containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 1, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–18654 Filed 11–3–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Delaware Hazardous Substances Cleanup Act

Notice is hereby given that on September 29, 2006, a proposed Consent Decree in *United States and the State of Delaware* v. *E.I. Dupont De Nemours & Company, Inc., and CIBA Specialty Chemicals Corporation,* Civil Action No. 06–612 was lodged with the United States District Court for the District of Delaware.

In this action the United States and the State of Delaware sought claims for natural resource damages brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9601 *et seq.* and the Delaware Hazardous Substance Cleanup Act (''HSCA''), 7 *Del. C.* Chapter 91 with respect to the release of hazardous substances from DuPont-Newport chemical facility, located in Newport, Delaware. Under the proposed Consent Decree, the defendants will fund restoration projects on the ''Pike Property'' as set forth in the Damage Assessment and Restoration Plan (''DARP'', attached to the Consent Decree), and the State of Delaware will hold an environmental covenant for the Pike Property to protect it in perpetuity. Defendants will reimburse each Trustee for its Damage Assessment Costs, and make a payment to Delaware for groundwater injuries. The total value of the settlement as set forth in the Consent Decree is $1.6 million.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and the State of Delaware* v. *E.I. Du Pont De Nemours & Company, Inc., and CIBA Specialty Chemicals Corporation*, D.J. Ref. 90–11–2–883/2.

The Consent Decree may be examined at the Office of the United States Attorney, for the District of Delaware, 1007 Orange Street, Suite 700, Wilmington, Delaware. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

A copy of the Consent Decree may also be obtained at the offices of the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, Delaware 19720, Main phone number: 302–395–2600, Site Name: DuPont Newport NRDA DE–X009. Contacts: Jane Biggs Sanger, Elizabeth LaSorte, or Robert Newsome. An electronic version of the Consent Decree and the DARP can be viewed at *http://apps.dnrec.state.de.us/intraviewer/session/frmmain.cfm.*

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9104 Filed 11–3–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Dairy Farmers of America, Inc.; Proposed Final Judgement and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgement, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Kentucky in *United States of America and Commonwealth of Kentucky* v. *Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC,* No. 6:03–cv–206. On April 24, 2003, the United States and Commonwealth of Kentucky filed a Complaint alleging that the acquisition by DFA of an ownership interest in Southern Belle Dairy Co., LLC (''Southern Belle''), violated Section 7 of the Clayton Act, 15 U.S.C. 18. An Amended Complaint was filed on May 6, 2004. The proposed Final Judgment, filed on October 2, 2006, requires DFA to divest its interest in Southern Belle and use its best efforts to cause its partner, the Allen Family Limited Partnership, to divest its interest in Southern Belle as well. Copies of the Amended Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Eastern District of Kentucky, London, Kentucky.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice,

1401 H St., NW., Suite 4000, Washington, DC 20530 (202–307–0001).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court, Eastern District of Kentucky, London Division

United States of America, and Commonwealth of Kentucky, Plaintiffs, v. Dairy Farmers of America, Inc., and Southern Belle Dairy Co., LLC, Defendants

Civil Action No.: 03–206–KSF
Filed:

Amended Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the Commonwealth of Kentucky, by and through its Attorney General, bring this civil action to obtain equitable relief against defendants, including compelling the Dairy Farmers of America, Inc. (''DFA'') to divest its interest in the Southern Belle dairy located in Somerset, Kentucky, and allege as follows:

I. Nature of the Action

1. Up until February 2002, DFA, through its subsidiaries, operated the Flav-O-Rich dairy in London, Kentucky (''Flav-O-Rich'') and competed vigorously against the Southern Belle dairy, located thirty miles away in Somerset, Kentucky (''Southern Bell''), to supply milk to school districts located in Kentucky and Tennessee. That competition resulted in lower prices and better service for school districts that provide milk to students.

2. In February 2002, DFA, through another subsidiary, acquired control of Southern Belle, eliminating that important competition. When it made that acquisition, DFA understood that the Department of Justice had in September 1998 successfully challenged a merger involving the very same dairies, under different ownership, because it would have substantially lessened competition in violation of Section 7 of the Clayton Act.

3. Southern Belle and Flav-O-Rich are the only two dairies or two of only a few dairies that bid to supply school milk in many parts of Kentucky and Tennessee. In 45 school districts, the acquisition has created a monopoly. In 55 other districts, the number of bidders has effectively declined from three to two, reducing competition substantially.

4. History in this region has demonstrated that less competition results in higher prices. Many school districts in this area previously had to pay higher prices as victims of a criminal bid-rigging conspiracy involving school milk. The former owners of Southern Belle and Flav-O-Rich engaged in that conspiracy and pled guilty to conspiring with each other for more than a decade to rig school milk bids.

5. Because many of the affected school districts are small or rural districts, often in the mountains, it is unlikely that other dairies will enter or expand into these markets to eliminate the anticompetitive effects of the acquisition. Indeed, Southern Belle's former owner, in the course of debarment proceedings following the criminal conviction, explained that entry was unlikely in many of these very districts, and that the elimination of Southern Belle as a competitor would reduce competition and cause prices to rise.

II. Defendants

6. Defendant Dairy Farmers of America, Inc. (''DFA'') is a Kansas corporation with its headquarters and principal place of business in Kansas City, Missouri. DFA is the largest dairy farmer cooperative in the world. In 2001, it had approximately 25,500 members in 48 states, and sold approximately 45.6 billion pounds of raw milk. DFA had over $7.9 billion in revenues in 2001.

7. DFA owns a 50% common equity interest and approximately 92% preferred equity interest (around $500,000,000) in National Dairy Holdings, L.P. (''NDH''). It also has a 50% interest in Dairy Management LLC, which is the managing arm of NDH. Based on its financial interests in NDH, DFA has the rights to between 50% and 75% or more of NDH's profits. In forming NDH, DFA and its partners in NDH agreed, among other that DFA must approve any decision to commit NDH to any contracts or expenditures exceeding $50,000, to appoint new NDH officers, or change the compensation (e.g., increase the salary) of NDH's officers.

8. DFA is the sole supplier of raw milk and is the contractually preferred supplier of raw milk to Flav-O-Rich and other NDH dairies. DFA also sells more raw, unprocessed milk to dairies in Kentucky and Tennessee than does any other entity.

9. In addition to its controlling interests in Flav-O-Rich, DFA also owns financial interests in several other dairies that sell school milk in parts of Kentucky and Tennessee, including five additional NDH dairies, three Turner Holdings dairies, and one Ideal American dairy. Until February 2002, when the instant acquisition was consummated, Southern Belle competed with a number of these dairies in addition to NDH dairies such as Flav-O-Rich.

10. In December 2001, DFA, through NDH, acquired control and influence over all significant business decisions of Flav-O-Rich and other NDH dairies. Flav-O-Rich processes approximately 30 million gallons of fluid milk per year and had annual revenues of approximately $70 million in 2001. Flav-O-Rich distributes and sells school milk primarily in the eastern two-thirds of Kentucky and Tennessee.

11. In February 2002, DFA, through its partially owned subsidiary, Southern Belle Dairy Co., LLC, (''Southern Bell subsidiary''), acquired control and influence over all significant business decisions of Southern Belle. DFA and subsidiaries controlled in who or in part by DFA contributed approximately $18 million of the $19 million purchase price for Southern Belle. The Allen Family Limited Partnership (''AFLP'') contributed the remaining $1 million, which DFA guaranteed AFLP could recover any time after February 26, 2005. DFA and its subsidiaries own a 50% common equity interest and almost 100% preferred equity interest (around $4,000,000), and 100% credit interest (around $13,000,000) in Southern Belle.

12. DFA formed its Southern Belle subsidiary to acquire the Southern Belle dairy after it became clear that its NDH subsidiary could not acquire the dairy based on the Department of Justice's September 1998 challenge.

13. In planning how DFA would control the Southern Belle subsidiary after they formed it, DFA and AFLP agreed, among other things, that DFA must approve any decision to commit Southern Belle to any contracts or expenditures exceeding $150,000, as well as hiring and compensation decisions for Southern Belle's officers. DFA also gained the right to control the supply of raw milk to the dairy and, based on its debt and equity holdings, the rights to between 50% and 75% of the dairy's profits.

