MIG/Hood Exhibit 21A

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

In re:	7 CFR Parts 1000 *et seq.*
Milk in the Northeast and Other Marketing Areas	Docket No. 23-J-0067; AMS-DA-23-0031

CARMEL, INDIANA
JANUARY 2024

TESTIMONY OF HP HOOD, LLC REGARDING NATIONAL HEARING ON FEDERAL MILK MARKETING ORDER PROPOSALS

January 11, 2024

I. BACKGROUND

A. PERSONAL BACKGROUND

My name is Michael Newell and I am a Sales Director for HP Hood LLC ("Hood"). I am also responsible for industry relations in California and serve on the Board of the Dairy Institute of California, the California Milk Processor Board, and the Dairy Council of California. In my role as Sales Director, I am responsible for the sale of Hood brands and licensed brands in Northern California and the Pacific Northwest. From 2011- 2015 I was also responsible for international sales and was Hood's representative of the U.S. Dairy Export Council Board. I came to Hood when they acquired Crystal Cream & Butter Company in 2007. At Crystal I served in various positions between 1987 - 2007 including Operations Trainee, Sales Analyst, V.P. of Sales & Marketing, and President. As V.P. of Sales & Marketing at Crystal, I oversaw pricing policy and participated in a number of California Department of Food and Agriculture milk price hearings. I graduated from U.C. Berkeley in 1987 with BA in Economics and received an MBA from the Wharton School of the University of Pennsylvania in 1991.

B. COMPANY BACKGROUND

HP Hood was founded in 1846 and is one of the largest family-owned fluid milk bottling companies in the United Sates, with annual sales in excess of $3 Billion in 2022. Hood currently operates five ESL plants and four HTST plants, all of which process Class I milk. Hood's ESL plants are located in Philadelphia, PA (FMMO 1); Winchester, VA (FMMO 1); Oneida, NY (FMMO 1); Batavia, NY (FMMO 1); and Sacramento, CA (FMMO 51). Hood has a sale agreement in place for the Philadelphia facility which should close in the first quarter of 2024. Hood's HTST/DSD Plants are located in Agawam, MA (FMMO 1); Barre, VT (FMMO 1); Concord, NH (FMMO 1), and Portland, ME (FMMO 1). In addition to Class I Products, Hood produces cream, half & half, and a variety of cultured products, ice cream, and several non-dairy ESL beverages, including Almond Breeze and Planet Oat brands. Hood operates culture plants in

Vernon, NY, Lafargeville, NY and Arkport, NY and an ice cream plant in Suffield, CT. For 2022, Hood had Class I utilization rate of over 87% for both its ESL and HTST bottling plants.

Hood's ESL business is the largest segment of our business and we distribute our major ESL brands nationally. Hood markets its national brands as consumer products. Annual marketing and trade plans are rigorously developed and wholesale price changes take place infrequently (over the past 10 years the average is less than annually). Hood's largest brand is Lactaid Lactose Free Milk which is produced under a license from McNeil Nutritionals. According to market analytics firm Circana, Lactaid's Class I lactose free milk's Total U.S. Multi Outlet sales exceeded 108 million gallons for the 52 weeks ending July 30, 2023, making it the largest Specialty Milk brand in the U.S. Hood also exports a significant amount of Class I ESL milk to Asia from its Sacramento, CA Plant.

HP Hood's Class I HTST business is regionally confined to the New England Market. Hood's Class I sales occur under several brands including HP Hood, Crowley Foods, Booth Brothers, and assorted private labels. Hood's Class I products are primarily delivered directly to stores, food service accounts, and schools. Wholesale prices of Class I typically change monthly in alignment with the FMMO Class I changes. According to Circana (based on public data) for the 52 weeks ending July 30, 2023, the HP Hood brand is the largest brand in the New England market with a 12.5 volume share. Private label has the largest share of the New England markets with a 74.7 volume share.

