

# Pennsylvania Vegetable Marketing and Research Program 2018 Program Order

*As Approved by a Grower Review Referendum, March 2018*

## **Article I—Declaration.**

In accordance with requirements of the Agricultural Commodities Marketing Act as amended, the Secretary of Agriculture finds that this program effectuates the purposes of said Act.

## **Article II—Definitions.**

As used in this marketing program, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

1. "Act" means the Act of March 24, 1998 (P.L. 217, No. 39) (3 Pa.C.S.A. §§ 4501—4513), as amended, known as the Agricultural Commodities Marketing Act.
2. "Commodity Marketing Board" or "Board" consists of the Secretary plus those persons who are appointed by the Secretary from among producers whose commodities are subject to this marketing program and from among certain sales agents required by regulation to collect or assist in the collection of producer charges under the authority of Section 10(b) of the Act, that person who is appointed by the Secretary from among such sales agents.
3. "Department" means the Department of Agriculture of the Commonwealth of Pennsylvania.
4. "Greenhouse" means any enclosed structure for growing vegetables, including both structures where the internal temperature is controlled and high tunnels where no additional heat is supplied. The term does not include low tunnels.
5. "Marketing Contract" Any contract or agreement between the Commodity Marketing Board and a person for the performance of services relating to advertising, marketing, promotion, or research, or other objectives in furtherance of this marketing program.
6. "Marketing Season" The period from October 15, 2011 through December 31, 2012, and thereafter from January 1 through December 31 of each calendar year.
7. "Person" means an individual, partnership, firm, corporation, association or other business unit.
8. "Producer" means a person who does one or more of the following during a particular marketing season:
  - a. Grows one (1) or more acres of vegetables within this Commonwealth for the purpose of selling said vegetables.
  - b. Grows vegetables in one or more greenhouses located within this Commonwealth if: (1) the greenhouse(s) is/are used for growing vegetables in 1,000 square feet or more of growing space; and (2) the vegetables are grown for sale; and (3) the vegetables are not grown to be transplanted outdoors.
  - c. Grows vegetables within this Commonwealth and sells \$2,000 or more of the vegetables grown in a given marketing season.
9. "Sales Agent" means any processor, auction, packing house, fresh market vegetable stand, cooperative, broker, wholesaler, commission merchant or any person who purchases, handles, processes, receives, sells or contracts to sell vegetables originating from a producer. A producer may be a sales agent with respect to his own production.
10. "Secretary" means the Secretary of Agriculture of the Commonwealth of Pennsylvania, or his designee.
11. "Vegetables" means all vegetables except Irish potatoes, including but not limited to: asparagus, beans (snap, dry and lima), beets, cabbage, cauliflower, broccoli, Brussels sprouts, collards, kale, mustard greens, kohlrabi, carrots, celery, corn (sweet, pop and ornamental), cucumbers, eggplant, garlic, horseradish, leeks, lettuce, muskmelons, watermelon, onions, parsley, parsnips, peas, peppers, pumpkins, squash (edible and decorative), gourds, radishes, rutabagas, spinach, sweet potatoes, tomatoes, and turnips, produced in Pennsylvania for the purpose of sale by a producer as herein defined.

## **Article III—Scope of Program.**

The area affected by this marketing program shall be the Commonwealth of Pennsylvania. The persons affected by this marketing program shall be the "producers" described herein at Article II.

## **Article IV—Commodity Marketing Board.**

### Section A. Establishment and Members.

The Commodity Marketing Board shall consist of fourteen (14) members, one of whom shall be the Secretary, or his designee. The Board shall have the primary decision-making authority in the administration of this marketing program, as provided in the Act.

For the purpose of representing the producers on the Commodity Marketing Board, the state shall be divided into three (3) production areas (West, Central, and East). Four (4) Board members representing producers shall be appointed from each production area. Such Board members shall represent fresh market vegetable producers, producers of vegetables for processing, and greenhouse vegetable producers.

