

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (I) and (f) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) and thus would not require DHS to apply rules for records or portions of records which are exempted from access or amendment upon request. Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related system of records notice (SORN) or Subpart B of this Part.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law

enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: January 21, 2010.

**Mary Ellen Callahan,**  
*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2010-3361 Filed 2-22-10; 8:45 am]

**BILLING CODE 9110-9M-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Doc. No. AO-FV-08-0174; AMS-FV-08-0085; FV08-920-3]

#### **Kiwifruit Grown in California; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 920**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on proposals by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would redefine the districts into which the production area is divided and reallocate committee membership among the districts, revise committee nomination and selection procedures, authorize the committee to conduct research and promotion programs, and revise committee meeting and voting procedures. The proposals are intended to improve the operation and administration of the order and provide the industry with additional tools for the marketing of kiwifruit.

**DATES:** The referendum will be conducted from March 12 through March 26, 2010. The representative period for the purpose of the referendum is August 1, 2008, through July 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Laurel May or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov) or [Kathy.Finn@ams.usda.gov](mailto:Kathy.Finn@ams.usda.gov).

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, E-mail: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on January 24, 2008, and published in the November 19, 2008, issue of the **Federal Register** (73 FR 69588), and a Recommended Decision issued on November 5, 2009, and published in the November 12, 2009, issue of the **Federal Register** (74 FR 58216).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

#### **Preliminary Statement**

The proposed amendments are based on the record of a public hearing held December 9, 2008, in Modesto, California, to consider such amendments to the order. Notice of this hearing was published in the **Federal Register** on November 19, 2008 (73 FR 69588). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The notice of hearing contained four proposals submitted by the committee.

The amendments included in this decision would:

1. Redefine the districts into which the production area is divided and reallocate committee membership positions among the districts;
2. Revise committee nomination and selection procedures;
3. Add authority for research and promotion programs; and
4. Revise the committee's meeting and voting procedures.

The Agricultural Marketing Service (AMS) also proposed to make any such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the

effectuated amendments. AMS proposed making a clarifying conforming change to the order language in § 920.20 that cross references § 920.31(l).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 5, 2009, filed with the Hearing Clerk, U.S. Department of Agriculture (USDA), a Recommended Decision and Opportunity to File Written Exceptions thereto by December 14, 2009. None were filed.

### Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. Small agricultural growers have been defined as those with annual receipts of less than \$750,000.

There are approximately 30 handlers of kiwifruit subject to regulation under the order and approximately 220 growers of kiwifruit in the regulated area. Information provided at the hearing indicates that the majority of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of growers would be considered small entities according to the SBA's definition.

The order regulates the handling of kiwifruit grown in the State of California. Total bearing kiwifruit acreage has declined from a peak of approximately 7,300 acres in 1992–93 to about 4,000 acres in 2007–08. Approximately 24,500 tons of kiwifruit were produced in California during the 2007–08 season—a decline of approximately 27,800 tons compared to the 1992–93 season. According to evidence provided at the hearing, approximately 30 percent of the 2007–08 California kiwifruit crop was shipped to export markets, including Canada,

Mexico, Central American, and Asian destinations.

Under the order, outgoing grade, size, pack, and container regulations are established for kiwifruit shipments, and shipping and inventory information is collected. Program activities administered by the committee are designed to support large and small kiwifruit growers and handlers. The 12-member committee is comprised of eleven grower representatives from the production area, as well as a public member. Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

Following several discussions within the kiwifruit industry, the committee considered adding authority to conduct research and promotion programs to provide maximum flexibility to the order. An amendment subcommittee was appointed to develop recommendations for this and other possible order revisions. The subcommittee developed a list of proposed amendments to the order, which was then presented to the committee.

The committee met to review and discuss the subcommittee's proposals at its meetings on January 30, 2008, April 22, 2008, and July 9, 2008. At those meetings, the committee voted unanimously to support the four proposed amendments that were forwarded to AMS and subsequently considered at the hearing.

The proposed amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing California kiwifruit. Record evidence indicates that the proposals are intended to benefit all growers and handlers under the order, regardless of size.

All grower and handler witnesses supported the proposed amendments at the hearing. Several witnesses commented on the implications of implementing research and promotion programs under the order. In that context, witnesses stated that they expected the benefits to growers and handlers to outweigh any potential costs.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

### *Proposal 1—Districts and Representation*

Proposal 1 would amend the order by redefining the districts into which the production area is divided and providing for the allocation of committee membership positions between the districts. Such allocation would be based upon five-year production averages, or upon another basis approved by the Secretary. This proposal would also provide for concurrent terms of office for all committee members, who would be selected biannually.