II. OPPOSITIONS TO OTHER PROPOSALS

A. Proposals 1 and 2 (NMPF's and National All-Jersey's Milk Component Factor Proposals)

The proposal to increase the component factors would result in an additional product cost increase to Class I processors with no value creation for its operations, customers, and consumers. Exhibit 45 is USDA's calculation of 2022 class prices using the component formula factors from

proposals 1 and 2. This analysis estimated the average Class I price increase to be $0.70 per cwt. This is a large burden to place on an already declining fluid market in an attempt to offset the make allowance increases in the Class III and IV milk price formulas.

My Hood colleague, Wendy Landry, gave extensive testimony on component test results earlier in the hearing which indicated that Hood's average monthly incoming milk receipts from MA reports fall below the proposed skim milk component levels of 3.39%, 6.02%, and 9.41% for protein, other solids, and nonfat solids respectively. I would like to address a point raised during questioning and by witnesses after her testimony. Hood's nutritional labeling is based on the current standards of identity for fluid milk products. These standards fall below the current component factors, so we are unable to capture the differential nutritional value. Increasing the component factors will only magnify the value disparity. Further as shown in Table 1 below, to increase the protein level to 9 grams from the current 8 grams in the nutrition facts panel, Hood would need to receive milk with 3.51% protein on a skim basis.

Table 1
Skim Component Formula Factors & Protein in Milk Nutrition Facts

Description	True Protein Skim Milk (lb / cwt skim)	Crude Protein Skim Milk (lb / cwt skim)	Crude Protein 1 Cup Skim (g / 244 g)
Current	3.10	3.28	8.00
Proposals 1 & 2	3.39	3.57	8.71
Nutrition Facts at 9 g	3.51	3.69	9.00
Note: Crude protein equals true protein plus 0.18.			

Additionally, much of the testimony in support of raising the component values was based on the logic that all consumers want more protein in their milk and are willing to pay for it. The market offers real-world examples that are contrary to this. Firstly, Hood does have one product

line, Lactaid Protein, which we market as Protein enhanced and is labeled with 13 grams of Protein. This product is priced at a premium on a per ounce basis to capture the added value of the enhanced Protein. The product line was introduced in 2020 and according to Circana accounted for less than 1.8% of Lactaid fluid sales for the 52 weeks ending August 20, 2023. Secondly, as successful as Fairlife has been at creating a high protein enhanced milk, according to Circana, for the 52 weeks ending August 20, 2023, the enhanced milk segment accounted for just 2.8% of the almost 2.8 Billion gallons of U.S. multi outlet (MULO) milk sales. Lastly, in the plant-based beverage category in the past several years we have seen multiple line extensions touting "high protein" which have not sold as well as their non-protein enhanced legacy counterparts and were thus soon discontinued. Each of these examples show that many consumers do not place enough value on higher protein to pay a premium for it.

B. Proposals 13, 16, 17, and 18 (NMPF's, Edge's, and AFBF's Base Class I Skim Milk Price "Mover" Proposals)

There are reasons why the "higher of" was replaced in 2017, and these have not changed. Rather than turning back the clock to a flawed system, the industry should move forward and replace the current base Class I skim milk price formula with one that maintains or creates more stability and predictability. A system that allows for risk management practices which could stimulate product innovation and marketing support to grow the Class I market should be adopted, as proposed by Proposal 15 or, in the alternative, Proposal 14.

In regard to Proposals 16, 17, and 18, while the current Class I advanced pricing system is cumbersome for HTST processors and customers due to the monthly changes and short implementation timing, it is universally accepted by the end customers and is quite orderly and transparent. It is easy for processors to justify their price changes based on price announcements. Eliminating advanced pricing would create a much more chaotic market and could harm bottlers who are operating labor-intensive businesses on very tight margins. This change would certainly

seem to favor the cooperative-owned bottlers as they are often marketing Class I bulk milk in addition to bottling their own and are able to determine their pricing methodology.

