to present any opposition testimony but did submit a brief in which he explained that he was unable to attend the hearing because of a flooding problem. In his brief, he stated that the associated producer provision is needed because "the pool should service all producers in it, not just a select few." He suggested, however, that it be modified to restrict it to "producer milk originating in the geographical boundaries of Order 131." He did not indicate that he has used the provision or plans to use it in the future but implied that it should be kept as a safeguard.

Under the associated producer provisions, a producer is permitted to divert a certain portion of his/her milk to a nonpool plant for Class III use if 50 percent of that person's milk is "producer milk" in the current month and in each of the immediately preceding two months. On the milk diverted to the nonpool plant, the producer draws a payment from the pool based on the difference between the order uniform price and the Class III price for the month.

The non-member dairy farmer who inspired the cooperative's 1982 proposal has never used the associated producer provision and now markets his milk through UDA. According to the UDA general manager, the California producer who had used the provision for a 21-month period joined UDA in the fall of 1989 and stopped using the provision in February 1989.

The associated producer provisions, when used, have been difficult to administer. In a letter referenced by the UDA witness at the hearing, the Order 131 market administrator is quoted as stating that he had "no handle under the order for determining the volume of milk shipped from a producer's farm to a nonpool plant because there were no reporting requirements" with which to verify the information supplied by the producer.

In view of the difficulty of administering the associated producer provision, its lack of use during the past three years, the potential for its abuse, and the limited opposition to its removal, there is no valid reason to keep it in the order. Under these circumstances, it no longer effectuates the declared policy of the Act and should be removed.

3. Conforming and non-substantive changes. Certain conforming changes are needed to implement the proposed changes adopted above. In particular, § 1131.13 (Producer milk) is changed to allow a cooperative bulk tank handler or a pool plant operator to divert milk for their accounts to a producer-handler;

§ 1131.30 (Reports of receipts and utilization) is modified to report the P–H's own-farm production and supplemental milk purchases each month; § 1131.42 (Classification of transfers and diversions) is modified to provide for the classification of milk diverted to a P–H from a cooperative bulk tank handler or a pool plant operator; and § 1131.61 (Computation of uniform price) is changed to remove obsolete language related to "associated producer milk."

Other changes of a minor and nonsubstantive nature have also been made to the order to remove obsolete language from the Class I price provision and to correct errors in § 1131.44 (i.e., change "ilk" to "milk") and § 1131.72 (i.e., change "for" to "from" and remove obsolete language related to associated producers).

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Order 1131 was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

- (a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;
- (b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Central Arizona marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of

pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk in the Central Arizona marketing area and an Order amending the order regulating the handling of milk in the Central Arizona marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

August 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Arizona marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the Central Arizona marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.