

**STATE OF CALIFORNIA**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**MARKETING BRANCH**



**CALIFORNIA PEAR MARKETING PROGRAM**

Effective March 9, 1992  
Incorporating Amendments Through June 6, 2012

# CALIFORNIA PEAR MARKETING PROGRAM

## ARTICLE I

### DEFINITIONS

DEFINITION OF TERMS. For the purposes of this Marketing Program, the following definitions apply:

1. "Act" means the California Marketing Act of 1937, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code, as amended, or as the same may be hereafter amended.
2. "Department" means the Department of Food and Agriculture of the State of California.
3. "California Pear Marketing Program" or "Program" means unless the context indicates otherwise, this marketing order directly affecting producers of pears, which is issued by the Department, pursuant to provision of the Act.
4. "Pear Advisory Board", "Pear Board", "Advisory Board", or "Board" are synonymous and mean the administrative body established in accordance with Article II of this Program.
5. "Person" means any individual, partnership, corporation, association, or other business unit.
6. "Pears" means all pear varieties, except Asian pears, produced in California, which are marketed in fresh or processed forms. (*Amended April 20, 2007*)
7. "Producer" means any person engaged in the business of producing or causing pears to be produced for processing or fresh consumption. A person producing for sale 10 tons or less of pears per year shall not be deemed to be a producer, provided that the total volume marketed by such person is sold directly to consumers.
8. "Processor" means any person who performs any of the functions of processing pears.
9. "Processing" means any action or operation including but not limited to canning, drying or dehydrating and freezing which is performed in the preparation of pears for market in any form other than fresh.
10. "Canning" means the preservation of pears by placement of such pears or any part thereof into containers, which are subsequently hermetically sealed, and the contents thereof sterilized.

11. "Drying" and "Dehydrating" are synonymous and mean the preservation of pears by the removal of moisture by any means.
12. "Freezing" means the preparation of pears in any form by subjecting the same to the freezing process employed by commercial freezers.
13. "Regular Pear Products" means any canned product containing pears or pear pieces which have a form or shape characteristic of the product and which may be described in terms of lineal measurements or fractional parts of the whole, and shall include but not be limited to canned pear products, fruit cocktail, fruit salad, or fruit mix.
14. "Special Pear Products" means any product containing pears (a) which have been dried or dehydrated in any form, (b) which have been processed by freezing in any form, (c) which have been reduced to a pulpy mass or a liquid and shall include but not be limited to such products as canned strained foods, juices, nectars, or (d) which have been reduced to a liquid for use in fermented products.
15. "Pear Products" means both regular pear products and special pear products as herein defined.
16. "Lot" means any single delivery of pears which a producer tenders for inspection pursuant to this Marketing Program.
17. "Off-Grade Pears" means any pears which do not meet the requirements of the grade standard or standards made effective for the marketing season or any period thereof pursuant to the provisions of this Marketing Program.
18. "Marketing Season" means the period beginning June 1 of any year and ending May 31 of the following year.
19. "Handler" means any person who performs the functions of handling of pears.
20. "Handle" or "Handling" are synonymous terms and mean to prepare for market, sell, consign, deliver or cause fruit to be prepared for market, sold, consigned, delivered or transported between the production area and any point outside thereof, or within the production area: provided, that the term "handle" shall not include the transportation within the production area of fruit from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such fruit to such packing facility for such preparation.

21. “Nonbearing acreage” means acreage planted to produce during the marketing season on which no quantity of the product is produced for marketing or is anticipated will be produced for market during such marketing season. (*Amended July 2, 2001*)
22. “Abandoned Orchard” means non-bearing acreage where no formal insect, predator, disease or parasite detection, prevention, control or eradication practices are being applied. (*Amended July 2, 2001*)

## ARTICLE II

### PEAR ADVISORY BOARD

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

1. A Board to be known as the Pear Advisory Board is hereby established and shall consist of up to twelve (12) members to assist the Department in the administration of this Program. The Board shall be composed of producers, as herein defined.
2. Members and alternate members shall be appointed by the Department from nominations received for that purpose.
3. The regular term of office of the members (except members-at-large) shall be three (3) years beginning with the effective date of this Program and ending April 30 of the applicable marketing season. However, to provide for a staggered term of office for appointees to the initial Board: three (3) members shall serve a one-year term; three (3) members shall serve a two-year term; and four (4) members shall serve a three-year term.
4. There shall be no term limits to serve on the advisory board in any capacity. (*Amended August, 12, 2009*)
5. Representation on the Board shall be by districts as herein described, or as such district representation may be changed by recommendation of the Board and approval of the Department, to maintain equitable representation in accordance with areas of production. Any such change of boundary lines of said districts or change in district representation shall be deemed a minor amendment to this Program.