14. Defendant Southern Belle Dairy Co., LLC, is a Delaware limited liability company with its headquarters and principal place of business in Somerset, Kentucky, where it owns and operates the Southern Belle dairy. Southern Belle processes approximately 25 million gallons of fluid milk per year and had annual revenues of approximately $65 million in 2001. Southern Belle distributes and sells school milk primarily in the eastern two-thirds of Kentucky and Tennessee.

III. Jurisdiction and Venue

15. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and by the Commonwealth of Kentucky under 15 U.S.C. 26, to prevent and restrain defendants from continuing to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and under the provisions of K.R.S. § 367.110 *et seq.*

16. Defendants, on their own or through their subsidiaries, transport and sell school and other milk in the flow of interstate commerce in Kentucky and Tennessee and are engaged in interstate commerce and in activities substantially affecting interstate commerce. Defendant DFA also buys and sells raw milk in interstate commerce. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

17. Both of the defendants transact business and are found in the Eastern District of Kentucky. Defendant Southern Belle's principal place of business is in this district. Venue is proper in this judicial district pursuant to 15 U.S.C. 22 and 28 U.S.C. 1391.

IV. History of Collusion on School Milk Sales in the Relevant Markets

18. In late 1993, Southern Belle and Flav-O-Rich pled guilty to the felony of conspiring to raise the price of school milk by agreeing on which dairy would submit the lowest bid for which school district. The conspiracy existed from at least the late 1970s through July 1989, and resulted in substantial harm to over thirty school districts. Southern Belle paid a $375,000 criminal fine; Flav-O-Rich paid $1,000,000. No others were charged with participating in this conspiracy. The current acquisition recreates the effect of this conspiracy in many of those same school districts harmed by the conspiracy for over a decade. *See United States* v. *Southern Belle Dairy Co.*, [1998–1996 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 45,092, at 44,599 (E.D. Ky. Nov. 13, 19920; *United States* v. *Flav-O-Rich, Inc.*, [1998–1996 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 45,092, at 44,605 (N.D. Ga. Dec. 22, 1992).

V. The Manufacture, Distribution, and Sale of School Milk Is a Relevant Product Market

19. Dairies purchase raw milk from dairy farmers and agricultural cooperatives, pasteurize and package the milk, and distribute and sell the processed product. Fluid milk (''fluid milk''P is raw milk that has been processed for human consumption, may be unflavored or flavored with chocolate or fruit flavorings, and does not include extended shelf life (ESL) milk or ultra high temperature (UHT) milk, which are produced by different manufacturing processes, generally cost significantly more than fluid milk, and have numerous significant physical differences compared with fluid milk, such as shelf stability, and a significantly different taste, among other attributes.

20. School milk is fluid milk that is processed, distributed, and sold to school districts, usually in half pint containers, pursuant to contracts with school districts. While these contracts may also include other products, school milk accounts for the vast majority of the dollar value of these contracts.

21. The U.S. Department of Agriculture (''USDA'') sponsors several programs to reimburse schools for meals and snacks served to students from lower income families. To qualify, schools must offer mild to every student, regardless of the income of that student's family. If schools want to receive the federal reimbursements, they cannot substitute other products for school milk, regardless of the milk's cost.

22. Individual school districts generally solicit bids from dairies to supply them with school milk. Sometimes, groups of school districts solicit bids to supply school milk to some or all of the school districts in the group, but each individual school district usually chooses (even if it solicited bids as part of a group) the dairy to which it will award its business.

23. Schools require many important services in connection with the supply of school milk. These services often include frequent delivery (usually every day or every other day because schools generally cannot store more than a limited amount of milk); delivery to all or almost all schools in a district; reordering of milk; stocking milk in the coolers; rotating products; retrieving spoiled and damaged products; providing quick emergency shipments (to guarantee a school has enough milk on hand so it will not lose school meal reimbursements); the return of milk before holidays; specific times of delivery (e.g., early morning so as not to conflict with times when students are present); specific access requirements (e.g., providing keys to drivers); allotting credit for retrieved products; cleaning and maintaining coolers; and other requirements.

24. School districts would not switch to alternative products or delivery methods in the event of a small but significant increase in the price of school milk.

25. The manufacture, distribution, and sale of school milk constitutes a relevant product market or line of commerce within the meaning of Section 7 of the Clayton Act.

VI. The Relevant Geographic Markets

26. Individual school districts generally solicit bids for school milk, although sometimes groups of school districts solicit bids for school milk for some or all of the school districts in the group. School districts usually decide which dairy to award with a school milk contract on an individual basis (regardless of whether they solicit bids individually or as part of a group). Several school districts belong to a group of school districts that (1) requires its members to solicit bids for school milk only through that group, and (2) requires bidders to submit a uniform bid for all of the districts in the group. Each school district typically requires its school milk supplies to deliver to each school within the school district. School districts vary with respect to how many schools must be served, the distance between the schools, the size of the schools in the school district, and other attributes. Each school district has its own requirements with respect to the frequency of deliveries (typically every day or every other day, because schools generally cannot store more than a limited amount of milk), the time of deliveries, the quantity of deliveries, products included, cooler requirements, and specific or individual service requirements.

27. Due to the high level of service requirements of schools, the high frequency of delivery required, the small volume delivered at each stop, the seasonal nature of the business, and other factors, the viable suppliers of school milk are generally limited to those dairies that already have significant local distribution in the area. Dairies that do not currently have nearby routes are generally not viable suppliers of school milk to such school districts. These factors limit school districts' choice of suppliers.

28. Dairies charge different prices to different school districts or groups of school districts (''price discriminate''), based on, among other things, the number of competing dairies in the area, the strength of competition in these localized school milk markets, and the unique service and other requirements of schools.

29. Accordingly, each school district, or group of school districts that requires its members to use the school milk

supplier who submits a winning bid that is uniform for that entire group, constitutes a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act. School districts harmed by the acquisition include those, among others, listed in Attachment A (''Merger-to-Monopoly Markets'') and Attachment B (''Merger-to-Duopoly Markets'').

VII. Harm to Consumers

30. Competition between Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) resulted in lower prices and better service for many school milk customers in Kentucky and Tennessee. Southern Belle's competitive presence forced these other dairies to lower their respective bid prices for school milk contracts.

31. Before DFA's acquisition of Southern Belle, school milk markets in Kentucky and Tennessee had very few competitors and thus were already highly concentrated. These markets have become much more concentrated as a result of the acquisition.

32. In many of these markets, Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) are clearly the two dairies able to supply school milk most economically, and would benefit (at the expense of consumers) by acting together at DFA's direction to raise one or both of their bids. Because it shares each dairy's profits, DFA has a financial incentive to encourage, facilitate, or enforce such cooperation. And, with DFA's control or influence over critical business decisions of the dairies, the dairies are likely to cooperate. Reducing the number of independent bidders from two to one in these markets makes it very likely that prices will rise or the level of service will decrease for these districts.

33. In a number of other school districts, Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) are two of only three likely bidders. Reducing the number of independent bidders from three to two in these markets makes it very likely that prices will rise or the level of service will decrease for these districts.

34. The effect of DFA's acquisition of control and influence over Southern Belle is to substantially lessen competition, or to tend to create a monopoly in violation of Section 7 of the Clayton Act.

VIII. Entry Is Difficult

35. To maintain its ability to sell school milk, the former owner of Southern Belle told the USDA during debarment proceedings in 1998 that competition would decrease and prices would rise if it could not bid. It said that Southern Belle was an ''important supplier to very small school districts in Kentucky and Tennessee,'' especially in the ''rural districts in the mountains of eastern Kentucky.'' (Letter from Joseph L. Ruby, *Wiley Rein & Fielding*, to Yvette Jackson, *Acting Administrator, Food and Consumer Service, USDA,* Jan. 23, 1998, at 2, copy provided in Attachment C.) It also said that those school districts would be unlikely to find any new school milk entrants to replace the lost competition if it could not bid.

36. Entry by new competitors or expansion by existing dairies in the manufacture, distribution, and sale of school milk will not be timely, likely, or sufficient to defeat any increase in prices or decrease in the level of service in the affected school milk markets. A dairy is unlikely to enter a school milk market, even after a small but significant price increase, unless it already services a substantial number of existing commercial fluid milk customers from its route trucks in the school district. This is true because school milk business is usually used to ''fill out'' a dairy's existing commercial fluid milk route truck business, as schools require the regular (e.g., every day or every other day) delivery of school milk along with a number of important labor-intensive and time-consuming services, which would not be economical but for the existing fluid milk customer accounts. Thus, only dairies with existing straight truck delivery routes in an area can compete efficiently for school milk business in that area. Entry or expansion into the school milk business also requires substantial investment in specialized manufacturing assets and infrastructure, including the high cost of installing a dedicated half pint filler.

