



HP Hood LLC • Six Kimball Lane • Lynnfield, MA 01940 • 617-887-3000

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**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

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In re:)
Milk in California)
Docket No. 15-0071)

**POST-HEARING BRIEF OF
HP HOOD LLC**

This post-hearing brief is filed on behalf of HP Hood LLC, a fluid processing and dairy product manufacturer with processing facilities in California. As a buyer and processor of milk in California, HP Hood has a critical interest in this promulgation hearing. As a processor of extended shelf-life (ESL) fluid products at our Sacramento, California plant, HP Hood has a particular interest in the inclusion of specified shrinkage allowances for such products processed in 7(a) and 7(b) distributing plants located within the proposed California milk marketing order. As testified to at the hearing, HP Hood is in support of Proposal 2

Meeting Customer Demand with Investment in ESL Process and Product

Our customers are driving our product offerings. Consolidation of retail grocery chains, and the modernization of food distribution systems, have incentivized some milk processors to provide ESL products that meet the demands of retailers' broader marketing regions and tighter inventory controls. The evidence of these shifts is the market expansion for ESL products, which stands in stark contrast to the steadily eroding market for traditional milk products processed as High Temperature Short Time (HTST). The hearing record includes testimony that ESL products are a growing portion of the Class I market, with a 10% increase in the pounds of milk received and processed into ESL products between 2013 and 2014 (Page 3825, lines 11-15). It stands to reason that offering products that retailers want to sell is a far better strategy than continuing to offer only the products in which retailers have shown less and less interest. It has been stated in the record that meeting this customer demand comes at a significant cost to the milk processor. Capital investment in ESL equipment and its operational costs are four to five times higher than for HTST systems (3953, lines 22-25). ESL milk products should be acknowledged not as simply "value-added," but as the growing product category requiring a four-to-five-time larger investment in equipment and plant operations.



ESL Process/Shrinkage Documented and Examined

The hearing record is very clear that a shrinkage allowance specifically for utilization of milk going into ESL products is justified and should be approved. Testimony by four witnesses, two of whom are experts in dairy cost accounting, and another in dairy plant equipment engineering and operation, documented and further explained the actual shrinkage experienced with ESL milk processing equipment. Several California ESL facilities were included in the 19 plant study conducted by Carl Herbein (Exhibit 84/California Dairy Institute-3).

The hearing record documents in detail the ESL process (Exhibit 86) and where and why milk loss is experienced in ESL equipment (testimony of Chuck Meek 3917-3935). The hearing record makes clear that ESL systems are designed to minimize product loss during changeover (3951), but the extensive ESL equipment and piping (3953, lines 11-13, 3965, lines 19-23 (Exhibit 87) used to reduce product perishability results in losses higher than in traditional HTST processing. The quality control protocol for ESL processing requires quarantine of raw milk to complete more extensive testing, and loss of product due to these stricter requirements leads to much more reworked product (Exhibit 87). Combining the required ESL equipment cleaning and sanitation with the much more extensive portfolio of dairy products made using that ESL equipment, each changeover creates product loss challenges (3966 lines 9-12, 22-25, 3967, lines 8-10).

The hearing record reflects detailed examination of the results shown in Exhibit 84/California Dairy Institute-3. The record also contains a thorough analysis of the differences in the shrinkage at plants surveyed in Exhibit 84 compared to the USDA data on excess shrinkage contained in Exhibit 9, Table 18 (testimony of Mr. Herbein (3878, lines 10-25, 3979, lines 2-4), testimony of Mr. Zolin (3882-3889, 3890, lines 24-25, 3891-3993). The examination of the differences between Exhibit 84 (Herbein study) and Exhibit 9, Table 18, (with additional testimony regarding the shrinkage percentage calculations by Mr. DeJong) during direct examination of Mr. Zolin was very detailed. At the conclusion of this direct examination, Mr. Zolin provided a statement on the record that Dairy Institute was proposing that USDA examine both exhibits and determine the appropriate excess shrinkage number to use in Section 1051.43 for ESL plants (3893, lines 2-6).

HP Hood supports the modification of Proposal 2 offered by the Dairy Institute.

No Rebuttal of ESL Testimony

The hearing record is replete with testimony as to the investment and operational cost of ESL equipment, and the need to update the allowed shrinkage to reflect this category of milk processing. Proponents of Proposal 1 offered no rebuttal of this testimony, aside from Dennis Schad's statement (Exhibit 185, page 12) that no California plants were included in Exhibit 9 Table 18, (USDA analysis of excess shrinkage in 7(a) and 7(b) plants), and that Dairy Institute witnesses "insisted that California data was needed for a California decision." Mr. Schad's statement does not refute any of the information entered into the record by Dairy Institute's four witnesses, completely ignores the breadth of the Herbein study (Exhibit 84), which includes California ESL plants, as well as the testimony of Mr. Zolin examining the differences between the results in USDA's Exhibit 9, Table 18 and Exhibit 84 (the Herbein study).



ESL Products Retain Markets for Producers

Whatever updated shrinkage allowance USDA determines is appropriate for 7(a) and (b) plants processing ESL product, it is the experience of HP Hood, as testified on the record (3969, lines 9-25, 3970, lines 1-12), that producers share in the benefit of the more robust ESL fluid milk sales to customers who otherwise continue to reduce their purchases of traditional milk products.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Marcinelli", written over a horizontal line.

James A. Marcinelli
Vice President, Controller
HP Hood LLC

Date: 8/22/16