PENNSYLVANIA WINE MARKETINGAND RESEARCH PROGRAM

2011 Order, As Amended

ARTICLE I - Declaration.

In accordance with the requirements of the Agricultural Commodities Marketing Act, the Secretary of Agriculture finds that this program - the Pennsylvania Wine Marketing and Research Program - effectuates the purposes of that statute.

ARTICLE II - Definitions.

The following words and terms, when used in this marketing and research program, shall have the following meanings:

1. "ACMA" – The Agricultural Commodities Marketing Act (act of March 24, 1998, P.L. 217, No. 39) (3 Pa. C. S. §§ 4501-4513).

2. "Board" – The persons appointed by the Secretary from among those producers whose commodities are subject to this marketing and research program.

3. "Department" – The Department of Agriculture of the Commonwealth of Pennsylvania.

4. "Limited Winery" - The holder of a limited winery license issued under authority of the Liquor Code (47 P.S. §§ 1-101 through 8-803).

5. "Marketing Contract" – Any contract or agreement between the Board and a person for the performance of service related to advertising, promotion, research, marketing, or other objectives in furtherance of this marketing and research program.

6. "Marketing Season" – The initial marketing season for purposes of this order shall be from July 1, 2001 through December 31, 2001. Thereafter, the marketing season shall be the period beginning January 1 of any year and extending through December 31 of the same year.

7. "Person" – An individual, partnership, firm, corporation, association or any other business unit.

8. "Producer" – A person who produces or sells wine under authority of a limited winery license during a particular marketing season.

9. "Program" - The Pennsylvania Wine Marketing and Research Program.

10. "Secretary" – The Secretary of Agriculture of the Commonwealth of Pennsylvania.

ARTICLE III - Scope of the Program.

The area affected by this program shall be the Commonwealth of Pennsylvania and the program shall apply to persons who produce or sell wine under authority of a limited winery license during a particular marketing season.

ARTICLE IV - The Program Board.

Section A. Membership and Terms of Office.

1. *Number.* The Board shall consist of nine (9) members, one of whom shall be the Secretary, or his designee.
2. *Appointment.* The Secretary shall appoint eight (8) of the Board members.
3. *Eligibility for Appointment.* Persons who are current producers and who are current with their obligations under this program shall be eligible for appointment to the Board.
4. *Nominations.* The Secretary shall consider nominations submitted by producers.
5. *Representation.* The Secretary shall endeavor to select Board members representing a cross-section of the various wine production areas of the Commonwealth.
6. *Appointment.* The Secretary shall appoint a person to the Board by providing that person written notification of appointment.
7. *Qualification.* A person appointed to the Board shall qualify by filing a written acceptance of appointment within 15 days of receiving written notification of appointment.
8. *Term of Office.* The Secretary shall appoint three of the initial Board members to 3-year terms, three to 2-year terms and two to 1-year terms. Thereafter, all terms of office shall be three years. Board members shall serve until their successors are appointed. If a Board member is not able to serve a full term, the Secretary shall appoint a person to serve the balance of that term.

Section B. Representation and Qualifications.

Any person appointed as a member of the Board shall represent the interest of producers, as those interests relate to the program.

Section C. Schedule of Meetings.

Regular meetings of the Board will be held during the months of March and August. Special meetings of the Board may be called by either the Secretary, the Board Chairman or the majority of the Board members.

Section D. Powers and Duties of the Board.