37. Neither entry nor expansion prevented Southern Belle and Flav-O-Rich from successfully carrying a decade-long criminal bid rigging conspiracy against many of these same school milk districts. Such long-lasting collusion would not have been possible if higher prices easily attracted new competitors.

IX. Violations Alleged

38. DFA's acquisition of Southern Belle through its partially owner Southern Belle subsidiary will likely have the following effects, among others:

a. Competition generally in the manufacture, distribution, and sale of school milk in the relevant geographic markets will be substantially lessened;

b. Actual and potential competition between Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) in the manufacture, distribution, and sale of school milk in the relevant geographic markets will be substantially lessened; and

c. Prices for school milk in the relevant geographic markets will likely increase.

39. DFA's partial acquisition of Southern Belle violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and K.R.S. § 367.110 *et seq.*

X. Relief Requested

40. Plaintiffs request that this Court:

a. Adjudge the acquisition of Southern Belle by defendant DFA to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and K.R.S. § 367.110 *et seq.*

b. Compel DFA to divest all of its interests (including common equity, preferred equity, credit interests, raw milk procurement authority, etc.) in Southern Belle, and take any further actions needed to place Southern Belle in the same or comparable competitive position as existed prior to the acquisition;

c. Permanently enjoin and restrain DFA, including any of its subsidiaries or joint ventures, and all persons acting on behalf of any of these entities, from acquiring or maintaining, in whole or part, any simultaneous legal or beneficial interests (including common equity, preferred equity, credit interests, or raw milk procurement authority) in both Southern Belle and Flaw-O-Rich;

d. Compel DFA, including any of its subsidiaries or joint ventures, and all persons acting on behalf of any of these entities, to provide plaintiff United States of America with notification at least 30 calendar days prior to any acquisition, in whole or in part, of any legal or beneficial interests (including common equity, preferred equity, credit interests, or raw milk procurement authority) in any fluid milk processing operation;

e. Allow any school district or school purchasing cooperative to terminate or rescind any contract to supply school milk entered into with defendants on or after February 20, 2002, including but not limited to eliminating any restrictions on or disincentives to terminating or rescinding such contracts and otherwise refunding or returning consideration paid in advance pursuant to such contracts (i.e., making such contracts voidable in the sole discretion of the school districts or purchasing cooperatives);

f. Award plaintiffs the costs of this action; and

g. Award plaintiffs such other and further relief as is proper.

Respectfully submitted,

For Plaintiff United States of America:

R. Hewitt Pate,
Assistant Attorney General.

J. Bruce McDonald,
Deputy Assistant Attorney General.

Mark J. Botti,
Chief, Litigation I Section.

Dated: March 30, 2004.

For Plaintiff Commonwealth of Kentucky:

David R. Vandeventer,
Assistant Attorney General, Kentucky Bar No. 72790, Office of the Attorney General of Kentucky, 1024 Capital Center Drive, Frankfort, KY 40601, 502–696–5385.

Dated: March 30, 2004.

John R. Read,
Assistant Chief, Litigation I Section.

J.D. Donaldson, Jody A. Boudreault, N. Christopher Hardee, Richard S. Martin, Richard D. Cooke, Ihan Kim,
U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–307–0001.

ATTACHMENT A—Merger-to-Monopoly Markets

Adair County, KY
Ashland Independent, KY
Bell County, KY
Berea Independent, KY
Boyd County, KY
Boyle County, KY
Breathitt County, KY
Campbellsville Independent, KY
Casey County, KY
Clay County, KY
Clinton County, KY
Cumberland County, KY
East Bernstadt Independent, KY
Estill County, KY
Fairview Independent, KY
Garrard County, KY
Harlan Independent, KY
Harrodsburg Independent, KY
Hazard Independent, KY
Jackson County, KY
Jenkins Independent, KY
Jessamine County, KY
Laurel County, KY
Lee County, KY
Leslie County, KY
Letcher County, KY
Lincoln County, KY
Madison County, KY
McCreary County, KY
Mercer County, KY
Montgomery County, KY
Oneida Baptist, KY
Owsley County, KY
Perry County, KY
Pineville Independent, KY
Pulaski County, KY
Rockcastle County, KY
Russell County, KY
Science Hill Independent, KY
Somerset Independent, KY
Wayne County, KY
Whitley County, KY
Williamsburg Independent, KY
Wolfe County, KY
Clay County, TN

ATTACHMENT B—Merger-to-Duopoly Markets

Allen County, KY
Barbourville Independent, KY
Barren County, KY
Bath County, KY
Butler County, KY
Carter County, KY
Caverna Independent, KY
Corbin Independent, KY
Fayette County (Lexington), KY
Franklin County, KY
Glasgow Independent, KY
Green County, KY
Greenup County, KY
Hart County, KY
Knox County, KY
Larue County, KY
Lawrence County, KY
Logan County, KY
Menifee County, KY
Metcalfe County, KY
Middlesboro Independent, KY
Monticello Independent, KY
Morgan County, KY
Ohio County, KY
Owensboro Independent, KY
Rowan County, KY
Russell Independent, KY
Russellville Independent, KY
Simpson County, KY
Taylor County, KY
Alcoa City, TN
Anderson County, TN
Blount County, TN
Bristol City, TN
Campbell County, TN
Carter County, TN
Clinton City, TN
Cocke County, TN
Elizabethon Independent, TN
Green County, TN
Greenville City, TN
Hawkins County, TN
Hamblen County, TN
Johnson City, TN
Johnson County, TN
Knox County, TN
Macon County, TN
Maryville City, TN
Metro Davidson (Nashville), TN
Rogersville City, TN
Sevier County, TN
Sullivan County, TN
Unicoi County, TN
Union County, TN
Washington County, TN

ATTACHMENT C

WILEY, REIN & FIELDING

January 23, 1998

By Messenger

Ms. Yvette Jackson,
Acting Administrator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, VA 22302.

Re: Southern Belle Dairy Company, Notice of Suspension and Debarment

Dear Ms. Jackson: On behalf of the Southern Belle Dairy division of Broughton Foods, Inc. (''Southern Belle''), we would like to supplement the administrative record made at the meeting of January 15, 1998, in connection with certain issues raised at the hearing, and also to propose certain actions to assure that a repeat of the alleged reporting violations will not occur in the future.

Southern Belle desires to supplement the record with the following documentation, which is attached:

The Termination of Mr. Christian

At our meeting, Mr. Hallberg expressed interest in reviewing documentation relating to Mr. Christian's probation as of May 1997, leading to his termination for performance reasons. The following documentation is enclosed:

Exh. 1. A May 15, 1997 ''agenda'' for a meeting with Mr. Christian.

Exh. 2. A May 15, 1997 memo by Mr. Christian's superior, Mike Chandler, summarizing a meeting with Mr. Christian at which he was informed of his need to improve performance or face termination, with a review to take place in two months.

Southern Belle's Contracts Under $100,000

At our meeting, Ms. Landos sought information concerning the number of school milk contracts under $100,000 that were serviced by Southern Belle. Attached hereto as Exh. 3 are two lists, showing actual 1996–97 and projected 1997–98 sales by school districts.

The lists show that, for 1996–97, Southern Belle serviced 46 districts. Of those, 33 districts had sales under $100,000. Of the 33 districts, 16 had sales under $50,000.

Projected sales for 1997–98 show that Southern Belle is currently servicing 55 districts. Of these, 39 districts are projected to have sales under $100,000. Of the 39 districts, 20 are projected to have sales under $50,000.

These figures reveal that Southern Belle is an important supplier to very small school districts in Kentucky and Tennessee. As the maps we provided show, many of these are rural districts in the mountains of eastern Kentucky. These districts would likely find it difficult to attract alternative suppliers from more distant locations.

It is of equal interest that for two years in a row, Southern Belle has been the low bidder in the Fayatte County district (that is, Lexington, Ky.), which has sales of over $600,000, and attracts multiple bids from competing dairies.