At the time the order was promulgated, kiwifruit acreage was more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

The concentration of planted acreage into two main regions and the decline in the number of growers over time has prompted the committee to evaluate the appropriateness of the current committee structure. The committee believes that consolidating the districts and providing for reallocation of grower seats as proposed would better reflect the current composition of the industry. The revisions would ensure that the interests of all large and small entities are represented appropriately during committee deliberations. Synchronizing all the terms of office to begin and end at the same time would simplify administration of the order and reduce disruptions to committee business. Adoption of the proposed amendment would have no economic impact on growers or handlers of any size.

### *Proposal 2—Nominations and Vacancies*

Proposal 2 would amend the order by specifying that grower nomination meetings be held by June 1 of each nomination year and that mid-term vacancies may be filled by selections made by the Secretary after consideration of recommendations that may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary.

Currently, the order requires that nomination meetings be held by July 15 of each year, but that deadline does not allow for timely processing of the

nominations and selections of new members prior to the August 1 beginning of the terms of office. The committee has been conducting nomination meetings earlier than prescribed by the order and proposed this revision to codify what has become normal practice.

Any vacancies that occur under the current order provisions must be filled by repeating the nomination and selection process outlined for new members. Allowing the Secretary to fill vacancies as proposed would streamline the process of filling vacancies and reduce disruption to committee business.

Adoption of this proposal would have no economic impact upon growers or handlers of any size.

#### *Proposal 3—Research and Promotion*

Proposal 3 would amend the order by adding authority for the committee to conduct research and promotion projects and to accept voluntary contributions to assist with funding those projects. This proposal would also amend the order by requiring the concurring vote of eight members for any action with respect to research and promotion. Currently, the committee is not authorized to conduct research or promotion programs, and it is not authorized to accept voluntary contributions for any purpose.

Historically, kiwifruit research has been conducted by other industry organizations and funded through private as well as public revenues. Currently, the California Kiwifruit Commission, a State marketing program, is authorized to conduct research and promotion projects for the industry. According to the hearing record, the committee has not identified any specific projects that it wants to conduct at this time, nor does it intend to duplicate the efforts of the State program. However, it would like to add authority to conduct such projects in the event that a need for new projects arises.

Further, the committee proposed adding authority to accept voluntary funds to conduct research and promotion projects to augment the assessment revenues they might budget for such purposes. The order specifies a cap on the rate handlers may be assessed to support the committee's programs and activities. According to witnesses, the current assessment rate is well below the established cap, but supporting research and promotion projects in the future could require more money than what the shrinking industry is likely to collect through assessments. Voluntary contributions could also augment matching funds required from

the committee for participation in USDA-sponsored market development programs.

Finally, the committee recommended adding a provision that all actions with respect to research and promotion would require eight concurring committee votes. Witnesses explained that this supermajority approval would ensure that research and promotion projects undertaken by the committee would benefit the industry as a whole.

Adding authority to conduct research and promotion projects would not, of itself, have any economic impact on growers or handlers of any size. If research and promotion projects were implemented under this authority in the future, the assessment rate for handlers would likely increase to cover the cost of those expenditures. The value of any proposed projects, as well as recommendations for increased assessment rates, would be evaluated by the committee and approval would require the concurring vote of eight members. Any increases in cost would be borne proportionately by handlers according to the volume of kiwifruit they ship. Those costs could be offset by voluntary contributions. Witnesses testified that any increases in cost due to implementation of this proposal would be offset by benefits expected to accrue to growers and handlers as improved production and post-harvest handling methods and new market opportunities are developed. Any increased costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

#### *Proposal 4—Meeting and Voting Procedures*

Proposal 4 would amend the order by allowing the committee to designate substitute alternates to represent absent members from the same district at meetings if necessary to secure a quorum. Currently, under most circumstances, only a member's respective alternate may represent the member if the member is unable to attend a meeting. For districts with only one member, there is no provision for when both the member and his or her alternate are unavailable for a meeting. In the past, meetings have been cancelled at the last minute because attendance was insufficient to meet quorum requirements.

If implemented, the proposed amendment would allow alternates not otherwise representing absent members to represent other members at committee meetings in order to secure a quorum. This would help ensure that quorum requirements could be met and

that committee business could be addressed in a timely manner.

This proposal would further authorize the committee to meet by telephone or other means of communication. Video conference meetings would be considered assembled meetings and votes taken at such meetings would be considered in-person. Votes by telephone or other types of non-assembled meetings would be by roll call.

