

Testimony of W. Anthony (“Tony”) Bostwick

Braum’s Ice Cream & Dairy Stores

May 2009 Federal Milk Marketing Order Hearing

Docket No. AO-14-A78, et al.

My name is W. Anthony (“Tony”) Bostwick. I am the Chief Executive Officer of Braum’s Ice Cream & Dairy Stores in Oklahoma City, Oklahoma. Braum’s Dairy is a vertically integrated third generation 100% family owned business in the Central Order. Braum’s Dairy has operated as a producer-handler since 2001. Braum’s sells all of own dairy products in its own retail stores, and does not carry any other fluid milk brands. In addition to our farms and processing plant, we have retail outlets in five states, Oklahoma, Texas, Arkansas, Kansas and Missouri. These retail outlets contain three different business areas; quick service restaurant with drive thru windows, an Ice Cream Parlor we call our fountain and a Fresh market where fresh dairy, bakery, meat and produce items are sold. Braum’s is a member of the American Independent Dairy Alliance and supports denial of the petitions to change the existing status of producer handlers.

Our marketing strategy is based on quality, traceability, time to market, freshness, and higher SNF (solids non-fat) in lower fat milks. Our lower fat milk products are unique – they contain a higher SNF percentage than other brands based on a process through which we remove water. As a result, it takes 3 gallons of milk to make every 2 gallons of Braum’s fat-free milk, with the remaining gallon removed accounted for as Class IV milk. A variety of doctors in our marketing area recommend our low-fat milks to their patients who need extra calcium with less fat.

wab We consider our business to be a consumer oriented, niche market that is a price follower. We do not have either processor or retailer competition in marketing. Recently, a Kroger’s store near our McKinney, Texas store was selling milk at \$2.79/gallon for the store brand and the generic brand at \$1.99/gallon even though each was bottled at the same Kroger plant ~~in Ohio~~. We are not selling milk at retail to move other product and we occasionally lose sales to competitors like Kroger’s when milk goes on sale, but our customers are very loyal to our particular products. Since we must self-balance as a producer handler we cannot go after someone else’s milk business (our supply is strictly limited to what we produce). We do not view ourselves as price competitors at retail, and as I have said, our products are not available in any retail outlets other than our own. Nor has anyone asked us to begin supplying milk for their retail operation – it is just not what we do.

Braum’s has grown with our customer base during the three generations of our existence. We milk approximately 12,000 cows and our Class I utilization tends to be in the 50+% range. Although we do not purchase or sell any raw milk, we do on occasion purchase or sell condensed skim, non-fat dry milk or cream from the other plants. Because of the higher percentage of sales of lower fat milks and lower fat frozen yogurt and sherbet products, we rarely need to purchase

additional cream for our ice cream products. We do purchase butter and cheese at the present time.

We do not view ourselves as the source of any disruption in the market in any way. We value the independence embodied in the producer-handler status because it fits our business so well. Our reputation with our customers depends on providing the consistent, fresh, high quality milk that they expect in Braum's branded milk. Our milk is immediately chilled to 35 degrees Fahrenheit when it leaves the cow. It is delivered to our bottling plant within 8 hours. It is on the shelf in our stores within 36 hours. Our brand is like a McDonalds type company in that our customers expect a uniform consistent product except in our case they expect high quality as well. Braums cannot depend on pool milk to meet that standard - it is not of a uniform quality with respect to freshness. In short, based on our quality profile, we cannot rely on pool milk.

As we understand the proposal to eliminate producer-handler status, it is based on the argument that producer handler activity has become "disorderly marketing" (whatever that means) for two reasons. First, the argument is made that such conditions are created by reductions in the blend price to folks who are just producers created by producer handler depooled Class I volumes. activity. Second, the argument is made that producer handlers have an "unfair price advantage" (blend price versus Class I price) over folks who are just handlers (wholesalers).

Let's look at the first part of this. Does the depooling of producer handler Class I volumes reduce blend prices to producers in a way that differs from other permissible activity in the FMMO system?

We do not believe that is the case. A lot has been said about the Central Order in this proceeding. The Central Order was greatly enlarged as a result of Federal Order Reform. It now includes many large cheese processing plants. In 2008, Central Order data I received from our Market Administrator shows that a very large volume of Class III milk was depooled (removed from the pool) in each of 5 months when the value of Class III milk exceeded the blend price.

In March of 2008, over 240 million pounds of Class III milk was depooled. In May 302 million pounds of Class III milk was depooled. In June of 2008, 246 million pounds of Class III milk was depooled. In October of 2008, over ~~185,000~~^{185 Million} pounds of Class III milk was depooled. In December, over 230 million pounds of Class III milk was depooled. **For all of 2008, 1.4 billion pounds of Class III milk was depooled in the Central Order in 2008. This compares with a total volume of producer handler sales for 2008 Central Order of 176.8 million pounds - less than 12% of the amount of milk removed from the pool by depooling. (Ex 12 in this proceeding).** Putting my producer hat on, reductions in blend price are reductions in blend price.

Second, we do not as a producer handler have an unfair price advantage over regulated handlers. First, because we are independent, we get our milk at the cost of production on our farms, not at the price producers receive from the pool. And no-one else is producing or selling our branded milk products. As evident from the description above, Braum's has a substantial investment in producing high quality milk.

We estimate that full regulation would add an annual regulatory cost to our business of ^{WAB} \$300,000 simply for administrative oversight by the market administrator (or as Drew Braum puts it, to ensure that he is paying himself the right amount for his own milk). Due to the diversified nature of our business, we do understand that diversified cooperatives and processors can organize product production so as to effectively eliminate the effect of any pool payment obligations on their bottom line – or to become pool neutral. While Class I fluid processors in the regulated pool are required to pay into the pool, Class III manufacturers draw from the pool. This is an advantage of scale and diversification that is not available to most independent producer handlers and to us illustrates why producer-handlers cannot, as a factual matter, be responsible for creating any disruption in the national marketplace.

I would also like to point out that to the extent its utilization matches the pool, a producer handler has no effect whatsoever on blend price. Braums is an example of this type of a producer handler. If we were required to participate in the pool, a very likely result could be a decrease in blend price rather than an increase due to our utilization of Class III milk, precisely the opposite intent of the NMPF and IDFA proposals.

We request that the petition to eliminate producer-handler status be denied. In the alternative, we support Alternatives 23, 24 and 25.