As mentioned above, in addition to supplementing the record with this additional documentation, Southern Belle would like to suggest that it undertake certain changes in its current procedures, which it hopes will prevent the recurrence of any reporting difficulties in the future.

As a preface to doing so, we note that Southern Belle, having been on the verge of bankruptcy and liquidation, is now a strong competitor and often the low bidder for school milk and other government contracts. Southern Belle has been able to continue in business and to attract a merger partner in Broughton Foods, whose purchase of Southern Belle means the continuing presence of a competitive dairy in the

southeastern Kentucky region. The proposed debarment for reporting violations would undermine much of the progress that Southern Belle has made, with FCS's assistance and under its compliance program, over the past few years. It would also unavoidably require the consolidation of routes and the layoffs of many Southern Belle employees. Debarment would therefore hurt the local Somerset, Kentucky economy and would reduce competition for government dairy contracts in the region.

Going forward, to insure that timely and accurate reporting is carried out under the Compliance Agreement, all Southern Belle management will be informed that they are to report actual or suspected misconduct to an Ethics Committee member within 24 hours. Furthermore, the Ethics Committee (which now has two new members from Broughton Foods) will implement new procedures whereby, when a violation is reported, it will convene quickly using telephone and fax, conduct an investigation, and make a timely report.

Finally, it appeared that there was a concern that the minutes of the September 26, 1997 Ethics Committee may not have captured the discussion at that meeting with complete accuracy. It has been the practice to have the minutes of each meeting kept by one member, and not reviewed as a matter of course until the next meeting. To eliminate accuracy concerns in the future, Southern Belle will undertake to have the minutes typed and distributed to all members by the business day following the meeting, so that any omissions can be corrected immediately.

In closing, Southern Belle would like to point out that there are a number of Kentucky state government contracts which are traditionally bid in February, including contracts for parks, universities, state hospitals, and vocational schools. Southern Belle would appreciate the ability to bid on these contracts, and submits that it is in the government's interest to permit Southern Belle to compete for them. We therefore request that, if at all possible, this matter be resolved promptly so that Southern Belle may participate in the bidding for at least some of these contracts.

Very truly yours,

/s/ Joseph L. Ruby

Joseph L. Ruby

cc: Philip Cline, Martin Shearer, Steven Diamond, Esquire.

Exhibit 1

Agenda

Meeting with Steve Christian

May 15, 1997

Items to be discussed:

Company expectations in the following areas,

1. Call on new business:

This should be done on a consistent basis and should be scheduled so that we are not wasting time.

2. Call on existing business:

We need to continue to see existing business but not spend all our time on this effort.

3. Respond to call sheets by routemen:

This need to be followed-up on and results put in writing to the routemen with a copy to Zone Sales Manager.

4. Fill out a customer call sheet daily and send to the Zone Sales Manager.

5. Oversee and have responsibility for Branch operations, this does not mean to stay in the office. Steve can get a daily report from Larry when he is in the office from 3:00–5:00 p.m.

6. Will also be responsible for other duties assigned by the Zone Sales Manager, such as school bids, etc.

Hours of work:

8:00 a.m. to 3:00 p.m.—Mon. through Thurs.—In market

3:00 p.m. to 5:00 p.m.—Mon. through Thurs.—Office

8:00 a.m. to 12:00 p.m.—Friday—In market

12:00 p.m. to 5:00 p.m.—Friday—Office

Exhibit 2

May 15, 1997

Harold Soper and I met with Steve Christian at the Louisville Branch. We reviewed his job description and asked him if there was anything that he could not do, or was unwilling to do. Steve said that he did not want to make sales calls or call on existing business. We stressed that all Branch Managers did this and that it was an important part of his job.

After reviewing the Job Description, we provided Steve with some basic forms to document sales calls and to be filled out by the routemen when they have prospect or need price information.

We discussed with Steve the need to create a better work environment for the routemen as several had complained that they had been mistreated in some way. One routeperson reported that he was not receiving mail communication from Somerset, another said he was being used around the Branch for jobs that were not related to his route.

We stressed to Steve that these matters, as well as others, must be improved. And that if he did not make some improvement during the next two months, he would be fired. I asked Steve if he understood what he was being asked to do, and he said he did.

We made an agreement to meet within two months to review his progress.

/s/ Mike Chandler

Exhibit 3

PROJECTED FROM ACTUAL 8/97–12/97

School system	Contract No.	1997–98 Sales
Adair County Schools	21627	95,893.38
Barbourville City Schools	22238	17,608.30
Bath County Schools	29192	84,831.85
Berea Community Schools	21352	26,750.62
Bowling Green City Schools	27981	122,667.00
Boyle County Schools	26130	37,890.91
Breathitt County Schools	33238	143,257.60
Bristol City (TN) Schools	34728	81,402.62
Burgin City Schools	26097	14,299.24
Campbell County Schools	29969	250,504.95
Clarksville Community (IN)	34815	30,299.82
Corbin City Schools	24627	72,999.58
Cumberland County Schools	30004	41,371.73
Danville City Schools	25979	56,280.46
East Bernstadt School	21157	17,540.36
Estill County Schools	25799	89,665.39
Fayette County Schools	21100	608,675.03
Green County Schools	26795	42,321.70
Greeneville City Schools	30007	44,520.96
Harrodsburg City Schools	33160	31,790.80
Hart County Schools	28389	66,226.97
Hazard Independent Schools	34848	27,636.88
Jackson Independent Schools	34847	14,163.46
Knox County Schools (KY)	21278	183,628.12
Larue County Schools	29988	74,432.16
Lee County Schools	24621	56,578.79
Lexington Private Schools	15121	35,552.81

PROJECTED FROM ACTUAL 8/97–12/97—Continued

School system	Contract No.	1997–98 Sales
Lincoln County Schools	24191	164,317.71
Macon County Schools	23173	88,989.91
Madison County Schools	25545	229,139.64
McCreary County Schools	24237	140,930.13
Meade County Schools	28454	153,510.34
Menifee County Schools	24919	32,323.89
Mercer County Schools	21763	52,000.58
Metcalfe County Schools	28395	59,048.89
Monroe County Schools	26543	77,986.33
Monticello City Schools	21575	25,423.20
Montgomery County Schools	24157	132,973.99
Morgan County Schools	29503	103,785.66
Nashville Metro Schools	23505	335,067.84
Pickett County Schools	26661	28,096.62
Pulaski County Schools	19140	294,978.80
Putnam County Schools	27240	221,463.07
Rockcastle County Schools	21088	87,306.99
Rowan County Schools	28846	82,248.66
Russell County Schools	26382	101,533.70
Science Hill School	29991	13,520.93
Simpson County Schools	33154	70,436.38
Somerset City Schools	13449	45,378.31
Taylor County Schools	26781	74,838.52
Van Buren County Schools	27118	26,809.74
Wayne County Schools	26404	89,391.06
West Clark Community (IN)	32001	60,298.90
Whitley County Schools	32580	202,722.31
Williamsburg City Schools	20425	27,033.50
Total	.....	5,390,347.09

School system	Contract No.	Actual 1996–97 sales
Adair County Schools	21627	95,893.38
Bath County Schools	29192	84,831.85
Berea Community Schools	21352	26,750.62
Bourbon County Schools	23293	95,217.02
Boyle County Schools	26130	37,890.91
Burgin City Schools	26097	14,299.24
Campbell County Schools	29969	250,504.95
Caverna Independent Schools	28461	35,597.42
Clinton City Schools	23381	30,363.58
Clinton County Schools	26260	57,222.29
Cumberland County Schools	30004	41,371.73
Danville City Schools	25979	56,280.46
East Bernstadt School	21157	17,540.36
Estill County Schools	25799	89,665.39
Fayette County Schools	21100	608,675.03
Garrard County Schools	24200	78,654.92
Greeneville City Schools	30007	44,520.96
Hardin County Schools	33249	367,140.54
Harrodsburg City Schools	33160	31,790.80
Hart County Schools	28389	66,226.97
Knox County Schools (KY)	21278	183,628.12
Lee County Schools	24621	56,578.79
Lexington Private Schools	15121	35,552.81
Lincoln County Schools	24191	164,317.71
Macon County Schools	23173	88,989.91
Madison County Schools	25545	229,139.64
McCreary County Schools	24237	140,930.13
Menifee County Schools	24919	32,323.89
Mercer County Schools	21763	52,000.58
Metcalfe County Schools	28395	59,048.89
Monroe County Schools	26543	77,986.33
Monticello City Schools	21575	25,423.20
Montgomery County Schools	24157	132,973.99
Morgan County Schools	29503	103,785.66
Pickett County Schools	26661	28,096.62
Powell County Schools	31815	91,315.15
Pulaski County Schools	19140	294,978.80