Witnesses testified that this amendment would provide the committee with greater flexibility in scheduling meetings and would be consistent with current practices in other kiwi industry settings. The use of telephone and other means of communication would allow greater access to committee meetings for members as well as other interested persons. Additionally, administration of the order would be improved as urgent committee business could be addressed in a timely manner.

This amendment is expected to benefit growers and handlers of all sizes by improving committee efficiencies and encouraging greater participation in industry deliberations. The amendment is not expected to result in any significant increased costs to producers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size. Furthermore, the record shows that the costs associated with implementing regulations would be outweighed by the benefits expected to accrue to the California kiwifruit industry.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the production and marketing of California kiwifruit.

#### **Paperwork Reduction Act**

Current information collection requirements for part 920 are approved by the Office of Management and Budget (OMB), under OMB Number 0581-0189—"Generic OMB Fruit Crops." No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Civil Justice Reform

The amendments to Marketing Order No. 920 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

### Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 12, 2009, issue of the **Federal Register** are hereby approved and adopted.

### Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Kiwifruit Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered*, that this entire decision be published in the **Federal Register**.

### Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–407) to determine whether the annexed order amending the order regulating the handling of

kiwifruit grown in California is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2008, through July 31, 2009.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel and Debbie Wray, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov) or [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@ams.usda.gov), respectively.

### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Dated: February 17, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

### Order Amending the Order Regulating the Handling of Kiwifruit Grown in California<sup>1</sup>

#### Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

#### (a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of kiwifruit grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Revise § 920.12 to read as follows:

#### § 920.12 District.

*District* means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) *District 1* shall include Butte, Sutter, and Yuba Counties.

(b) *District 2* shall include Tulare County.

(c) *District 3* shall include all counties within the production area not included in Districts 1 and 2.

3. Revise § 920.20 to read as follows:

#### § 920.20 Establishment and Membership

There is hereby established a Kiwifruit Administrative Committee

consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate), and eleven members (and alternates). With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers. In accordance with § 920.31(l), district representation on the committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts. The committee may, with the approval of the Secretary, provide such other allocation of membership as may be necessary to assure equitable representation.

4. Revise § 920.21 to read as follows:

#### **§ 920.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. *Provided*, That the terms of office of all members and alternates currently serving will end on the last day of the fiscal period in which this amended provision becomes effective, with nominations for new terms of office to be conducted as soon as practicable after the effective date of the amendment. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members. *Provided*, That any term of office less than two years as a result of the amendment will not count toward tenure.

5. In § 920.22, revise the first sentence of paragraph (a) to read as follows:

#### **§ 920.22 Nomination.**

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than June 1 of each year in which nominations are made, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. \* \* \*

\* \* \* \* \*

6. Revise § 920.26 to read as follows:

#### **§ 920.26 Vacancies.**

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be selected by the Secretary after consideration of recommendations which may be submitted by the committee, unless such selection is deemed unnecessary by the Secretary. The selection shall be made on the basis of representation provided for in § 920.20.

7. Revise § 920.27 to read as follows:

#### **§ 920.27 Alternate members.**

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead if necessary to secure a quorum. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

8. Revise § 920.32 to read as follows:

#### **§ 920.32 Procedure.**

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, research and promotion activities, or recommendations for regulations pursuant to §§ 920.50 through 920.55 of this part shall require at least eight concurring votes.

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided*, That a video conference shall be considered an assembled meeting, and votes by those

participating through video conference shall be considered as cast in person.

9. Add a new § 920.45 to read as follows:

#### **§ 920.45 Contributions.**

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

10. Add a new § 920.47 to read as follows:

#### **§ 920.47 Production research, marketing research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of kiwifruit. The expense of such projects shall be paid from funds collected pursuant to §§ 920.41 and 920.45.

[FR Doc. 2010–3477 Filed 2–22–10; 8:45 am]

BILLING CODE 3410–02–P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1218**

[Document Number AMS–FV–09–0021; FV–09–704]

### **Blueberry Promotion, Research, and Information Order; Withdrawal of a Proposed Rule**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This action withdraws a proposed rule published in the **Federal Register** on July 27, 2009 (74 FR 36955), to amend the Blueberry Promotion, Research, and Information Order (Order) by increasing the assessment rate on producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually from \$12 to \$24 per ton. The Order is administered by the U.S. Highbush Blueberry Council (Council). Assessments are used by the Council to fund a nationally coordinated program of research, development, advertising, and promotion of highbush blueberries in the marketplace. The Council recommended increasing the assessment rate to expand its promotional and