

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF THE UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURE AND MARKETING SERVICE

Docket No. AO-14-A73 *et al.*
DA-03-10

Reconvened Public Hearing
September 14, 2006
Strongsville, Ohio

In Re:

The Matter of Proposed Amendments
To Tentative Marketing Agreements and
Orders

Brief submitted on behalf of
O-AT-KA Milk Products Cooperative, Inc. and
Upstate Farms Cooperative, Inc.
By Craig Alexander, Manager of Dairy Ingredient Sales
and Regulatory Affairs of
O-AT-KA Milk Products Cooperative, Inc. and
Timothy R. Harner, Esq., General Counsel of
Upstate Farms Cooperative, Inc. and Special Counsel to
O-AT-KA Milk Products Cooperative, Inc.

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O-AT-KA Milk Products, Inc. and Upstate Farms Cooperative, Inc. are filing this brief in regards to the reconvened hearing on September 14, 2006 to consider changes in make allowances for Class III and Class IV milk. Specifically, the re-opened hearing was intended to take into evidence cost of processing surveys recently conducted by Cornell University.

We wish to reiterate our support for the O-AT-KA testimony at the make allowance hearing held January 25, 2006. That testimony explained that O-AT-KA's plant costs were well above current make allowances and stressed the need for updated make allowances that will be implemented as soon as possible. Almost nine months later, the producer owners of O-AT-KA are still bearing the increased costs of manufacturing butter and nonfat dry milk in an unfair and burdensome manner. In the interest of maintaining principles of orderly markets with fair returns to producers, we ask that USDA expedite its decision from this re-opened hearing to make the changes in make allowances that are necessary.

We also wish to express support for the post hearing brief from this reconvened hearing as submitted by Agri-Mark *et. al.* (the Proponents' Brief) specifically for the increased make allowances for butter and nonfat dry milk that we produce.

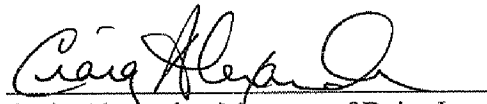
We concur with the concern extensively explained in the Proponents' Brief that the Cornell survey data on both butter and nonfat dry milk is insufficiently representative to base a make allowance decision. Dr. Mark Stephenson acknowledged these survey weaknesses in the butter and nonfat dry milk survey data as he was unable to make estimates for the overall population of butter and nonfat dry milk plants operating in Federal Order markets. Clearly the butter and nonfat dry milk plants were significantly larger than the average plants operating in Federal

Order markets and produced butter and nonfat dry milk volumes twice as large as our own plant. Dr. Stephenson acknowledged that both butter and nonfat dry milk plants have significant economies of scale and smaller plants will typically have much higher costs. Also based on the testimony of Dr. Stephenson, there had not been sufficient time for all the surveyed butter and nonfat dry milk plants to see and review for accuracy their own completed costs. The one plant that did request their costs, found errors in the assumptions made for that particular plant.

We also agree with the recommendation of the Proponents' Brief to use a combination of the CDFA cost surveys and Dr. Ling's RCBS studies to update make allowances in the absence of a representative estimate from the Cornell data. We believe the increased make allowances, as more fully discussed and supported in the Proponents' Brief, are the fairest representation of make allowances for butter and nonfat dry milk plants that are available to USDA in their decision.

In summary, O-AT-KA provided testimony in January that butter and nonfat dry milk plants such as ours are crucial to help balance markets. However, the resulting wide swings in volume inevitably reduce efficiencies and raise costs. The record shows that current make allowances are not sufficient for the majority of butter and nonfat dry milk plants and cannot fairly compensate producers who own facilities that provide market clearing services such as ours for the entire market. We ask that the Secretary act as soon as possible to make the appropriate make allowance increases we have previously proposed.

Respectfully Submitted



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and Regulatory Affairs of
O-AT-KA Milk Products Cooperative, Inc. and



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