As this marketing program requires certain sales agents to collect or assist in the collection of producer charges under authority of Section 10(b) of the Act, the Secretary shall appoint one (1) Board member from among such sales agents.

### Section B. Term of Office.

1. The term of office of each appointed member shall be for three (3) years, beginning July 1 and ending June 30: Provided, that the terms of office of the initial appointed members of the Commodity Marketing Board shall be staggered as follows: Four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, and four (4) members shall serve for three (3) years. All members appointed subsequent to those first appointed, and the member appointed to represent sales agents, shall serve three (3) year terms.

2. The Secretary, or his designee, will be a member of the Commodity Marketing Board, and the other Board members shall be appointed by the Secretary. Twelve (12) Board members shall be appointed from among affected producers. One (1) Board member shall be appointed by the Secretary from among sales agents. In making these appointments, the Secretary shall consider nominations submitted by the affected producers or sales agents.

3. Successor members to fill the expired terms of members of the Commodity Marketing Board shall be appointed in the same manner as the initial members of the Commodity Marketing Board. Members shall serve in such capacities for the portion of the term of office for which they are appointed and until their respective successors are appointed and have qualified.

4. Any person appointed to represent producers as a member of the Commodity Marketing Board shall be and remain a producer while a member of the Board. A person appointed to represent sales agents as a member of the Board shall be and remain a sales agent while a member of the Board. Any person appointed to the Board shall qualify by filing a written acceptance with the Secretary within fifteen (15) days of being notified of appointment.

5. To fill any vacancy occasioned by the failure of any person appointed as a member of the Commodity Marketing Board, a successor for the unexpired term of such member shall be appointed by the Secretary from among the affected producers or sales agents.

6. The regular meetings of the Board will be held at least four (4) times a year.

#### Section C. Powers and Duties of the Board.

The Commodity Marketing Board shall have the primary decision-making authority relative to marketing contracts and other projects in furtherance of this marketing program and includes the following powers and duties:

1. To determine all matters pertaining to this marketing program.
2. To hire and employ personnel which the Board deems necessary for the proper administration of this marketing program and to fix the compensation and terms of employment of such personnel.
3. 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.
4. To make and enter into all contracts and agreements, in accordance with the provisions of the law, which the Board deems necessary or incidental to the furtherance of the marketing program or performance of duties and powers pursuant to the Act. The Board shall adopt written procurement procedures for all marketing contracts.
5. To receive, account for and disburse all monies collected pursuant to this marketing program, the Act and any applicable regulations. Funds should generally be disbursed to benefit the fresh market producers in proportion to the amount received from the fresh market acreage and likewise to proportionately benefit the processing producers and greenhouse producers.
6. To prepare a budget for the administration, operating costs and expenses of this marketing program.
7. To receive and report to the Secretary complaints or violations of this marketing program and to assist and cooperate with the Secretary in the enforcement thereof.
8. 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.
9. To collect and gather information and data relevant to the proper administration of this marketing program.
10. To charge fees and to assist the Secretary in the imposition of fees and the collection of fees and revenue pursuant to the Act.
11. To issue an annual report on the operation of this marketing program.
12. To recommend amendments to this marketing program and amendments to the Act and regulations issued pursuant thereto.

#### Section D. 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 duties authorized herein. In addition, a per diem payment may be made to each Board Member or subcommittee member for each day in which a Board Member or subcommittee member is performing a duty necessary to the functions of the Board. The per diem payment shall not exceed the maximum sum allowable under the Act.

### **Article V—Powers and Duties of the Secretary.**

Subject to the provisions contained in the Act, the Secretary shall administer and enforce the provisions of the Act, and shall have and shall exercise all administrative powers necessary to effectuate the purposes of the Act, including the issuance of this marketing program, the appointment of members to the Commodity Marketing Board and the providing of personnel, staff, legal counsel, and office facilities required for the administration and enforcement of this marketing program.

