**Exhibit MIG/Hood – 3**

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

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

**CARMEL, INDIANA**
**AUGUST 2023**

# TESTIMONY OF HP HOOD, LLC, PART 1 REGARDING NATIONAL HEARING ON FEDERAL MILK MARKETING ORDER PROPOSALS

August 28, 2023

# I. BACKGROUND

## A. PERSONAL BACKGROUND

My name is Wendy Landry and I am the Food Safety & Quality, Director of Supply Chain Quality for HP Hood. HP Hood's corporate headquarters address is 6 Kimball Lane Lynnfield, Massachusetts 01940. My current responsibilities include supplier quality and the auditing of our 400+ ingredient and packaging suppliers that service our 13 locations, as well as our external contract manufacturers. I am currently the Vice President of the Dairy Practices Council (DPC) and am the Vice-Chair of the National Conference of Interstate Milk Shipments (NCIMS) Lab Committee.

I grew up raising dairy heifers in 4-H which led me to obtain my Associates Degree in Dairy Farm Management from Vermont Technical College and a Bachelor's of Science degree in Dairy Science from Delaware Valley University. I have worked in the industry for over 25 years. I started my career as the Quality Assurance Director at an independent dairy processor in Maine for 10 ½ years, managing a plant and 110 independent producers. I left that position in 2007 to join Hood as the Quality Assurance Manager at their Portland Maine facility for 9 ½ years. I then moved on to corporate roles as the Sr. Manager of Supply Chain Quality and the Director of Quality Assurance for Fluid & Ice Cream before taking my current role in 2019.

## 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 extended shelf life (ESL) plants and four high temperature short time (HTST) direct store delivery (DSD) plants, all of which process Class I fluid 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 second half of 2023. Hood's HTST/DSD Plants

are located in Agawam, MA (FMMO 1); Barre, VT (FMMO 1); Concord, NH (FMMO 1), and Portland, ME (n/a). 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 plants and its HTST bottling plants.

Hood's ESL business is the largest segment of our business with distribution of its 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 Northeastern United States with sales occurring under several brands including the 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. According to Circana, 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. TESTIMONY ON HP HOOD'S COMPONENTS

### A. Hood's Actual Components Received

HP Hood does not consistently receive producer milk at our Class I plants with skim components at the proposed levels. The table below is a summary comparison of HP Hood's

producer milk receipts at its 9 Class I fluid milk plants for the 24-month period from January 2021 to December 2022.