Additionally, Hood's plants procure milk from multiple cooperatives, independent dairies, and through a broker. Should Proposal 18 be adopted, then negotiated price methodologies could differ for each of these sources of supply. This would create a real challenge in determining the cost of the product. As businesses that have annual budgets and loan covenants to meet, Class I processors would likely need to build in an extra price buffer to account for this price uncertainty. This would result in a higher price for the consumer which would continue the downward cycle of Class I fluid milk volume.

C. Proposal 19 (NMPF's Class I Differential)

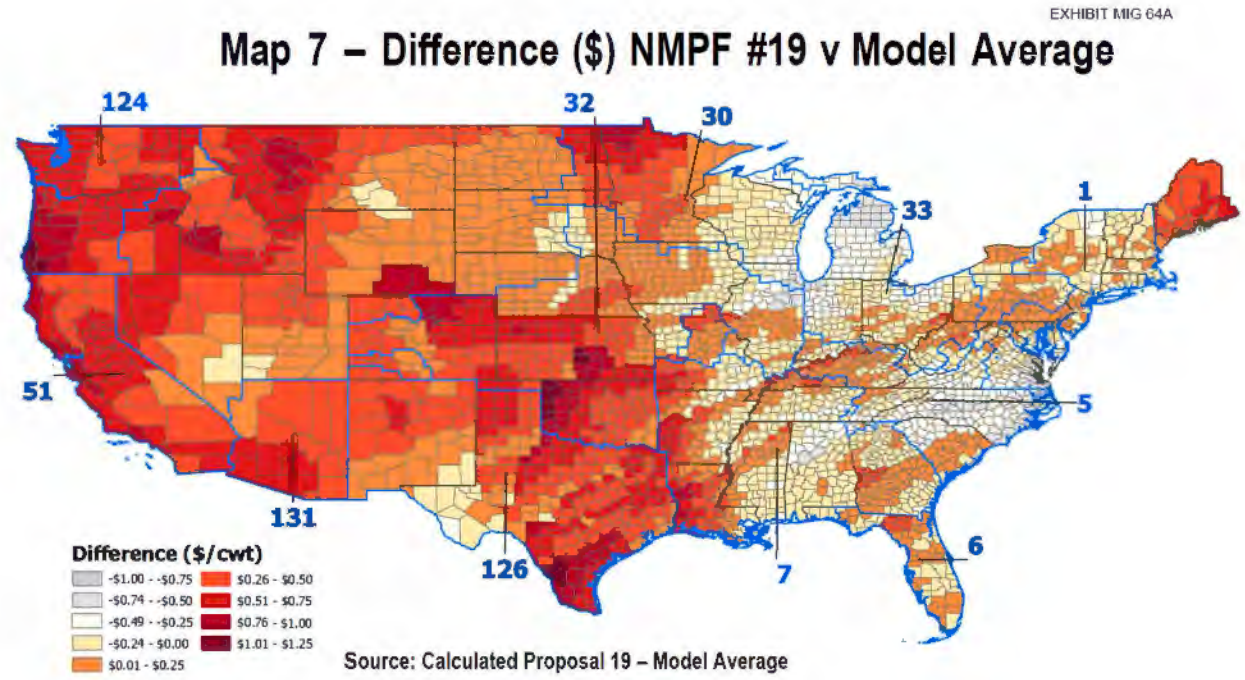
Hood opposes Proposal 19, which seeks to increase Class I price differentials. The NMPF proposal recognizes the USDA has maintained a policy of minimum regulated prices, but states that the differentials need to be increased because the current system of over order premiums is not allowing producers to fully recoup hauling cost from Class I processors and is resulting in "disorderly market conditions" that threaten the reliable supply of milk to Class I processors. To reiterate Mike Brown's statement in IDFA Exhibit 57, "there is no justification to increase Class I differentials and stimulate a larger milk supply given the presence of an already far more than adequate milk supply".