Said districts are as follows:

District No. 1, the "Early" District, shall be represented by six (6) members and shall consist of the following counties: San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, Monterey, San Luis Obispo, Santa Barbara, Stanislaus, Merced, Madera, Contra Costa, Solano, Marin, Mariposa, Mono, Inyo, Fresno, Kings, Tulare, Kern, Ventura, Orange, Los Angeles, San Bernardino, Riverside, San Diego, Imperial, San Joaquin, Sacramento, Yolo, Sutter, Yuba, Colusa, Glenn, Butte, Tehama, Shasta and Siskiyou. Not less than three (3) members from District 1 shall be producers in Sacramento County. *(Amended June 6, 2012)*

District No. 2, the "Late" District shall be represented by four (4) members and shall consist of the following counties: Lake, Mendocino, Napa, Sonoma, Del Norte, Humboldt, Trinity, Modoc, Lassen, Plumas, El Dorado, Nevada, Placer, Sierra, Amador, Calaveras, Alpine and Tuolumne. Not less than two (2) members from District 2 shall be producers in Lake County and not less than two (2) members in District 2 shall be from Mendocino County. *(Amended June 6, 2012)*

6. There shall be only one (1) alternate member for District 1, and this alternate can act in the place of any of the members in District 1. There shall be only one (1) alternate member for District 2, and this alternate can act in the place of any of the members in District 2. The District alternates shall serve one (1) year terms, said terms to begin on May 1 of any year and to end on April 30 of the succeeding year. In addition to serving in place of absent District members, the alternates may serve in the place of absent members-at-large. In the event that a member-at-large is absent at a meeting, either of the District alternates may serve in his or her place. The alternate member who lives the closest to the absent member-at-large shall be the one who will serve for the absent member-at-large. *(Amended January 20, 1994)*
7. Producer members-at-large. In addition to the District membership, the Board, by a majority vote may nominate and the Department may appoint not more than two (2) producer members-at-large who will be selected without regard to districts. The term of office of the members-at-large shall be one (1) year beginning on May 1 of any year and ending April 30 of the succeeding year; except that the term of office for the initial members-at-large may begin with the effective date of this Program. *(Amended August 12, 2009)*
8. Notwithstanding other provisions of this Article II, and 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, in addition to the up to twelve (12) producer members of the Board provided for in this Section A. Such persons shall not be affiliated in any way with respect to the production or marketing of pears and shall have all the rights and privileges, including voting, of any other member or alternate member of the Board. The regular term of office of any member or respective alternate member appointed pursuant to this subsection 8 shall be as close as possible to one (1) full year and shall terminate on April 30 during the year following their appointment.

Section B. NOMINATION OF MEMBERS OF THE PEAR ADVISORY BOARD.

1. Nominations of persons eligible to serve on the initial Pear Board shall be 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.
3. Procedures for the nomination of subsequent Board members and alternates may be developed by the Nominating Committee and recommended by the Board to the Department for its approval.
4. Each producer member and alternate member of the Board shall be, during his/her term of office, a producer or an employee of a producer of pears.

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

Section D. QUALIFICATION. Any person appointed by the Department as a member or 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 one of the members for whom he or she is 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, the alternate for his or her position shall act in his or her place and stead until a successor to such member is selected and has qualified.

Section F. VACANCIES. The Department shall fill any vacancies occasioned by the removal, death, resignation, or disqualification of any member or alternate member of the California Pear Board. In making such selection, the Department may take into consideration any reserve nominees and nominations made by the remaining members of the Board.

Section G. ORGANIZATION.

1. The Pear Advisory Board shall not perform any of its duties nor exercise any of the powers herein granted when more than two (2) vacancies from each District and one vacancy in a member-at-large position exist.

2. Seven (7) members of the Board, including not less than three members from each District, shall constitute a quorum. Any recommendation of the Board to the Department shall require an affirmative vote of a majority of the members present or alternates present and acting in the place and stead of members.

Section H. EX-OFFICIO MEMBERS. Each year the Board may recommend, and the Department may approve, the participation of ex-officio members in any or all deliberations of the Board; provided, that such participants shall not be counted in determining the presence of a quorum nor may they participate in voting on matters under consideration by the Board.

Section I. COMMITTEES.

1. A committee is hereby established, as recommended by the Board, to assist the Board and the Department in the nomination of members and alternate members to the Board. The Nominating Committee may make nominations of persons eligible to serve on the Board when regular terms of office expire.
2. The Board may recommend, and the Department may appoint, such additional committees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Program.