### **Article VI—Purpose.**

This marketing program is to provide funds to be used to contract with any person, organization, or state or federal agency, to prepare, issue, administer and enforce plans for promoting the sale of vegetables or vegetable products without reference to any particular firm's or individual's brand or trade name. No advertising or sales promotion program shall be approved, which shall make use of false or unwarranted claims or disparage the quality, value, sale or use of any other agricultural commodity.

This marketing program further provides funds to be contracted with any person, organization, or state or federal agency for conducting research deemed beneficial to the vegetable industry. Program funds may also be used to develop information designed to inform producers of quality standards and quality improvements. The Secretary and the Board may cooperate with any other state or Federal agency, or other organization whose activities may be deemed beneficial to the purpose of this Act.

### **Article VII—Budget, Rate of Assessment, Collection of Assessment, Disbursement of Funds.**

#### Section A. Budget and Assessment.

A budget shall be prepared and established for the administration and enforcement of this marketing program and for carrying out duly authorized programs and activities of marketing or research as herein provided.

The rate of assessment shall be the lesser of the following:

- a. a flat fee of twenty-five dollars (\$25.00) per affected producer ("affected producer" is defined herein at Article III, relating to scope of program) plus \$1.50 for each acre of field vegetable production and each 1,000 square feet of greenhouse vegetable production beyond the initial five of these acreage and/or square-footage units; or
- b. an amount equal to 1.25% (.0125) of gross sales of vegetables during a particular marketing season, but no less than twenty-five dollars (\$25).

Producers shall report what part of their total acreage is utilized for fresh market production and the part utilized for processing production.

Section B. Collection of Assessment/Charge.

1. Each producer shall be responsible for payment of the proper assessment upon the vegetables which he produces or causes to be produced, and sells or delivers for sale.

2. All producers shall make remittance and accounting of the proper assessment to the Secretary or his designated fiscal agent no later than the 31st day of January immediately following the applicable marketing season, or such other period as established by regulation.

3. Any delinquent producer may be assessed a penalty for late payments as established by regulation.

Section C. Disbursement of Funds.

1. Disbursement of funds shall be made in the manner described in the Act and in any rules or any regulations promulgated by the Secretary to effectuate the provisions and intent thereof, and in accordance with the provisions of this marketing program.

2. Funds should generally be disbursed to include support for vegetable promotion or research, approximately in proportion to the amounts provided by fresh market, processing, and greenhouse segments of the vegetable industry.

**Article VIII—Effecting Marketing Program.**

This marketing 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 a majority by acreage and square footage assent to the proposed program.

**Article IX—Amending Marketing Program.**

The Secretary shall call for a referendum on amendments to the marketing program within a reasonable period of time, upon the request of the Board or with written request of ten percent of the producers in a commodity group of over two thousand affected producers or fifteen percent of the producers in a commodity group of less than two thousand affected producers. In voting on an amendment to the marketing program, the vote shall be only on the amendment, and shall not terminate the program.

**Article X—Terminating Marketing Program.**

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

If the Secretary finds that the termination of the marketing program is requested in writing, by more than thirty-three and one-third percent of the affected producers who produce for market more than fifty percent of the volume of agricultural commodities produced within the designated production area for market, the Secretary shall terminate or suspend for a specified period, the program or provisions thereof; Provided that such termination shall be effective only if announced on or before the first day of July in any calendar year. If ten percent of the producers in a commodity group of over two thousand affected producers or fifteen percent of the producers in a commodity group of less than two thousand affected producers, request in writing, that a referendum be held on the question of terminating the program, the Secretary must announce and conduct a referendum within a reasonable period of time. The program shall be terminated if so voted by a majority of those voting.

**Article XI—Marketing Program Reviewed.**

At intervals of no greater than five (5) years, the Secretary of Agriculture shall call a referendum to determine whether or not a majority of the vegetable producers voting still desire a Commodity Marketing Program.

**Article XII—Interpretation.**

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

**Article XIII—Effective Date.**

The Program shall become effective 21 days from publication of the notice of issuance in accordance with Section 9 of the Act.

RUSSELL C. REDDING, Secretary