ACTION: Final rule.

summary: This final rule redefines the eight district boundaries under the Federal marketing order for kiwifruit grown in California and makes the districts more equitable in terms of kiwifruit production. Kiwifruit growers in each of these districts elect members to represent their districts on the Kiwifruit Administrative Committee (committee), which locally administers the order. Production shifts have occurred within the California production area that have made the districts inequitable in terms of kiwifruit production.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901; or Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 [7 CFR Part 920], as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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 the Secretary 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 the Secretary 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 principle place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this

action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the order and approximately 600 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. A majority of handlers and producers of California kiwifruit may be classified as small entities.

The committee met on September 27, 1994, and recommended by a vote of 8 to 1 to change the producer district boundaries.

The 12-member committee consists of one public member (and alternate), one member (and alternate) from each of the eight California districts, and three additional committee members and their alternates to be selected from the three districts with the three highest volumes of fresh shipments in the prior fiscal period. No more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates are growers or employees of growers. The public member and alternate are nominated by the grower members and are selected with the approval of the Secretary.

Under Section 920.31 of the marketing order, the committee may, with the approval of the Secretary, redefine the districts into which the production area is divided. Any such changes shall reflect, insofar as practicable, shifts in kiwifruit

production within the districts and the production area.

Pursuant to section 920.12, the production area, which includes all counties in California, is divided into eight districts. District 1 includes Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte counties with the exception of that area set aside as "District 2." District 2 includes the 95948 postal zip code area known as Gridley (and surrounding area), incorporating the area located within the following boundaries: the area west of the Feather River; north of the Butte/ Sutter County line; east of Pennigton and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue. District 3 includes Yuba, Sutter, Sierra, Nevada, and Placer Counties. District 4 includes Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa, and Glenn Counties. District 5 includes San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey Counties. District 6 includes Mono, Mariposa, Madera, Fresno, and Kings Counties. District 7 includes Tulare and Inyo Counties. District 8 includes San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties.

Over the past ten years, production shifts have occurred within the California production area that have made the districts unequitable in terms of kiwifruit production. At the time the current districts were established, the production per district was fairly equal, but a greater percentage of the California kiwifruit crop was produced in Southern California (District 8) and Central California (District 5). However, kiwifruit production has shifted so that a larger percentage of the crop is concentrated in the Gridley area in Northern California (District 2) and Tulare County in Central California (District 7).

The percentage of production for each of the eight current districts is shown in the table below based on the 1993/94 crop year. The percentage of production for the redefined districts based on the 1993/94 crop year is shown as a basis for comparison. The table outlines the inequity that currently exists among the