also receive the same products in the same-sized package with similar labels from a fully or partially regulated handler during the month. Additional amendments will clarify the limits and sources of supplemental supplies of the P–H. The basic intent of these provisions is to continue to allow the operations of P–Hs, while ensuring they bear the burden of their own reserve supply of milk.

At the time of the hearing, Heartland Dairy was the largest P–H in the Central Arizona market. Since then, it has sold its cows and dairy farms and has become a fully regulated handler under the order. Testimony at the hearing indicated that Heartland had been sharing a joint account with a fully regulated handler, Jackson Foremost Foods, to supply Fry's Food Stores, the dominant supermarket chain in the Phoenix area.

The Executive Director of The United Dairymen of Arizona (UDA), a cooperative association in the market, testified that Fry's Food Stores is the principal outlet for Heartland Dairy's fluid milk product distribution in the Central Arizona marketing area. The witness stated that Heartland shared the Fry's account with Jackson Foremost Foods, a fully regulated handler supplied by UDA. He said that when Heartland's deliveries to Fry's were insufficient to cover its commitment, Fry's called on Jackson to make up the deficit. Jackson, in turn, called on UDA to supply it with more milk. The witness indicated that this scenario had occurred repeatedly in the last three years, particularly during the low production months of July, August, September, and October, and throughout the year on Fridays and Saturdays.

The UDA spokesman testified that this pattern of operation by Heartland Dairy violated the spirit of the P–H provision. He referenced the Secretary of Agriculture's 1962 decision (27 FR 3923) which states that:

A producer-handler should be required to maintain his own reserve supply since he is exempted from pooling his Class I sales with other producers. The limitation on the amount of milk which an exempt producer-handler may purchase from pool plants will make it necessary for him to maintain herd production equal to his Class I sales plus a reserve to cover variations in production and sales

sales.

\* \* \* [P]roducer-handlers' milk sales
represent a potential threat to orderly
marketing if producer-handlers are permitted
to shift their excess burden to other
producers. The Central Arizona market is

retail stores (wherever located), or on the P-H's home delivery routes.

composed of large producers delivering nearly one million pounds a month. If such large volume producers could market their own production entirely as Class I and buy reserve milk to balance daily fluctuations in their production and sales, they would be a disturbing element in the market.

The Vice President of Sales for Shamrock Foods, one of the largest handlers in the Central Arizona market, testified that Heartland Dairy supplied private label milk to the Southwest Supermarket chain in December of 1992, when Shamrock was also supplying milk to Southwest stores. In addition, he said that from time to time Southwest would call Shamrock asking for additional milk when Southwest was not getting its orders filled by Heartland Dairy. It was his understanding, he testified, that when Southwest was required to buy this extra milk from Shamrock, Heartland Dairy would pay the difference in price between what it would have charged Southwest and what Shamrock charged Southwest for this milk.

In this market, the annual variation in producer milk from the lowest production month to the highest production month has averaged 28 percent during the past five years. Given this seasonality in production, a P-H must find a way to handle its seasonal production problem. One method would be to maintain a fluid milk distribution level equal to its highest month's production-typically, March-and purchase enough supplemental milk during the other eleven months. However, unrestricted supplemental purchases are conceptually antithetical to the principle of maintaining one's own reserve supply. Alternatively, a P-H could maintain a fluid milk product distribution level equal to its lowest month's production—typically, August—and send the additional production during the other 11 months to a manufacturing plant.

At the present time, the only manufacturing plant within reasonable distance of Heartland Dairy is UDA's butter-powder plant at Tempe, Arizona. There are no other manufacturing plants in the Central Arizona marketing area, except for a cheese plant which is under the same roof as UDA's butter-powder plant and which is fully supplied by UDA, and a yogurt processing plant, LaCorona Yogurt, which, according to the manager of Heartland Dairy, was under contract to buy its milk from Shamrock. Consequently, the only surplus outlet available to Heartland Dairy in this area is UDA's butterpowder plant.

The Heartland Dairy manager testified that when Heartland Dairy sent surplus

milk to the UDA butter-powder plant for manufacturing use, it was in the position of having to accept whatever the cooperative was willing to pay for the milk. For example, he said that in December 1992 Heartland sold 427,210 pounds of surplus milk to UDA and was paid \$10.25 per hundredweight for it, which was \$1.09 less than the order's Class III price.

The evidence in the record indicates that Heartland used other ways to handle its seasonal production problem. It shared joint Class I sales accounts with fully regulated handlers and disposed of fluid milk products outside of the marketing area when extra milk was available.

UDA's proposal to address these practices would require the market administrator to closely monitor the P-H's operations and to make several subjective judgments regarding whether the P-H was maintaining its own reserve supply. Specifically, the market administrator would be asked to: (1) Compare weekly volumes sold to accounts serviced by the P-H and by other handlers under this or any other Federal milk order; (2) determine whether the P-H packaged milk in the same label as another handler under this or any other Federal milk order; (3) determine if the P-H's pro rata share of Class I route disposition in the marketing area during the flush milk production months (March, April, May) was substantially the same as during the short milk production months (July, August, September); and (4) use any other method that would indicate when the P-H was not maintaining the burden of its own reserve supply. Under the proposal, the P-H would be fully regulated for the next 12 months if the market administrator found that the P-H was not maintaining its own reserve supply.

Another part of the UDA proposal was designed to preclude P-Hs from sharing Class I accounts with fully regulated handlers. In this case, the order would treat packaged fluid milk that is delivered by a P-H to a market outlet which is also serviced by a pool plant (using the same label as the P-H) as having been "acquired for distribution" by the pool plant. In such circumstances, the P-H's milk would be assigned a Class III classification at the pool plant. This procedure would force an equal amount of "producer milk" into Class I and thereby increase the pool plant's obligation to the pool.

In its brief, UDA stated that, based on the evidence in the record, a producerhandler should be required to carry 135 percent of its monthly Class I sales in its own herd production. To implement