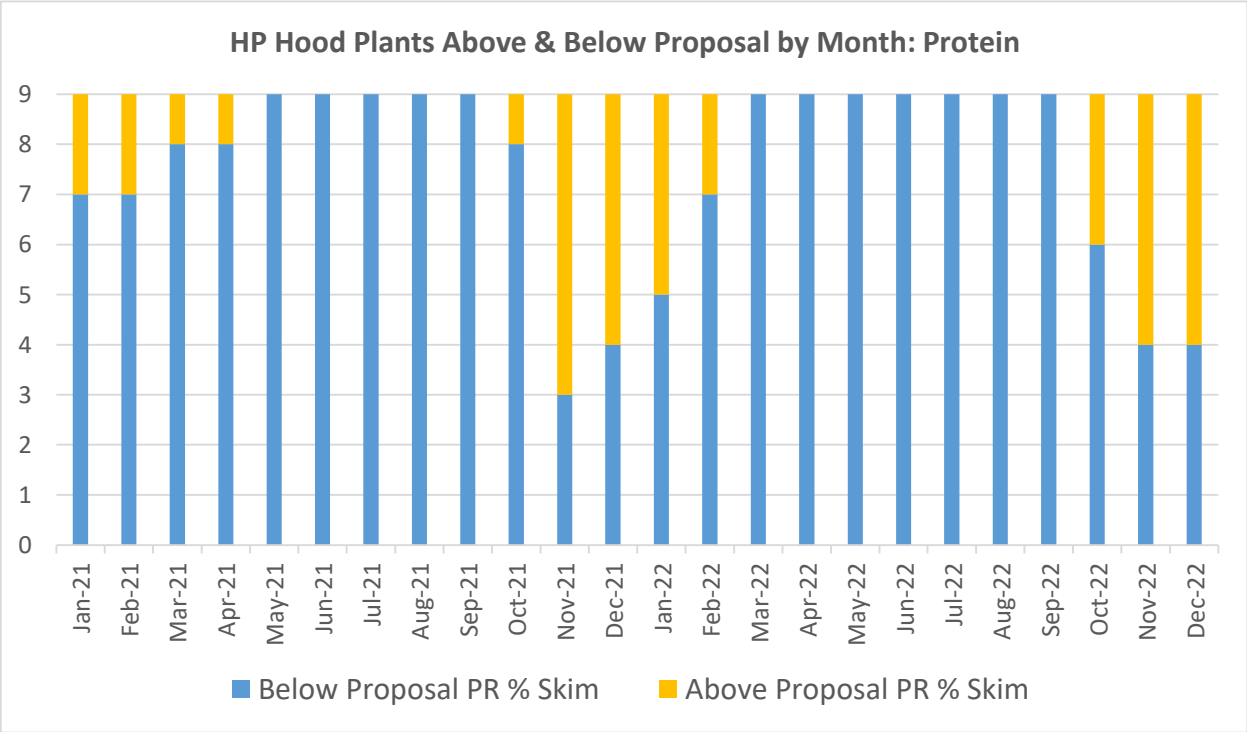
| **HP Hood Milk Receipts Skim Components** | | | |
|---|---|---|---|
| | Protein % Skim | Other Solids % Skim | Nonfat Solids % Skim |
| | | | |
| FMMO Current[1] | 3.10 | 5.90 | 9.00 |
| Proposals 1 and 2 | 3.39 | 6.02 | 9.41 |
| | | | |
| HP Hood Minimum[2] | 3.09 | 5.83 | 8.92 |
| HP Hood Maximum[3] | 3.50 | 6.08 | 9.49 |
| | | | |
| | | | |
| **% Months with Plants Below Proposal[4]** | **83%** | **72%** | **86%** |

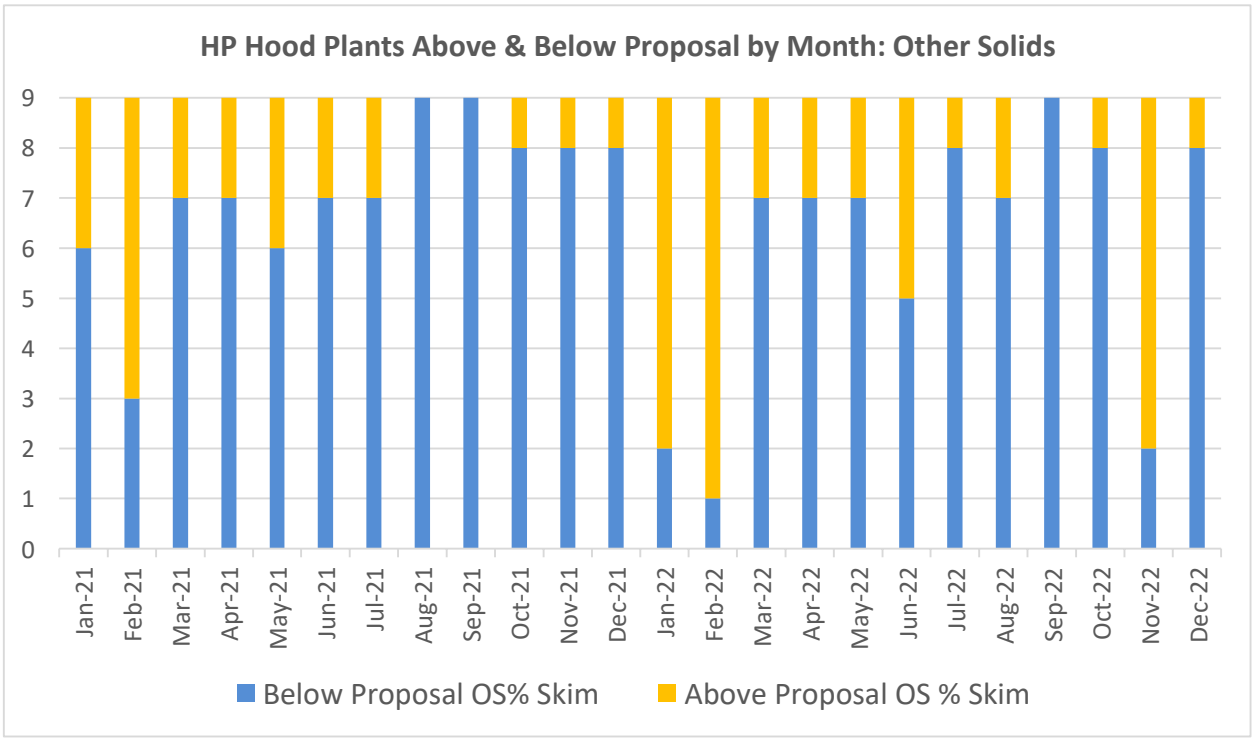
These levels are different among the plants and months, but a few facts are notable.