Section J. EXPENSES. The members and alternate members of the Board, including ex-officio members, and of any committees established pursuant to Section I above, may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder.

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

1. To administer the provisions of this Program.
2. To recommend to the Department administrative rules and regulations relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department 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 select a chairman and vice chairman from its membership and to select such other officers and adopt such rules for the conduct of its business as the Board may deem advisable.
8. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall, at all times, be subject to examination by the Department or its duly authorized representatives.
9. To employ such personnel or administrative agencies as may be deemed necessary, including private counsel, and to determine the salaries and define the duties of such personnel subject to the approval of the Department.
10. To negotiate and enter into contracts or agreements for such goods and services as may be necessary to carry out the purposes and objectives of the Program.
11. To recommend to the Department the establishment of any of the administrative rules and regulations authorized under Article III of this Program.
12. To receive, invest, borrow and disburse funds pursuant to the provisions of Article 10 of the Act.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD. The members and alternate members of the Pear Advisory Board, ex-officio members, or members and alternate members of any committees hereunder duly appointed by the Department, and the employees of such Board shall not be responsible individually in any way whatsoever to any producer or 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 own 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 or the Board, committee, or employee. The liability 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.

## **ARTICLE III**

### **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 quality standards as developed and recommended by the Board. Such recommendations shall not be lower than any existing State or Federal regulations.



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

Section C. INSPECTION AGENCY. The 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 order, provided, that any such recommendations shall be made no later than June 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 deliver to any processor or fresh handler only those lots of pears 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 possess, market, handle, or transport any pears in violation of any regulation made effective pursuant to this Marketing Program.
4. The Department through its duly authorized representatives and agents, including Board staff, 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 processors and fresh handlers of pears and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores, and transportation facilities and other places in which pears 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 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 IV

### SALES PROMOTION AND MARKET DEVELOPMENT

#### Section A. SALES PROMOTION AND MARKET DEVELOPMENT PROGRAM.

1. The Board is hereby authorized to prepare plans and administer programs and expend moneys, subject to the approval of the Department, for promoting the sale of pears, in fresh or processed form, as defined in this Program, for the purpose of maintaining existing markets or creating new and larger markets for pears, or for the prevention, modification, or removal of trade barriers which obstruct the free flow of pears or pear products to any market; provided, that any such plans so developed and conducted shall be directed toward promoting the sale of pears without reference to a particular private brand name or trade name, except as authorized by the Act, and, provided, further, that such plans or programs make no false or unwarranted claims on behalf of pears, nor disparage the quality, value, sale or use of any other agricultural commodity.
2. In carrying out any sales promotion or market development programs or other market development authorization, the Board may present facts to, and negotiate with state, federal, or foreign governmental agencies on matters which affect the marketing of pears or pear products produced within the State of California.
3. 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 affect the marketing of pears or pear products produced within the State of California.
4. The Board may with the approval of the Department, undertake programs to educate and instruct the public with respect to the uses and value of California pears and pear products.
5. The Board may recommend and the Department may approve provisions for the establishment of, regulations for, and rules for permissive use of an official board brand, trade name, or label, or other distinctive designation of grade, quality or condition as provided for in the Act.
6. In order to carry out programs or activities authorized in this Article, the Board, subject to the approval of the Department, may enter into contracts with any person qualified to render services in formulating and conducting said plans or programs, and prepare a statement of the cost of such plans and programs.

Section B. APPROVAL BY THE DEPARTMENT. Upon recommendation by the Board of any sales promotion or market development plans or activities authorized by this Article, and upon recommendation of the expenditures required by such programs, the Department may approve such programs and may authorize the Board to incur expenditures in connection therewith.

## **ARTICLE V**

### **RESEARCH AND SURVEYS**

Section A. MARKETING RESEARCH. The Pear Board may conduct or arrange for any necessary and proper research studies or investigations relating to the marketing of pears or pear products.

Section B. PRODUCTION AND PROCESSING RESEARCH.

1. In addition to marketing research, the Board may undertake research relating to the production and processing of pears. Production research may include, but not be limited to, cultural practices, harvesting methods and practices, and the preparation of pears for entry into marketing channels. Processing research may include any research activity relating to the processing of pears.
2. The Board may carry on any other appropriate research activity relating to the production, processing, transportation or utilization of pears.

Section C. SURVEYS. The Board may arrange for or undertake acreage surveys for pears, or surveys of the estimated annual production of pears, or other surveys deemed appropriate by the Board.

