The limit on supplemental purchases will not only apply to bulk or packaged fluid milk products that are received by transfer or diversion at the P–H's plant, but also will apply equally to packaged fluid milk products that are acquired for route disposition to any of the P–H's retail outlets. This means that any acquisition of a fluid milk product, whether it entered the P–H's plant or retail facility, was picked up by the P–H's truck, or was acquired in some other way, will still count against the monthly 5,000-pound/5 percent limit.

Currently, P-Hs are not permitted to purchase milk directly from dairy farms. However, as noted previously, UDA accounts for 88 percent of the producer milk in the Central Arizona market. Accordingly, the cooperative is the likely source for supplemental milk supplies. Even if the P-H were to obtain transfers from a pool plant operated by another handler, in all likelihood it would be UDA milk since the cooperative association supplies all of the pool plants in this market. In view of this, it is much more efficient to allow a P-H to obtain milk from a cooperative association in its capacity as a handler on milk delivered directly from producers' farms. This milk will be classified as Class I milk, and the cooperative association handler delivering the milk will account to the pool for it.

While a P–H may now receive transfers from pool plants and other order plants, it may not receive diverted milk from these plants. This restriction also is removed to allow a P–H to obtain supplemental milk by diversion from these plants directly from the farms of producers. Under most circumstances, this would be the most efficient way to obtain a load of supplemental milk, and there is no reason to preclude such shipments. Such receipts will be classified as Class I milk, and the diverting handler will account to the pool for this milk.

This final decision continues the earlier recommendations requiring a P–H to file monthly reports with the market administrator and giving the market administrator full access to all of a producer-handler's records, including all of the milk production and farm pickup records pertaining to the dairy operations of each of a P–H's farms. By having complete access to a P–H's records, the market administrator will be in a better position to enforce the order and to prevent or minimize a problem before it gets out of hand.

Exceptions to the Revised Recommended Decision

Three letters were received in response to the revised recommended decision.

Comment: UDA indicated in its letter that while it continues to believe that P-Hs should not be exempt from full regulation, it commended the Department "for taking this first step toward an approach to competitive parity between P-Hs and the fully regulated handlers with whom they are in daily competition."

Response: While some aspects of the revised recommended decision have not been carried forward in this final decision, several new provisions in the order should strengthen the hand of the market administrator to ensure that a similar situation does not again arise in this market. In particular, P–Hs will be required to report their receipts and utilization to the market administrator monthly. This will permit the market administrator to ascertain whether the P–H is operating in a manner that qualifies it for its exempt status under the order.

Comment: Sarah Farms, a P–H located in Yuma, Arizona, submitted the following comment:

We feel that this recommended decision and proposed amendment * * * was for a particular situation that no longer exists. The P–H effectuating this action violated the spirit and intention of the laws governing a P–H, was held accountable to these existing regulations, failed the criterion, and because of this is no longer a P–H today. The order as it is written is correct, it worked, don't change a thing.

Response: At the time of the hearing, Sarah Farms was not fully operational and did not participate in the hearing. For this reason, there is no information in the record concerning its mode of operation.

We appreciate Sarah Farms' argument that they could be unnecessarily burdened by a provision that was designed for a situation that no longer exists. For this reason, we have significantly changed this final decision.

Sarah Farms exhibits an understanding of how Heartland Dairy manipulated its P–H exemption. For this reason, the new provision in § 1131.10(a)(3) should pose no burden to it. Under the order, as amended, Sarah Farms may supply wholesale accounts; they may deliver more products to such accounts in one month than in another month without penalty; they may even supply a wholesale account when that account is also supplied by a fully or partially regulated handler. What they may not do,

however, is supply the same product (e.g., 2% milk) in the same-sized package and with a similar label as is being supplied to that customer by a fully or partially regulated handler during the same month.

While Sarah Farms would be subject to the new monthly reporting provisions that are contained in § 1131.30(d), this is not an unreasonable burden to ensure that it is properly entitled to its exemption under the order.

Comment: Goldenwest Dairies, another P–H under the Central Arizona order, suggested that mechanical breakdowns be included with natural disasters in computing a P–H's low month of production in § 1131.60(J)(4)(i).

Response: This suggestion is no longer relevant in view of the changes made in this final decision.

2. The definition and treatment of associated producers. A proposal by The United Dairymen of Arizona to remove all language from the order relating to "associated producer" should be adopted. UDA's general manager testified that UDA had proposed the associated producer provisions at a hearing held on November 9–10, 1982. The purpose of these provisions, he explained, was to enable a dairy farmer in the Phoenix area to retain "producer" status on a portion of his milk which he was unable to market to an Order 131 handler.

The UDA witness stated that the Phoenix producer never availed himself of these provisions, but that a dairy farmer from California had "exploited" the provision during a 21-month period from June 1987 through February 1989. He said that this dairy farmer had drawn \$192,340 out of the pool in the form of "phantom freight" on more than 8 million pounds of milk diverted to a nonpool plant in California.

The "associated producer" provision now in the order is not a provision that is commonly found in Federal orders. Normally, a pool plant operator who regularly receives a dairy farmer's milk will willingly serve as the handler for the milk when it is not needed at the pool plant and must be diverted to a nonpool plant for manufacturing use. In the Central Arizona market, however, a pool plant operator who had received a dairy farmer's milk was not willing to bear responsibility for the milk when it was diverted to a nonpool plant. Accordingly, UDA proposed—and the Secretary adopted, with some modifications-the "associated producer'' provisions.

The producer for whom the

The producer for whom the "associated producer" provision was intended did not appear at the hearing