School system	Contract No.	Actual 1996–97 sales
Putnam County Schools	27240	221,463.07
Rockcastle County Schools	21088	87,306.99
Russell County Schools	26382	101,533.70
Science Hill School	29992	13,520.93
Simpson County Schools	33154	70,436.38
Somerset City Schools	13449	45,378.31
Van Buren County Schools	27118	26,809.74
Wayne County Schools	26404	89,391.06
Whitley County Schools	32580	202,722.31
Total	.....	4,786,071.13

United States District Court, Eastern District of Kentucky, London Division

United States of America, et al., Plaintiffs, v. *Dairy Farmers of America, Inc., Defendant*

Civil Action No.: 6:03–206–KSF

Final Judgment

Whereas, plaintiffs, the United States of America and the Commonwealth of Kentucky, and defendant Dairy Farmers of America, Inc. (''DFA''), by their respective attorneys, have consented to the entry of this Final Judgment without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, the United States of American and the Commonwealth of Kentucky have concluded, after due investigation and careful consideration of the relevant circumstances, including the claims asserted in the Amended Complaint, and the legal and factual defenses thereto, that the public interest is served by entering into a Stipulation, to avoid the uncertainties of litigation and to assure that the benefits of this Final Judgment are obtained;

And whereas, DFA agrees that venue and jurisdiction are proper in this Court;

And whereas, DFA agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets by DFA;

And whereas, DFA, despite its belief that it has good defenses to the claims asserted against it in the Amended Complaint, has nevertheless agreed to enter into this Final Judgment to avoid further expense, inconvenience, the uncertainties of litigation, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the United States of America and the Commonwealth of Kentucky;

And whereas, DFA, the United States of America, and the Commonwealth of Kentucky desire to resolve disputes between them concerning DFA's acquisition of a partial interest in Southern Belle Dairy Co., LLC, without further Court proceedings except as set out below;

And whereas, DFA has entered into a written agreement with AFLP to facilitate the resolution of this matter;

And whereas, DFA has represented to the United States that the divestitures required below can and will be made and that DFA will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against DFA under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and under the provisions of K.R.S.§ 367.110 et seq., but, by virtue of this Final Judgment, DFA has not and does not admit either the allegations set forth in the Complaint or any liability or wrongdoing.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom DFA or the trustee divest the Divestiture Assets.

B. ''AFLP'' means the Allen Family Limited Partnership, managed by Robert Allen.

C. ''DFA'' means Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and employees.

D. ''Divestiture Assets'' means any and all of DFA's interests in the Southern Belle Dairy including DFA's Series A Preferred Capital Interest and Series B Preferred Capital Interest, and any and all lines of credit or other loans that Mid-Am has extended to the Southern Belle Dairy, and any interest in the Southern Belle Dairy acquired from AFLP.

E. ''Mid-Am'' means Mid-Am Capital LLC, a subsidiary of DFA and a Delaware limited liability company with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and employees.

F. ''Southern Belle Dairy'' means the Southern Belle Dairy Co., LLC, a Delaware limited liability company that owns and operates a milk processing plant located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, that plant or any of its distribution branches and locations.

G. ''Stipulation'' means the Stipulation signed by the United States, the Commonwealth of Kentucky, and DFA in this matter.

III. Applicability

A. This Final Judgment applies to DFA, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. DFA shall require, as a condition of the sale or other disposition of all or substantially all of DFA's assets or of lesser business units that include the Divestiture Assets, that the purchaser

agrees to be bound by the provisions of this Final Judgment. DFA need not, however, obtain such an agreement from the Acquirer of the Divestiture Assets.

IV. Divestitures

A. DFA is ordered and directed within five days after notice of the entry of this Final Judgment by the Court, to divest the Divestiture Assess in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky. The United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, may agree to an extension of this time period for any divestiture of up to thirty additional calendar days. DFA agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. DFA shall also use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky.

C. In accomplishing the divestitures ordered by this Final Judgment, DFA promptly shall make known to one or more potential purchasers the availability of the Divestiture Assets. DFA shall inform any potentially qualified purchaser making inquiry regarding a possible purchase of the Divestiture Assets that such assets are being offered for sale.

D. DFA shall use commercially reasonable efforts to cause to be furnished to all prospective Acquirers, subject to the customary confidentiality assurances, all information and documents relating to the Divestiture Assets and the Southern Belle Dairy customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. DFA shall make available such information to the United States and the Commonwealth of Kentucky at the same time that such information is made available to any other person.

E. DFA shall use commercially reasonable efforts to obtain permission for prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Southern Belle Dairy; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. DFA shall use commercially reasonable efforts to cause to be provided to the Acquirer and the United States information relating to the personnel involved in the operation of the Southern Belle Dairy to enable the Acquirer to make offers of employment. DFA shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

G. DFA shall not take any action that will impede in any way the operation of the Southern Belle Dairy of the divestiture of the Divestiture Assets.

H. Unless the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, otherwise consents in writing, the divestiture pursuant to the Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that the Southern Belle Dairy will be a viable, ongoing dairy. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with the Commonwealth of Kentucky, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in school and fluid milk markets in Kentucky and Tennessee; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that none of the terms of any agreement between an Acquirer and DFA give DFA the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If DFA has not divested the Divestiture Assets within the time period specified in Section IV(A), DFA shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States (after consultation with the Commonwealth of Kentucky) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of DFA any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. DFA shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by DFA must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of DFA, on such terms and conditions as the United States approves, after consultation with the Commonwealth of Kentucky, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to DFA and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. DFA shall use its best efforts to assist the trustee in accomplishing the required divestiture. While the trustee shall have the right to sell the Divestiture Assets, DFA shall use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the commonwealth of Kentucky. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and DFA shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for

trade secret or other confidential research, development, or commercial information. DFA shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States, the Commonwealth of Kentucky, DFA, and the court setting forth the trustee's efforts to accomplish the divestiture ordered under this final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court and DFA's copy of the reports shall have such confidential information redacted. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States and the Commonwealth of Kentucky who shall have the right to make additional recommendations consistent with the purpose of the trust. The trustee shall at the same time furnish the report to DFA, but with all confidential information redacted. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period required by the United States.

H. If necessary in the trustee's judgment to divest the Divestiture Assets, DFA shall use its best efforts to assist the trustee in dissolving the Southern Belle Dairy under Delaware Statute 6 Del. C. § 18–802, or such other applicable statutes and laws.

VI. Notice of Proposed Divestitures

A. Within two business days following execution of definitive divestiture agreement, DFA or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Commonwealth of Kentucky of the proposed divestiture required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify DFA. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from DFA, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. DFA and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from DFA, the proposed Acquirer, and third party, and the trustee, whichever is later, the United States shall provide written notice to DFA and the trustee is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to DFA's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Sections IV or Section V shall not be consummated. Upon objection by DFA under Section V(C), the divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

DFA shall not finance all or any part of any purchase made pursuant to Section IV or V or this Final Judgment.

VIII. Supply Contracts

DFA shall not require the Acquirer to enter into a supply contract for raw milk with DFA as a condition for the sale of the Divestiture Assets.