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

## **ARTICLE VI**

### **PEST AND DISEASE CONTROL**

Section A. DETECTION, CONTROL AND PREVENTION

This section pertains, but is not limited to the management of abandoned orchards.

The advisory board may recommend and the Department may approve measures to assist in the prevention or reduction of losses in the California pear industry caused by predators, insects, diseases or parasite infestations.

The Pear Board may conduct or arrange for the detection, prevention, control and eradication of insects, predators, diseases or parasites affecting the California Pear industry. Such activities may include the establishment and operation of inspection, spraying, dusting, fumigating, or other control measures, including orchard removal, as permitted by law. *(Amended July 2, 2001)*

## **ARTICLE VII**

### **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 pears 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. The rates of assessment which the Board may recommend shall not exceed the maximum permitted by the Act. The Board may recommend different assessment rates for processing pears (depending upon usage) and for pears that are marketed for fresh consumption.

**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 assessments are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this 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 pears produced for market by said producers, delivered to processors or handlers, prepared for market and marketed by said processors or handlers. To facilitate collection, each processor or handler of pears shall pay the entire applicable assessment on all pears received by him/her from a producer at the rates approved by the Department pursuant to the provisions of this Program. The processor or handler may, however, deduct any assessment paid for and on behalf of the producer from any money owed by the processor or handler to the producer. The Department shall verify that proper payment has been made by processors or 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 applicable provisions 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 plus accrued interest as authorized in the Act.

Section D. REFUNDS. Any monies collected as assessments during a marketing season and not expended in connection with the respective marketing operations may be refunded, 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 Program in such succeeding marketing season; provided, that upon termination by the Department of this Marketing Program, any and all monies remaining and not required by the Department to defray the expenses of this Marketing Program 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 pears produced within the area. Thereafter, if there are any monies remaining which have not been used by the Department as hereinabove provided, such monies shall be withdrawn from the approved depository and paid into the State Treasury as unclaimed trust monies.

## ARTICLE VIII

### BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all producers, handlers, and processors 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 them 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. 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 or her 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.

Section C. IMMUNITY. No person shall be excused from attending and testifying or from producing 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 or her tends to incriminate said person or subjects said person to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may be so required to testify or produce evidence documentary or otherwise, before the Department in obedience to a subpoena issued by him or her.

Section D. APPEALS. Any producer, handler, or processor regulated by this Program may petition the Department to review any order or decision of the Pear Board. Any such petition must be filed in writing setting forth the facts upon which it is based.

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

Section F. AGENTS. The Department may designate and authorize any person or persons including officers or employees of the Department of Food and Agriculture to act as its agent or agents with respect to any provisions of this Program.

## **ARTICLE IX**

### **SEPARABILITY**

SEPARABILITY. If any section, sentence, clause, or part of this Marketing Program is, for any reason, held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Marketing Program.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section A. DEPARTMENT'S APPROVAL OF BOARD ACTIONS. The exercise of any powers granted to the Pear Board under this Marketing Program shall be subject to the approval of the Department of Food and Agriculture.

Section B. POOLING OF FUNDS FOR PROMOTION. In the event funds collected under any marketing program or order for the promotion of pears are made available for inclusion in a pool of funds for the promotion of pears either fresh or processed, promotion funds collected under this Marketing Program may also be included in said pool of funds.

Section C. RELATION TO ANTITRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act, Section 16600 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 Marketing Program and in furtherance of the purposes and provisions of the Act, shall be a complete defense to such action or proceeding.

## ARTICLE XI

### EFFECTIVE TIME AND TERMINATION

#### Section A. EFFECTIVE TIME.

1. 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 1997 and every fifth (5th) year thereafter, the Department shall conduct a referendum of producers of pears to determine whether or not this Program should be terminated. However, successful passage of a major amendment substitutes for a continuation referendum and resets the timing for the next required continuation referendum.  
*(Amended April 20, 2007)*
2. The Department shall suspend this Program if it finds from the referendum 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 pears delivered during such season by all producers voting in the referendum. The volume for the purposes of this referendum shall be determined from information furnished by each producer at the time such producer's ballot is submitted.

Section B. TERMINATION. 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 public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter 1, Division 21 of said Food and Agricultural Code, that this Program, or any provisions 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 restrictions 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 or terminate this Program in accordance with the provisions of Sections 59082, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT. Unless otherwise expressly provided in the notice of amendment, suspension, or termination no amendment, suspension, or termination of the Program issued by the Department shall (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter

arise in connection with any other provision 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 right or remedy of the Department or of any person with respect to any such violation; (d) affect any liabilities pursuant to the provisions of this Program.