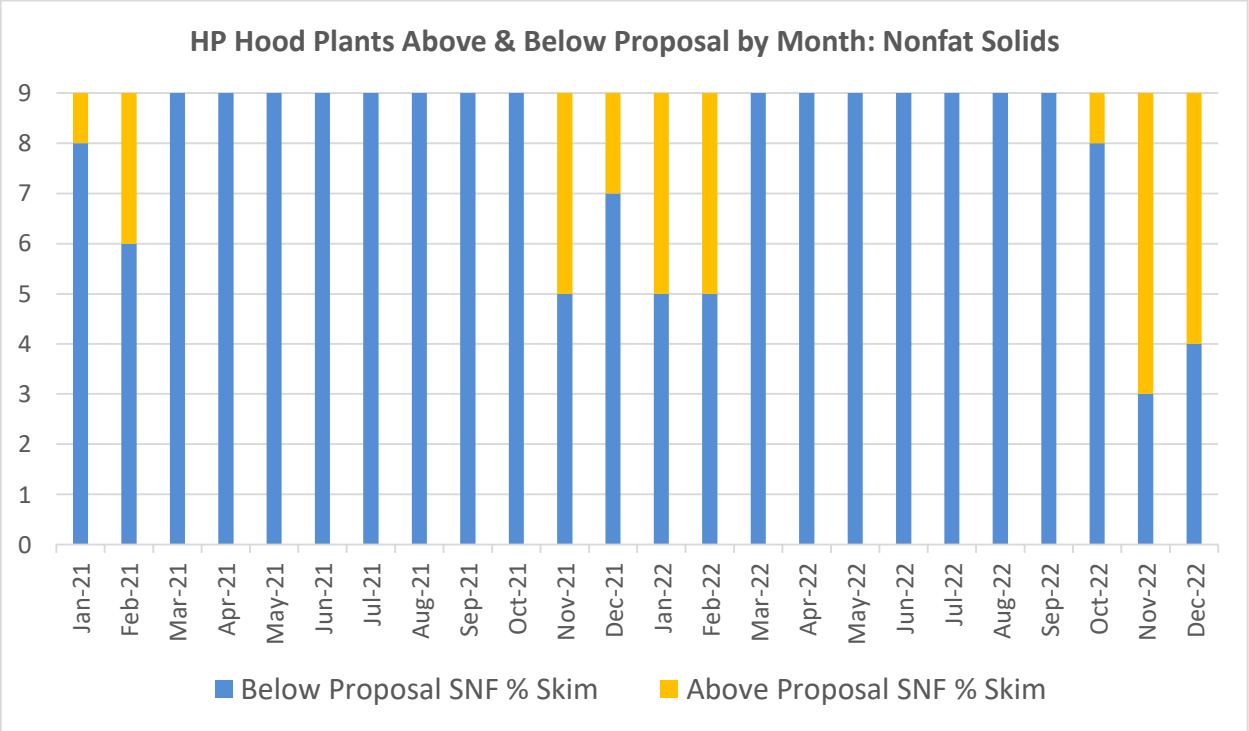
First, for example, the lowest individual monthly component levels we received for all three components were less than the current levels for components in the Class I skim price formula. So if USDA were to set the formula component factors at the lowest actual market level, HP Hood's data shows the current factors are already at the appropriate levels.