If milk pricing is insufficient to cover the cost to produce and move milk, the market will respond accordingly by utilizing a number of mechanisms to keep supply and demand in balance; such as adjusting over order premiums and/or implementing fuel surcharges. Over order premiums and fuel surcharges are fluid and move with the market, unlike the proposed Class I differentials which will be static to the market. If the effect of over order premiums is diluted by increased Class I differentials, the pool unknowingly props up underperforming segments of demand (i.e.,

Class IV) by raising the pay price for saturated markets thus creating a supply situation that is less responsive to market signals.

As an industry, we cannot continue to ignore the increasing negative effect Class I price elasticity has on demand, and how rapidly demand will erode if we continue to push cost to the consumer. As an industry, we need to strongly consider what will happen to the pool milk check if Class I utilization drops below 20%.

Hood disagrees with the broad methodologies NMPF members used to set its proposed Class I differentials. Prior to the hearing, the NMPF proposal acknowledged they deviate from the "Wisconsin spatial model based on the Co-ops' understanding of current supply/demand considerations," but made no effort to articulate those specific deviations or provide cohesive evidence of applicability. They did offer the USDA should have "listening sessions' where more details could be made available prior to the hearing, but at the pre-hearing information session the USDA held in June 2023, NMPF offered no further details. In fact, during this hearing, NMPF's witnesses from different regional working groups offer varying and sometimes contrary logic in their testimony on how they came to their proposed differentials. This disorganization of methodology extends to their use of "anchor cities" which Sally Keefe pointed out completely lacks a "unifying principle". It is unclear why Winchester, VA was used as the anchor city for the northeast when the state of New York produces over 10 times as much milk as Virginia according to USDA statistics and the Northeast has a population over 6.5 times that of Virginia.



MIG Exhibit 64A, Map 7 is an excellent reference tool as we look at the impact of NMPF's proposed location differential changes on our New England HTST plants versus the competition. Hood's HTST plant in Agawam, MA and DFA's in Franklin, MA are assigned *the same* proposed $1.85/cwt location differential increase. The DFA plant, which is located just south of Boston and is approximately 80 miles closer to Boston than Hood's Agawam facility, currently has a $.25/cwt higher differential than the Agawam plant. This indicates that Franklin is in a deficit area, so it seems appropriate that the differential change should be proportionally higher. In fact, the Nicholson and Stephenson spatial model suggested that the Franklin's plant's location differential increase should be $.15/cwt *higher* than the proposed increase. This proposed change favors the Franklin plant over Hood's Agawam facility as Hood still must incur the added freight to ship its packaged milk 80 miles further to serve the Boston market. The "flattening" of the differential zone versus the model would give the DFA Franklin plant a significant competitive advantage

over Hood's Agawam facility. We also noted the difference in the differential between an Albany, NY bottling plant (owned by DFA) and our Agawam plant will increase from $.30/cwt to $.45/cwt under the NMPF proposal even though the model calls for a $.40 difference. It's clear that the proposed changes put our Agawam facility at a disadvantage in both cases.

Looking at northern New England we observed the NMPF proposal increased the differential versus the spatial model for the Hood Portland, ME plant in Cumberland County by +$.35/cwt, but decreased the differential versus the model for the DFA Franklin plant in Boston by -$.15/cwt. As is the case for our Agawam plant, this proposed change significantly benefits the Co-op plant in Franklin verses our Portland, ME facility which supplies a significant volume of bottled milk to the Boston and southward markets. The same observation was noted for our Concord, NH plant which had its differential increase by +$.15/cwt versus the spatial model versus a -$.15/cwt decrease for the DFA Franklin plant. The Hood Concord plant markets Class I milk in the Boston market and is being placed at a competitive disadvantage. In both of these cases, the NMPF proposal has adjusted the differential against the model to not only reduce the incentive to move milk to a deficit area, but also improve the competitive position of DFA's Franklin plant.