IX. Affidavits

A. Within twenty calendar days of DFA's signing the Stipulation, and every thirty calendar days thereafter until the divestiture has been completed under Sections IV or V, DFA shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts DFA has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by DFA, including limitation on information, shall be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of DFA's signing the Stipulation, DFA shall deliver to the United States an affidavit that describes in reasonable detail all actions DFA has taken and all steps DFA has implemented on an ongoing basis to comply with the Stipulation. DFA shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in DFA's earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. DFA shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Untied States Department of Justice or the Commonwealth of Kentucky, including consultants and other persons retained by either of them, shall, upon written request of a duly authorized

representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, and on reasonable notice to DFA, be permitted:

Access during DFA's office hours to inspect and copy, or at plaintiffs' option, to require DFA provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of DFA, relating to any matters contained in this Final Judgment; and

To interview, either informally or on the record, DFA's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by DFA.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, DFA shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States or the Commonwealth of Kentucky to any person other than an authorized representative of the executive branch of the United States or the Commonwealth of Kentucky, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by DFA to the plaintiffs, DFA represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and DFA marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the plaintiffs shall give DFA ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Reacquisition of the Divestiture Assets

Other than acquiring AFLP's interests in the Southern Belle Dairy for resale to the Acquirer, DFA may not directly or indirectly reacquire in whole or in part the Divestiture Assets or any interest in the Southern Belle Dairy during the term of this Final Judgment without the prior written approval of the United States. Unless the United States otherwise agrees in writing, DFA will urge any partnership, joint venture, limited liability company, or other firm in which it has an equity interest, not to acquire the Divestiture Assets or any interest in Southern Belle Dairy during the term of this Final Judgment; such urging shall include, among other things, voting its interest, if applicable, against such an acquisition.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

FILED ELECTRONICALLY

United States District Court, Eastern District of Kentucky, London Division

United States of America, et al. Plaintiffs, v. *Dairy Farmers of America, Inc., et al., Defendants*

Civil Action No.: 6:03–206–KSF

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), plaintiff United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

The United States and the Commonwealth of Kentucky (collectively, the ''government'') filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on April 24, 2003, alleging that the acquisition by Dairy Farmers of America, Inc. (''DFA'') of its interest in Southern Belle Dairy Co., LLC (''Southern Belle'') violated Section 7 of the Clayton Act (''Section 7''), 15 U.S.C. 18.[1] An Amended Complaint was filed on May 6, 2004.

The Amended Complaint alleged that the acquisition may substantially lessen competition for the sale of milk sold to schools in one hundred school districts in eastern Kentucky and Tennessee. On August 31, 2004, the District Court granted summary judgment to DFA and Southern Belle. The government appealed, and on October 25, 2005, the Court of Appeals reversed the grant of summary judgment as to DFA and remanded the case for trial. The Court of Appeals affirmed the dismissal of Southern Belle, leaving DFA as the only defendant. *See United States* v. *Dairy Farmers of America*, 426 F.3d 850 (6th Cir. 2005).

On October 2, 2006, the United States filed a proposed Final Judgment that requires DFA to divest its interest in Southern Belle and use its best efforts to require its partner, the Allen Family Limited Partnership (''AFLP''), to also divest its interest in Southern Belle. DFA has proposed divesting its interest and AFLP's interest in Southern Belle to Prairie Farms Dairy, Inc. (''Prairie Farms''), and the government has approved Prairie Farms as a suitable buyer of DFA's and AFLP's interest in Southern Belle. The proposed Final Judgement is designed to eliminate the anticompetitive effects of the acquisition alleged in the Amended Complaint.

The government and DFA have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Dairy Farmers of America (''DFA'') is a Kansas milk marketing cooperative with its headquarters and principal place of business in Kansas City, Missouri. DFA is the largest dairy cooperative in the world. DFA sells raw milk in interstate commerce. In 2005, DFA had 20,000 members in 49 states, marketed 59.7 billion pounds of raw

[1] The Commonwealth of Kentucky joined this lawsuit under 15 U.S.C. 26, and also sought relief pursuant to the provisions of K.R.S. § 367.110, *et seq.*

milk in the United States, and had over $8.9 billion in revenues.

Southern Belle Dairy Co., LLC (''Southern Belle'') owns the Southern Belle dairy processing plant. Southern Belle is a Delaware limited liability company with its headquarters and principal place of business in Somerset, Kentucky. Southern Belle processed approximately 25 million gallons of raw milk in 2001 and had annual revenues of approximately $65 million that year. Southern Belle sells fluid milk in interstate commerce, including milk to school districts in Kentucky and Tennessee.

B. The Acquisition

Southern Belle was formed by DFA on February 20, 2002. It acquired the assets of the Southern Belle dairy plant on February 25, 2002. On February 26, 2002, DFA's joint venture partner AFLP acquired 50 percent of Southern Belle. The purchase price of the Southern Belle dairy plant was approximately $18.7 million: $2 million in common equity; $4 million in preferred equity; and the rest paid through of a line of credit. DFA and AFLP each contributed $1 million in exchange for each receiving 50 percent of the common interests in Southern Belle. A subsidiary of DFA contributed $4 million in exchange for preferred equity interests and extended to Southern Belle the line of credit used to finance the remaining $12.7 million of the purchase price.

C. Anticompetitive Effects of the Acquisition

The Amended Complaint alleged that the manufacture, distribution, and sale of school milk constitutes a relevant product market. Milk is a product that has special nutritional characteristics and no practical substitutes. Dairies sell milk to schools with special services, including storage coolers, daily or every-other-day delivery to each school, constant rotation of old milk, and replacement of expired milk. Moreover, school districts must provide milk in order to receive substantial funds under Federal school meal subsidy programs. There are no other products that school districts would substitute for school milk in the event of a small but significant price increase.

The Amended Complaint alleged that the relevant geographic markets in which to assess the competitive effects of the acquisition are the school districts in eastern Kentucky and Tennessee identified in Attachments A and B of the Amended Complaint, either as individual districts or, where applicable, as groups of districts that solicit school milk bids together.[2] As a practical matter, these school districts are unable to turn to additional school milk suppliers, who would not bid for their school milk contracts even if the price of school milk were to increase by a small but significant amount.

The Amended Complaint alleged that DFA's acquisition of its interest in Southern Belle would lessen competition substantially in the sale of school milk in each of the school districts identified in the Amended complaint. These districts receive school milk bids from Southern Belle and dairies operated by National Dairy Holdings, LP (''NDH''), a dairy holding company also 50 percent-owned by DFA. Some affected districts and groups of districts also receive bids from a third supplier. One of the NDH-operated dairies that serves the affected school districts is the Flav-O-Rich dairy, located in London, Kentucky, only 30 miles from the Southern Belle plant in Somerset, Kentucky. The transaction lessened competition for school districts receiving milk contract bids from both Southern Belle and NDH because, as a result of the transaction, both Southern Belle and NDH were 50 percent-owned by DFA. Since any contracts won by Southern Belle from NDH, or vice versa, through aggressive bidding would likely reduce DFA's profits, reduced competition between Southern Belle and NDH is in DFA's interest.

In 45 of the school districts listed in the Amended Complaint, the effect of the acquisition has been to establish a monopoly, with only Southern Belle and Flav-O-Rich (or another NDH dairy) as possible milk suppliers. In these districts, the acquisition would give DFA the incentive and ability to encourage, facilitate, or enforce cooperation between Southern Belle and NDH to raise prices or decrease the level or quality of service provided to these school districts. In 55 school districts listed in the Amended Complaint, the acquisition has reduced the number of independent competitors from three to two, making it likely that the remaining bidders will bid less aggressively against each other.

The Amended complaint also alleged that entry into the affected markets by other dairies or distributors would not be timely, likely, or sufficient to deter the anticompetitive effects caused by the acquisition. Dairies or distributors not currently competing in the affected markets would be unlikely to start bidding as a result of a small but significant increase in school milk prices. This is supported by the lack of new entry into these markets when competition between Southern Belle and Flav-O-Rich has been reduced. First, in the 1980s, these two dairies rigged bids for school milk contracts for many of the school districts affected by the acquisition. Despite an increase in school milk prices, new entry did not occur in these markets to undermine the bid-rigging conspiracy, which lasted for over ten years. Second, competition between Southern Belle and Flav-O-Rich was eliminated in some districts when Southern Belle was suspended from bidding on certain school milk contracts from 1998 to 2000 by the U.S. Department of Agriculture for violating provisions of an antitrust compliance program. Again, for those districts affected by the loss of Southern Belle as a bidder for school milk contracts, relative prices for school milk rose and new entry did not occur to return prices to a competitive level.

For all of these reasons, the government concluded that the transaction would substantially lessen competition in the sale of school milk in the school districts in Kentucky and Tennessee identified in the Amended Complaint, by increasing prices and/or reducing quality, all in violation of Section 7 of the Clayton Act. Indeed, the government found evidence that, after the transaction, bids to districts where Southern Belle and Flav-O-Rich were the only bidders were higher than bids received by other districts with only two bidders, though this was not true before the transaction.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects identified in the Amended Complaint by requiring DFA to divest its interest in Southern Belle. In addition, the proposed Final Judgment requires DFA to use commercially reasonable efforts to cause AFLP to divest its interest in Southern Belle. The proposed Final Judgment requires the United States, in consultation with the Commonwealth of Kentucky, to approve any buyer of DFA's and AFLP's interests in Southern Belle. The divestitures must be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that Southern Belle will be a viable, ongoing dairy business capable to competing effectively in the sale of school and fluid milk in Kentucky and Tennessee.