1. *General Powers*. The Board shall have all of the authority granted a commodity marketing board" under ACMA.
2. *Specific Powers and Duties.* The Board shall have primary decision making authority relative to marketing contracts and other projects in furtherance of this marketing and research program and includes the following powers and duties:

   (a) To determine all matters pertaining to the program.
   (b) To hire and employ personnel which the Board deems necessary for the proper administration of the program and to fix the compensation and terms of employment of such personnel.
   (c) To adopt written procedures for acquiring and disposing of property, and subject to these procedures, to acquire, own, use, hire, lease, operate and dispose of personal property, real property and interests in real property.
   (d) To make and enter into all contracts and agreements, in accordance with the provisions of the law, which the Board deems necessary or incidental for the furtherance of the program or performance of duties and powers set forth in ACMA.
   (e) To receive, account for and disburse all monies collected pursuant to the program.
   (f) To prepare a budget for the administration, operating costs and expenses of the program.
   (g) To receive and report to the Secretary complaints or violations of the program and to assist and cooperate with the Secretary in the enforcement thereof.
   (h) To establish committees or subcommittees to carry out assigned duties and functions, and to designate Board members and non-Board members to serve on such committees and subcommittees. These non-Board members might include wine grape growers, wine retailers and any other persons the Board, in its discretion, chooses to assign to a particular committee or subcommittee. There will be at least three standing committees, including Marketing, Enology, and Viticulture. The viticulture standing committee is to include 3 (three) independent (non-winery-affiliated) wine grape growers.
   (i) To collect and gather information and data relevant to the proper administration of the program.
   (j) To charge fees and to assist the Secretary in the imposition of fees and the collection of fees and revenues pursuant to the Act. The Board may also afford affected producers the opportunity to designate the specific percentage of the fees collected from that producer to be used for marketing (including generic advertising and other promotional activities) and the specific percentage to be applied to non-marketing activities (such as research).
   (k) To issue an annual report on the operation of the program.
   (l) To recommend amendments to the program and amendments to ACMA and any regulations relating to the program.
3. *Duty to Adopt Written Procurement Procedures.* The Board shall adopt written procurement procedures for all marketing contracts, in accordance with ACMA.

Section E. Expenses and Compensation.

No member of the Board shall receive a salary, but each shall be entitled to actual expenses incurred while engaged in performing the duties authorized by ACMA or this Order. However, no *per diem* payment shall be made to any Board, committee or subcommittee member.

ARTICLE V - Powers and Duties of the Secretary.

The Secretary shall have all of the powers and perform all of the duties prescribed under ACMA, and shall exercise all administrative powers necessary to effectuate the purposes of that statute. These powers and duties include the issuance of this Order, the appointment of members to the Board and the providing of personnel, staff, legal counsel, and office facilities required for the administration and enforcement of the program.

ARTICLE VI - Purpose.

1. *General Purpose.* The program will provide funds for wine and wine grape research and to support promotion and marketing of wines for the benefit of Pennsylvania's producers.
2. *Cooperation with other Persons and Organizations.* The Secretary and the Board may cooperate with any other organizations whose activities may be deemed beneficial to the purpose of this program.
3. *Special Relationship to the Wine Grape Production Industry.* The interests of the Commonwealth's wine grape production industry and its wine production industry are intertwined. Growers of wine grapes will benefit from the research and promotion efforts to be funded by the program. As a consequence of the mutual interests of wine producers and wine grape producers, the Board shall, to the extent practicable, endeavor to include growers of wine grapes, or organizations representing such growers, in its consideration of appropriate research or marketing projects relating to wine grapes or wine production.

ARTICLE VII - The Program Budget.

The Board shall prepare a budget for each marketing season. The budget shall be prepared by December 1 of the year immediately preceding the marketing season. The budget shall address administrative and operating costs of the program, and the costs of carrying on duly authorized research and marketing projects, programs and activities.

ARTICLE VIII - Disbursement of Funds.

Disbursement of funds shall be made by the Board in the manner described in ACMA and in accordance with the provisions of this marketing order.

At least 30% of annual funding shall be allocated to viticultural research. This allocation, or any unexpended portion thereof, may be carried-forward from year to year to fund viticultural research.

ARTICLE IX - Producer Charges.