We would also like to highlight the DFA-owed Oakhurst plant in Portland, ME has been placed at a similar disadvantage to their plant in Franklin, MA. Circana data shows very little Oakhurst branded milk is sold in Boston. For the 52 weeks ending October 29, 2023 Circana reported only 94,000 gallons of Oakhurst milk sold in the Boston Food market versus over 2,249,000 gallons sold in the Maine Food market. Thus, Oakhurst is in better position to pass this change along to the Maine market, while Hood's Portland plant is disadvantaged by this proposed differential change in the Boston market where it does a substantial amount of business.

Turning our attention specifically to the milk market in Maine, Scott Warme of Agri-Mark explained the logic for the variation from the model as necessary to keep milk in the Maine market. However, Ed Gallagher presented Appendix 1b in Exhibit NMPF-54 which outlines the amount of beverage demand compared to milk production by state. In Appendix 1b, Maine's 2022

beverage demand was 32% of their total milk production which would lead one to believe Maine is a milk surplus state. Under law, the Maine Milk Commission was created to arbitrate differences, establish minimum prices in designated areas after proper hearings and exercise general supervision over the milk industry in Maine. Its basic function was, and still is, to see that there will be a plentiful supply of pure, wholesome milk available at all times, in all places, at reasonable prices in the State of Maine. Since the State of Maine is not part of the Federal Order, the Maine Milk Commission has full authority over processing plants that are exempt from the Federal Order, and has partial authority over Federal Order Plants that operate in Maine. The Commission has authority to regulate milk that is produced, processed and sold in Maine. (7 MRSA. Section 2954.8 and 9). The Commission establishes minimum milk prices, monthly, for milk sold in gallons (the price also applies to quarts through 20-quart containers). The price per gallon established by the Commission is based on the Market Administrators price announcements; however, the Commission has the authority to add special premiums to the price based on market conditions in southern New England. (7 MRSA. Section 2954.1 and 2). With a surplus of milk in Maine for Class I and close oversight by the Maine Milk Commission, it is unnecessary to increase the Class I differentials.

In assessing NMPF's proposed Class I differentials for our ESL plants we have also noted that Hood's Batavia plant is assigned a location differential increase of $1.80/cwt which is roughly equivalent to the $1.75/cwt. increase suggested by the spatial model average. This would increase the total differential for Batavia to $4.00. Conversely, our Oneida ESL facility has been assigned an increase of $1.70 which is $.20 higher than the $1.50 increase suggested by the spatial model average and results in a total differential of $4.20. This $.20 deviation from the model appears to be unjustified and a $4.00/cwt total for each of these counties would be more appropriate.

We also looked at the proposed differential increase to our Sacramento, CA ESL plant against the spatial model and noted a wide divergence of +$.60/cwt. from the average model work. This seems to be the general pattern of the California differential changes. They are much higher

than the model at an average of +$.69/cwt whereas the rest of the country is proposed at +$.14 higher than the model. It is remarkable how different the methodologies are and how large the model variances are when comparing NMPF 19 proposed differentials for the Northeast to the West.

Another geographic inconsistency we noted in the proposal was that of the divergence to the Nicholson and Stephenson spatial model in the Appalachian region (FMMO 5) actually works in the opposite way. The average proposed differential is actually -$.14/cwt. less than the spatial model average. This does not seem justified or rational as NMPF testified in its Proposal 1 support that component factors need to be higher to attract milk to the southeast. Yet they have the opportunity for a more transparent way to incent more milk to move to the market and do not propose it.

We suspect that these "model deviations" based on county code occur throughout NMPF's proposal and believe that an unbiased, market-driven milk movement study is needed to justify the proposed Class I differential changes throughout the country.