[2] These groups of school districts require bidders to charge the same price to the entire group, require successful bidders to serve all of group's districts at the same price, and require the group's members to accept the group bid.

The effect of these divestitures would be to restore competition between Southern Belle and NDH, with the divestiture of AFLP's interest allowing a buyer of Southern Belle to acquire the entire dairy as a going concern, rather than as a 50 percent owner in conjunction with AFLP. During the divestiture process, DFA is prohibited from taking any steps to degrade the operations of Southern Belle, and the entire Southern Belle dairy business is to be sold through the divestiture, instead of piecemeal, so it can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. In addition, DFA is not permitted to finance any part of a purchaser's acquisition of the Southern Belle dairy and is prohibited from requiring the purchaser to enter into a raw milk supply contract with DFA as a condition of the divestiture.

The government and DFA reached agreement on the terms of the proposed Final Judgment and signed the Stipulation on May 15, 2006. That same day, DFA and AFLP executed an option agreement giving DFA the ability to purchase AFLP's ownership interest in Southern Belle. This option agreement allows DFA to sell the dairy in its entirety rather than just DFA's partial ownership interest in the dairy. Not only would a complete transfer of Southern Belle to a new owner eliminate the government's concerns about DFA's ownership interests in both Southern Belle and Flav-O-Rich, the divestitures also eliminate the possibility of anticompetitive effects as a result of DFA's ability to influence AFLP, its long-time business partner.

In exchange for DFA's agreement to divest its interest in Southern Belle and use its best efforts to have AFLP do the same, and so that DFA could find a buyer for the dairy, the government agreed in a letter agreement with DFA dated May 15, 2006, not to file the Stipulation and proposed Final Judgment until the earlier of 120 days after signing the Stipulation, or DFA gave notice that it executed an agreement with a buyer. A copy of this letter agreement is provided as Exhibit A to this Competitive Impact Statement. If DFA was not able to find a buyer for Southern Belle after 120 days had elapsed, DFA agreed that the government could file the Stipulation and proposed Final Judgment.

If a buyer for Southern Belle were not found by five days after DFA receives notice of the entry of the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. The proposed Final Judgment allows the United States to delay the appointment of the trustee for thirty days. If a trustee is appointed, the proposed Final Judgment provides that DFA will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestitures required by the proposed Final Judgment eliminate the harm to competition identified in the Amended Complaint by making Southern Belle completely independent from DFA and NDH, including the Flav-O-Rich dairy. Prairie Farms' purchase of Southern Belle accomplishes this goal of the proposed Final Judgment. Prairie Farms will be purchasing Southern Belle as a complete going concern, including the plant in Somerset, Kentucky, distribution facilities, equipment, and trademarks. The government believes that Prairie Farms can capably operate and manage Southern Belle, as it already owns and operates several dairy processing plants. The government believes that Southern Belle will continue to bid on school milk contracts under Prairie Farms' ownership, including against Flav-O-Rich and other NDH dairies. The divestiture of DFA's and AFLP's interests in Southern Belle to Prairie Farms has allowed the government to secure relief more quickly than if the matter had gone to trial. In addition, this relief is equal to, and probably exceeds, the relief that the government could have obtained after a victory at trial.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against DFA or Southern Belle.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement is published in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H St. NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The government considered, as an alternative to the proposed Final Judgment, a full trial on the merits of the Amended Complaint against DFA, continuing the litigation and seeking the divestiture of DFA's interest in Southern Belle and other injunctive relief requested in the Amended Complaint. The government is satisfied, however, that the divestitures and other relief

contained in the proposed Final Judgment will preserve competition in the relevant markets alleged in the Amended Complaint. The government believes that by requiring DFA to divest its interest in Southern Belle, as well as using its best efforts to have AFLP simultaneously divest its interest in the remaining 50 percent of the dairy, the relief obtained in the proposed Final Judgment has allowed the government to secure relief more quickly than if the matter had gone to trial. In addition, the relief is equal to, and probably exceeds, the relief that the government could have obtained after a victory at trial.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60)-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgement is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) and (B).[3] As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1985)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Amended Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-American Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

VIII. Determinative Documents

In formulating the proposed Final Judgment, the United States considered DFA's agreement with AFLP, dated May 15, 2006, giving DFA the option to purchase AFLP's interest in Southern Belle. This agreement, a determinative document as described in Section 2(b) of the APPA, 15 U.S.C. 16(b), is available for public inspection at the office of the Department of Justice in Washington, DC, Room 200, 325 Seventh Street, NW., and at the office of

[3] In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). On the points discussed herein, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

[4] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (d. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

the Clerk of the United States District Court for the Eastern District of Kentucky, London, Kentucky, as Exhibit B to this Competitive Impact Statement.

Dated: October 2, 2006.

Respectfully Submitted,

Jon B. Jacobs, Richard Martin, N. Christopher Hardee, Richard D. Cooke, Ihan Kim,
Attorneys, Litigation I Section, Antitrust Division, United States Department of Justice, City Center Building, 1401 H. Street NW., Suite 4000, Washington, DC 20530. Telephone: 202–307–0001. Facsimile: 202–307–5802. E-mail: ihan.kim@usdoj.gov.

Certificate of Service

This certifies that I caused a true and correct copy of the foregoing Competitive Impact Statement to be served on October 2, 2006, in the manner indicated:

David A. Owen, Esq., Greenebaum Doll & McDonald, PLLC, 300 West Vine Street—Suite 1100, Lexington, KY 40507, Counsel for Dairy Farmers of America, Inc. (via e-mail and first-class mail).

W. Todd Miller, Esq., Baker & Miller, PLLC, 2401 Pennsylvania Ave., Suite 300, Washington, DC 20037, Counsel for Dairy Farmers of America, Inc. (via e-mail and first-class mail).

John M. Famularo, Esq., Stites & Harbison PLLC, 250 West Main Street, Suite 2300, Lexington, Kentucky 40507, Counsel for Dean Foods Company (via e-mail and first-class mail).

John L. Fleischaker, Esq., R. Kenyon Meyer, Esq., Jeremy S. Rogers, Esq., Dinsmore & Shohl LLP, 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Counsel for Chicago Tribune Company (via e-mail and first-class mail).

Charles E. Shivel, Jr., Esq., Stoll Keenon Ogden PLLC, 300 West Vine Street—Suite 2100, Lexington, KY 40507, Counsel for Southern Belle Dairy Co., LLC (via e-mail and first-class mail).

J. Jackson Eaton, III, Esq., Gross, McGinley, LaBarre & Eaton, LLP, P.O. Box 4600—33 South Seventh Street, Allentown, PA 18105, Counsel for Southern Belle Dairy Co., LLC (via e-mail and first-class mail).

Maryellen B. Mynear, Esq., Office of the Kentucky Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601, Counsel for Commonwealth of Kentucky (via e-mail and first-class mail).

/s/ Ihan Kim,
Attorney for Plaintiff, United States of America.

Exhibit A—Letter Agreement Between the United States, Commonwealth of Kentucky, and Dairy Farmers of America, Inc.

U.S. Department of Justice

Antitrust Division

May 15, 2006

Via Hand Delivery

W. Todd Miller, Esq.,
Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 2005

Re: United States of America, et al. v. *Dairy Farmers of America, et al.*

Dear Todd: This letter sets forth the agreement among the Department of Justice (''the Department''), the Commonwealth of Kentucky (''the Commonwealth''), and Diary Farmers of America, Inc. (''DFA'') regarding the Stipulation and proposed Final Judgment in this matter. Except as discussed below, the Department and the Commonwealth agree not to file the Stipulation and proposed Final Judgment with the Court until the earlier of (1) 120 calendar days after DFA's signing of the Stipulation or (2) the day after DFA gives notice to the United States and the Commonwealth pursuant to Section VI.A of the proposed Final Judgment that DFA has executed a divestiture agreement with a proposed Acquirer of the Divestiture Assets. During this period, however, the Department and the Commonwealth reserve the right to file the Stipulation and proposed Final Judgment with the Court under seal should they, in their sole discretion, determine after giving 15 days written notice of its reasons to DFA that DFA is not complying with the terms of the Stipulation and proposed Final Judgment. The Department will exercise its sole discretion under this letter agreement and the Final Judgment in good faith in light of the relevant facts, law, and public policy.