Second, as shown by our maximum component levels achieved, there are times Hood has received high component milk. But that is not a consistent level. For an overwhelming majority of months, Hood received component levels less than the Proposal 1 and 2 levels. When looking at this on a month-to-month basis, you can also see how frequently Hood received below-proposal level milk most of the time. Additionally, this shows the seasonality affects the component levels.

[1] This data is from 7 C.F.R. §1000.50.
[2] For competitive reasons, Hood will not identify the plant(s) or supplier(s) for this milk.
[3] For competitive reasons, Hood will not identify the plant(s) or supplier(s) for this milk.
[4] Calculated for a 24 month period from January 2021 – December 2022 for HP Hood's nine fluid milk plants based on receipts as reported in HP Hoods' individual monthly MA Reports.


HP Hood Plants Above & Below Proposal by Month: Protein
9
8
7
6
5
4
3
2
1
0
Jan-21
Feb-21
Mar-21
Apr-21
May-21
Jun-21
Jul-21
Aug-21
Sep-21
Oct-21
Nov-21
Dec-21
Jan-22
Feb-22
Mar-22
Apr-22
May-22
Jun-22
Jul-22
Aug-22
Sep-22
Oct-22
Nov-22
Dec-22
Below Proposal PR % Skim
Above Proposal PR % Skim


HP Hood Plants Above & Below Proposal by Month: Other Solids
9
8
7
6
5
4
3
2
1
0
Jan-21
Feb-21
Mar-21
Apr-21
May-21
Jun-21
Jul-21
Aug-21
Sep-21
Oct-21
Nov-21
Dec-21
Jan-22
Feb-22
Mar-22
Apr-22
May-22
Jun-22
Jul-22
Aug-22
Sep-22
Oct-22
Nov-22
Dec-22
Below Proposal OS% Skim
Above Proposal OS % Skim




Third, these charts also show that our levels on the minimum and maximum make sense given seasonal variation. The minimums for all three components were from July and the maximums were from November, December, and January. This aligns with milk production realities in that cows produce higher component milk in the winter months (due to feed), and lower component milk in the summer months (exacerbated by heat).

Fourth, this variation is not just seasonal but also geographic. For example, for protein, three of our nine plants never once met the proposed protein levels in the two years surveyed. Similarly, one plant never once met the proposed levels for other solids. Finally, three of our nine plants never once met the proposed solids nonfat standard levels in the two years surveyed. While other Hood plants in other locations may have had, on average, higher levels that did occasionally reach the proposal levels, some plants are routinely on the lower end due to the geographic location of their supply.

### B. Standard of Identity

Hood manufactures milk compliant with the U.S. Food and Drug Administration standards of identity. Those are found at 21 C.F.R. § 131.110. These define milk as:

> (a) Description. Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8 ¼ percent milk solids not fat and not less than 3 ¼ percent milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized.

The underlined portion of the above is the key portion for this testimony. The only way that we can modify milk by removing something is removing milkfat. Otherwise, we can only add to milk, and we can only add by fortifying using cream, NFDM, or like products.

### C. The Manufacturing Process

Hood receives milk from cooperatives throughout the regions where our plants are located. Each load received into the site is tested for temperature, Appendix N (antibiotic) drug screening, freezing point (checking for added water), DMC (direct microscopic count), and odor/flavor upon arrival. Once the tanker compartment has passed all of our quality testing it is released to be unloaded into one of our raw milk silos. After many years of trial and error it was determined that the best way to test the incoming loads for butterfats was to take a weighted average of the milk in the raw silos once the receivers were finished filling the silo; prior to the raw milk being processed. Butterfat is the only component used to determine the formula of our Class I products.