One final concern regarding the potential impact of NMPF's proposed differential increases. Earlier in the hearing Dr. Capps testified he projects the demand impact of the 4.3% cost increase of the differential proposal equates to a -6.6% volume loss. This volume loss will only accelerate the Class I volume loss in future years. For Hood, with multiple plants in a region, this could cause us to review our operations and potentially consolidate plants. Alternatively, it could cause processors to increase wholesale prices further in an effort to offset the loss in operating margin caused by the volume loss. Higher fluid milk retail prices could also push more consumers to consider plant-based beverages as a more price competitive and fungible alternative. The increased differential will most likely result in accelerating the rate of decline in fluid milk sales we are already experiencing.

D. Proposal 21 (AFBF's Class II Differential)

Hood also opposes Proposal 21. Instead of creating another stagnant differential that creates market distortions between pooled and non-pooled milk, we lean on our opposition to Proposal 19, reiterating the need to let a free market do its job and place the value of Class II milk in the hands of the overorder premium based on supply and demand signals in the marketplace. The permanent cost increases in Proposal 21 may decrease the demand for Class II skim solids by encouraging low-cost raw material optimization of non-fat dry milk powder, whey and/or buttermilk in place of the Class II skim solids. As a result, the displaced skim will be pushed to a Class III or Class IV plant, incurring additional freight costs and potentially lowering overorder premiums- which would be completely at odds with AFBF's the reasoning of AFBF's proposal.

For a Class I bottler who also produces Class II products in FMMO 1 facilities, it would be nearly impossible to de-pool so the additional costs associated with the increased differential will be absorbed into the finished good pricing. Doubling the differential may cause retail and foodservice demand to decrease due to additional costs, which would ultimately push more cream and solids to Class III or Class IV plants. With limited balancing plants in certain areas of the country, such as New England, Proposal 21 could result in significant disorderly market conditions.

III. CONCLUSION

HP Hood thanks the USDA for allowing us to provide testimony on these important proposals. In summary, the above proposals will result in an increase in the Class I Milk price by approximately $2.20/cwt. which in turn, may accelerate the decline in Class I sales. No rational retailer would materially increase the price of a product undergoing such a steady, substantial decline in sales. USDA should not do so by regulation. HP Hood respectfully requests that USDA take the following actions regarding the proposals below:

- Reject the revised component factors offered by Proposals 1 and 2: Consumers value the Class I milk based on the nutritional labeling standards on the packaging and Class I processors are unable to capture the value provided by higher component factors. Further, the proposed component factors are significantly higher than the component actually being received by Class I processors and at a minimum any adjustment in component factors should be based on the average components in the milk being received by Class I plants.
- Reject Proposals 13,16,17, and 18: Hood has offered considerable testimony on the importance of maintaining the ability to hedge Class I milk in support of Proposals 15 and 14, which preserves this ability while removing the volatility in the current "average of" formula that benefits the entire industry. Returning to "the higher of" standard as mandated by Proposal 13 will be a step back for the industry. Advanced pricing for Class I products is transparent and is well accepted by HTST Class I customers and, its elimination, as proposed by Proposals 16,17, and 18, will likely lead to increased prices to the consumer and accelerate the decline in Class I milk sales.
- Reject Proposal 19: Hood believes that regulated prices should represent minimum prices and the use of over order premiums and fuel surcharges to incent milk movement and cover the gyrations in transportation costs are a more appropriate approach rather than placing the burden of higher transportation costs on Class I regulated minimum prices. In looking at the impact of the specific proposed location differentials, we find that no set methodology was used by NMPF working groups and the supporting logic of different NMPF witnesses is at times contradictory. Also, the proposed location differentials often vary significantly from the spatial model and in some cases seem to give a competitive advantage to competitive plants owned by the Co-ops that helped craft the location differential proposal.
- Reject Proposal 21: Adoption of this proposal will likely push more milk into Class III and IV, reducing the overall value of the milk check to producers. Moreover, with reduced

Class IV capacity available in the Northeast this proposal will result in disorderly marketing conditions.

DATED this 11th day of January, 2024.

By */s/ Michael Newell*
MICHAEL NEWELL