1. *Obligation of Producer to Pay Producer Charge.* A producer shall account for and pay the producer charge described in this article in the amount and manner described herein.
2. *Producer Charge Amount.* A producer shall pay the program $.15 (fifteen cents) with respect to each gallon of wine sold (excludes instate winery to winery sales in bond) within a given marketing season.
3. *Mandatory Deadline for Payment of Producer Charges.* A producer shall make remittance and accounting of the proper producer charge to the Secretary or his designated fiscal agent by February 1 of the year immediately following the marketing season with respect to which payment is due.
4. *Optional Quarterly Payments of Producer Charges.* The program will provide producers an opportunity to pay producer charges during the marketing season on a quarterly basis. Full payment must be made by February 1 of the year immediately following the marketing season with respect to which payment is due.
5. *Production and Sales Figures to be used in Calculating Producer Charges.* A producer - as a holder of a limited winery license - is obligated by law to provide the Pennsylvania Liquor Control Board ("PLCB") monthly reports of wine production and sales. For purposes of calculating the appropriate producer charges due the program with respect to a particular marketing season, a producer shall use the same production and sales figures as it provided the PLCB with respect to that same marketing season.
6. *Civil Penalties and Interest.* A producer who fails to account for and pay producer charges owed the program by March 1 of the year immediately following the marketing season with respect to which payment is due shall be required to pay an additional penalty of not less than $100 nor more than $5,000. The penalty shall be as nearly equivalent to 100% of the amount of delinquent producer charges as is practicable.
7. *Special Provisions for the Initial Marketing Season.* The initial marketing season for the program shall be the six-month period from July1, 2001 through December 31, 2001. Producers shall pay the program producer charges with respect to this abbreviated initial marketing season, in accordance with this Article.
8. *Voluntary Contributions.* The program may encourage and accept financial contributions from persons other than producers. This may include but not be limited

to contributions from wine grape growers (who shall benefit from the research and marketing efforts of the program).

ARTICLE X - Effecting the Program.

This program, or any amendment thereto, shall not become effective unless and until the Secretary determines by a referendum whether or not the affected producers assent to the proposed action. The Secretary shall conduct the referendum among affected producers and the affected producers shall be deemed to have assented to the proposed program if, of those voting, not less than a majority by number and by volume assent to the proposed program.

ARTICLE XI - Terminating the Marketing Program.

Subject to approval of the Board, the Secretary shall suspend or terminate this program or any provisions of this program whenever he finds that such provisions or program do not tend to effectuate ACMA within the standards and subject to the limitations and restrictions imposed in ACMA; provided, that such suspension or termination shall not be effective until the expiration of the current marketing season.

If the Secretary finds that the termination of the program is requested, in writing, by more than thirty-three and one-third percent of the affected producers who sell more than fifty percent of the volume of wines produced within the Commonwealth, he shall terminate or suspend for a specified period such program or provisions thereof, provided that such termination shall be effective only if announced on or before a date thirty days in advance of the beginning of the current marketing season. If fifteen percent of the producers request, in writing, that a referendum be held on the question of terminating the program, the Secretary must announce and conduct such a referendum within a reasonable period of time, and in any case, within one year of the request, the marketing and research program shall be terminated if so voted by a majority of those voting.

ARTICLE XII - Review of Program at 5-Year Intervals.

Every five years, the Secretary shall call a referendum to determine whether or not a majority of the affected producers voting still desire the marketing and research program.

ARTICLE XIII - Interpretation.

Applicable provisions of this program shall be interpreted consistent with ACMA and ACMA shall take precedence in the event of any conflict with this program.

ARTICLE XIV - Effective date.

This program shall take effect no less than 21 days after the notice described in § 4509 of the Agricultural Commodities Marketing Act (3 Pa. C. S. §§ 4501- 4513) is published in a newspaper of general circulation in the capital of the State.

BY THE PENNSYLVANIA DEPARTMENT OF AGRICULTURE

George D Greig

George D. Greig, *Secretary*

Date: 12/22/11