When raw milk is pumped out of the silo it is sent to the separator and separated into skim milk and cream. The butterfat of the skim milk is about 0.09%. The butterfat of the cream is about 40%. Skim milk is processed directly off the separator through the homogenizer and then to the pasteurizer. For the 1%, 2% and whole milk, the skim milk and cream are blended back together prior to homogenization and pasteurization for the correct butterfat level. Finished milk is only standardized to a butterfat level and no other components. Butterfat testing is conducted on the

finished products at several locations in the flow including in the pasteurized storage tanks/silos, at the filler and in the middle of the production run. Standardized milk is stored in pasteurized milk tanks/silos prior to bottling. When the filler starts running a product at the beginning of the shift, the filler operators will bring a sample to test for freezing point (checking for sanitizer) and butterfat.

All Class I products are tested and released based on the butterfat levels and the label claims. We do not test for nonfat solids, protein and other solids levels because those components are not used to determine if the product meets the standard of identity. Although the testing is available to test for these components, butterfat is the sole component we need to determine if the product is ready for release to the customer.

Throughout the process we are standardizing to the butterfat levels by adjusting the amounts for cream and skim milk added to the blend. We do not use water as an ingredient in any of our products. Nonfat dry milk (NFDM) could be added to flavored milks when the solids of the incoming milk are lower than the formula calls for. The way the milk is processed in our Class I facilities there is no way to extract, separate, or reduce the components if the levels are higher than needed. We only have the ability to add ingredients if in a blended product, the levels are below the formula such as in flavored milk or egg nog.

Why does this manufacturing process limitation matter to Proposals 1 and 2? These proposals raise the component levels on the basis that there is additional value in milk with higher components. But there is no way in the manufacturing process for Class I processors, like Hood, to "capture" the value of the higher components. For example, if Hood receives milk with particularly high protein levels, we cannot process the milk to either pull out the protein (to use it for other purposes) or create "more" milk by adding water to dilute the protein. That is because the standards of identify for milk do not let us dilute the milk in any way. So, we are stuck with the same volume of milk no matter the level of protein (or other components, other than butterfat).

In other classes, I understand that manufacturers (for example, cheese) could use those higher components, mixed with ingredients and manufactured accordingly, could allow that manufacturer to make more cheese. That makes the components valuable to them. Class I processors, like Hood, cannot do that, so we have no way in our manufacturing process to create more "value" from higher component milk.

**D. Specifications to and from Customers**

With the majority of our customers that purchase Hood's Class I products, they use the specification that has been developed and provided by Hood. Hood's specifications are driven by the standard of identity, so these specifications state only butterfat levels under the chemical composition of the product. For example, 2% milk states the butterfat range from 1.80% to 2.20% with a target of 2.00%. Other components (nonfat solids, protein, other solids) are not part of Hood's customer specifications. Hood's customers are expecting the butterfat range that is stated in the specification match what is listed on the package label. But they have no expectation on the content of nonfat solids, protein or other solids that is in the milk.

For customers that have their own specifications, the standard of identity is still followed and their specifications may also include a certain package size or code date on the package. The product is still the same finished product and follows the same standard of identity, with butterfat only. In my experience, I have never received any specifications from a customer that reference or require any specific level of nonfat solids, protein, or other solids. Class I milk has always been a good source of nutrients, including vitamins and minerals, and we work hard to educate consumers about these benefits. But fluid milk has always been marketed and sold based on butterfat levels.

In my experience, I also have never had a customer express any demand or desire for any other components except butterfat. To be honest, I am not sure most of Hood's customers know what nonfat solids or other solids even are (let alone have a demand for them). And I am confident

that the average consumer purchasing our products does not know what solids and other solids are. And if there is no demand by retailers or consumers for components, there is no way for Hood to raise its prices to customers based on higher component levels. So, if Hood's input costs are raised based on component levels being set at a higher level, even if Hood receives that high component milk, it has no way to recover that increased cost from its customers based on the components. Given the challenges already faced by the Class I market, it is my opinion it would significantly harm Class I processors, including Hood, to face increased prices based on raising component levels.

Thank you for the opportunity to testify today.