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**Consumer Federation of America**



April 13, 2015

U.S. Department of Agriculture  
Office of the Secretary  
Copy: Agricultural Marketing Service  
Dairy Programs Enforcement Branch  
Mail STOP 0231-Room 2971-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0231

Attention Docket ID No. AMS-DA-09-0065  
Electronically filed at [www.regulations.gov](http://www.regulations.gov)

Dear Secretary Vilsack:

As consumer and taxpayer organizations that represent millions of Americans, we are pleased to offer these comments in response to the Agricultural Marketing Service (AMS) Notice<sup>1</sup> to review the Federal Milk Marketing Orders (FMMOs) under Section 610 of the Regulatory Flexibility Act (RFA).

The FMMOs are the federal government's milk pricing regulations, which date back to the Great Depression. They are one of the last remaining areas of direct government market intervention in food prices. As such, FMMOs have a substantial impact on hundreds of millions of U.S. consumers and taxpayers.

The FMMOs initially provided an important service to the American public. Specifically, they were adopted to ensure an adequate supply of beverage milk, particularly in rapidly growing cities of the early 20<sup>th</sup> century. Today, that mission has been fulfilled, and the continued existence of FMMO milk pricing regulations is no longer in the best interests of consumers and taxpayers.

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<sup>1</sup> Federal Register Vol. 80, No. 28 7549 February 11, 2015

## FMMOs raise the cost of federal nutrition programs.

Food is a fundamental component and cost of many U.S. social welfare programs. The FMMOs are designed to raise or alter milk prices, and they predate the emergence of modern social welfare programs. Through such initiatives as the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the National School Lunch and School Breakfast Programs, the Special Milk Program, the Child and Adult Care Food Program and others, the federal government is the largest purchaser of beverage milk. Quite predictably, higher prices for milk result in higher costs for some feeding programs and fewer people served in others. Higher-than-market milk prices also run counter to the underlying goal of providing disposable income or direct benefits, such as dairy foods, to qualified program participants. By raising the price of milk, the FMMOs erode the very income and food benefits given to recipients, and raise the taxpayer costs of government feeding programs that include milk.

## FMMOs raise the cost of milk and effectively amount to a regressive tax on low income families.

Effectively, the FMMO system artificially raises beverage milk prices. Published studies<sup>2</sup> of the impacts of government milk price regulations on consumers found that while all consumers benefit when the milk pricing system is eliminated, households with lower income levels benefit the most because they spend a larger percentage of their income on food than do other consumers. Higher beverage milk prices brought about by government pricing effectively function like a regressive tax imposed on consumers, disproportionately affecting fixed and lower income households which spend a higher share of their income on food in general and on milk in particular.

## FMMOs are inconsistent with nutrition guidelines.

USDA's milk pricing regulations conflict with federal nutrition policy. The 2010 Dietary Guidelines for Americans (DGA) recommend three servings a day of **low fat** or fat free milk or dairy products<sup>3</sup>. The government sets the price for beverage milk (Class I) at a rate above cheese (Class III) or butter (Class IV) prices<sup>4</sup>. The mandatory price premium for beverage milk is

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<sup>2</sup> Chouinard, Hayley and David Davis et.al. 2010. "Milk Marketing Orders Who Wins and Who Loses," Choices publication of Agricultural & Applied Economics 2<sup>nd</sup> Quarter 25 (2) [www.ChoicesMagazine.org](http://www.ChoicesMagazine.org) and Applied Economic Perspectives and Policy, 32(1), 59-76; CUDARE Working Papers, Department of Agricultural and Resource Economics, UC Berkeley.

Dardis, R., and B. Bedore. 1990. "Consumer and Welfare Losses from Milk Marketing Orders." *The Journal of Consumer Affairs* 24: 366-80.

LaFrance. J.T. and H. de Gorter. 1985. "Regulation in a Dynamic Market: The U.S. Dairy Industry." *American Journal of Agricultural Economics* 67:821-32.

Stewart, H. and D. Blayney (2011). "Retail Dairy Prices Fluctuate with the Farm Value of Milk," *Agricultural and Resource Economics Review* 40(1): 201-217.

<sup>3</sup> Dietary Guidelines Tip Sheet No. 5. 2011 "got your dairy today? 10 tips to help you eat and drink more fat-free or low-fat dairy foods." <http://www.choosemyplate.gov/food/groups/downloads/TenTips/DGTipsheet5GotYourDairyToday-BlkAndWht.pdf>

required regardless of whether the milk is sold as low fat or fat free. Considering also that the vast majority of milk fats are not sold in the Class I beverage milk category<sup>5</sup>, the current pricing system requires beverage milk to subsidize the price of milk fat in other dairy products.

#### Retrospective review and prospective action

The original purpose of the FMMOs (i.e., to benefit producers **and consumers** by establishing and maintaining orderly marketing conditions of milk) is no longer a valid justification for the continuation of this government program. Rather than additional retrospective analysis, we propose that USDA prospectively consider how existing FMMOs affect the Department's policy goals and statutory responsibilities in **all** of its mission areas, including but not limited to the cost to federal nutrition programs and the impact on consumers. Going forward, USDA should require that the FMMO system consider important consumer nutrition and health objectives with respect to the cost and consumption of beverage milk. When the FMMO rules enhance one USDA objective but detract from others, there should be a clear analysis of the trade-offs, particularly in light of the fact that dairy producers now have access to taxpayer funded financial support programs administered by USDA's Farm Service Agency and Risk Management Agency.

Finally, AMS could increase public participation in its FMMO rulemaking through use of "plain English" to explain how the current rules operate. FMMO rules are particularly complex and difficult to understand. Accordingly, it is nearly impossible for consumers to participate in any public dialogue on this subject. Simplification of this discussion would lead to more consumer and taxpayer participation in future policy debates and could generate potentially innovative ideas on how federal dairy programs could best serve the public interest.

Thank you for your consideration of our views on this important matter.

Sincerely,

Citizens Against Government Waste

National Taxpayers Union

Consumer Action

Taxpayers for Common Sense

Consumer Federation of America

Taxpayers Protection Alliance

National Consumers League

The R Street Institute

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<sup>4</sup> Sumner, Daniel A., and Joseph V. Balagtas. "United States' Agricultural Systems: An Overview of U.S. Dairy Policy." University of California: Agricultural Issues Center. University of California - Davis, 2002. 25 May 2012 [http://www.aic.ucdavis.edu/research1/DairyEncyclopedia\\_policy.pdf](http://www.aic.ucdavis.edu/research1/DairyEncyclopedia_policy.pdf).

<sup>5</sup> USDA National Agricultural Statistics Service data.