Beginning immediately with DFA's signing of the Stipulation, DFA must comply with all obligations and prohibitions set forth in the Stipulation and proposed Final Judgment including keeping the Department and the Commonwealth informed as to DFA's actions seeking an Acquirer.

If this accurately sets forth the agreement among the Department, the Commonwealth and DFA, please execute a copy of this letter on behalf of DFA and return the copy to me.

Sincerely,

Mark J. Botti,
For the United States Department of Justice.

Maryellen B. Mynear,
For the Commonwealth of Kentucky.

Agreed:

W. Todd Miller,
Counsel for Dairy Farmers of America, Inc.

Date: May 15, 2006

cc. David A. Owen.

Exhibit B—Determinative Document Pursuant to 15 U.S.C. 16(b): Option Agreement Between Dairy Farmers of America, Inc. and Allen Family Limited Partnership

Redacted

Public Version

Option Agreement

This OPTION AGREEMENT is dated and made effective as of the 15th day of May, 2006, among DAIRY FARMERS OF AMERICA, INC., a Kansas cooperative marketing association (''DFA''), and ALLEN FAMILY LIMITED PARTNERSHIP, a Pennsylvania limited partnership (''AFLP'').

Recitals

WHEREAS, AFLP is the owner of one hundred percent (100%) of the common member interest (''AFLP Interests'') of Southern Belle Dairy Co., LLC, a Delaware limited liability company (''Southern Belle''); and

WHEREAS, DFA is or will become the owner of the [REDACTED] of Series A Preferred Capital Interest and the [REDACTED] of Series B Preferred Capital Interest in Southern Belle, plus all lines of credit or other loans from Mid-Am Capital, L.L.C., (''DFA Interests''); and

WHEREAS, DFA is a defendant in an action filed by the United States of America through its Department of Justice (''DOJ'') and by the Commonwealth of Kentucky and pending in the United States District Court for the Eastern District of Kentucky originally titled *United States of America and the Commonwealth of Kentucky* v. *Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC,* Civil Action No. 6:03–cv–206–KSF (the ''DOJ Litigation'');

WHEREAS, DFA and AFLP have been in discussions regarding the possibility of entering into a purchase agreement (''Purchase Agreement'') relating to all of the AFLP Interests, subject to and conditioned on (i) full and final settlement of the DOJ Litigation and (ii) DFA's ability and the DOJ's acceptance and/or acquiescence to DFA concurrently entering into a definitive purchase agreement relating to the sale of the DFA and AFLP Interests and/or the sale of all or substantially all of the operational assets of Southern Belle Dairy (''Assets'') with a third-party purchaser (''Acquirer''), pursuant to which an Acquirer would purchase both the DFA and the AFLP Interests and/or the Assets from DFA (the ''Acquisition Agreement''); and

WHEREAS, in furtherance of the discussions and as a condition precedent to the DFA's obligation to purchase the AFLP Interests from AFLP, and for the additional consideration set forth herein, the AFLP desires to grant, and herein does grant, to DFA an option to purchase the AFLP interests according to the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises herein and the representations, warranties, covenants and agreements contained herein, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Grant of Option.* AFLP hereby grants to DFA an unconditional, irrevocable option (the ''Option'') to purchase, subject to the terms and conditions hereof, the AFLP Interests for the total sum of [REDACTED] (''Purchase Price'') payable in cash at the time of closing. The Option shall terminate upon the earliest to occur of: (i) the written mutual agreement of DFA and AFLP to terminate the Option; or (ii) the delivery of at least ten (10) days prior written notice from DFA to AFLP that DFA has decided to terminate the Option. The Option may only be exercised during the period from the date hereof through the first date to occur of clause (i) or (ii) of the immediately preceding sentence (the ''Option Period'').

2. *Option Grant Payment.* Upon the execution of this Option Agreement by the parties hereto, DFA shall remit to AFLP the amount of One Thousand Dollars ($1,000) and other good and valuable consideration,

the receipt of which is hereby acknowledged by AFLP for the grant of the Option by AFLP pursuant to this Agreement.

3. *Exercise of Option by DFA.*

(a) DFA shall exercise the Option for the AFLP Interests, but only upon (i) full and final settlement of the DOJ Litigation and (ii) DFA's ability and DOJ's acceptance and/or acquiescence to DFA concurrently entering into a definitive Acquisition Agreement relating to the sale of the AFLP and DFA Interests and/or the sale of all or substantially all of the Assets with an Acquirer during the Option Period. The Option may not be exercised in part, but may only be exercised for all of the AFLP Interests subject to this Agreement and as set forth in the Purchase Agreement.

(b) At the closing (''Closing''), DFA shall pay to AFLP the Purchase Price by wire transfer of immediately available funds to an account designated by such AFLP or by delivery of a certified check to the AFLP address listed on the signature page to this Agreement.

At the Closing, and upon confirmation of the satisfaction of the conditions set forth in Section 3(a)(i) and (ii) above, simultaneously with the payment of the Purchase Price as provided for hereinabove, (i) DFA will execute the Acquisition Agreement pursuant to terms and conditions mutually agreed between DFA and such Acquirer.

4. *Conditions Precedent to Closing by DFA.* AFLP, as manager of Southern Belle Dairy, LLC, hereby represents and warrants to DFA as follows:

(a) AFLP shall offer to furnish to all prospective Acquirers from DFA, subject to customary confidentiality assurances, all information and documents relating to the AFLP Interests or Assets of the Southern Belle Dairy provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. AFLP shall make available such information to the United States and the Commonwealth of Kentucky at the same time that such information is made available to any such prospective Acquirer.

(b) AFLP shall permit prospective Acquirers from DFA of the AFLP Interests and/or the Assets to have reasonable access to personnel and make inspections of the physical facilities of the Southern Belle Dairy; access to any and all environmental, zoning and other permit documents and information; and access to any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

(c) AFLP shall provide the Acquirer from DFA and the United States information relating to the personnel involved in the operation of the Southern Belle Dairy to enable the Acquirer to make offers of employment. AFLP shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing or distribution of products from the Southern Belle Dairy.

(d) AFLP shall not take any action that will impede in any way the operation of the Southern Belle Dairy or the divestiture of the AFLP and DFA Interests and/or the Assets by DFA.

(e) AFLP shall not change the authorized or issued AFLP or DFA Interests or grant any option or right to purchase such Interests other than as set forth herein.

(f) AFLP shall not amend the organizational document of Southern Belle.

(g) AFLP shall not damage or cause the loss of any material customer, asset or property of Southern Belle Dairy.

(h) AFLP shall not incur any indebtedness or borrow money in excess of Three Hundred Thousand Dollars ($300,000).

(i) AFLP shall not cause a material change in the accounting methods used by Southern Belle Dairy.

(j) AFLP shall not enter into a sale or transfer of any of the assets of Southern Belle Dairy except in the ordinary course of business.

(k) AFLP shall not enter into any contract or agreement to do any of the foregoing.

5. *Representations, Warranties and Covenants of AFLP.*

(a) AFLP hereby represents and warrants to DFA the following: (i) AFLP has sole and exclusive record title to and ownership of the AFLP Interests that are the subject of this Agreement; (ii) the AFLP Interests are free and clear of any liens, restrictions, claims, charges, options, rights of first refusal or encumbrances, with no defects of title whatsover, except as provided in the Second Amended and Restated Limited Liability Company Agreement of Southern Belle Dairy Co., LLC; (iii) with respect to any AFLP Interests which were acquired by gift or inheritance, all federal and state estate or gift tax returns, as the case may be, required to be filed were duly and timely filed, and all taxes payable with respect thereto were paid; (iv) AFLP has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (v) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by AFLP and authorized by the required governing body prior to the date hereof and no other proceedings on the part of AFLP or consents from or filings with any person or entity or regulatory body are necessary to authorize this Agreement, for AFLP to perform its obligations hereunder or to consummate the transactions contemplated hereby, except as provided in the Second Amended and Restated Limited Liability Company Agreement of Southern Belle Dairy Co., LLC; (vi) this Agreement has been duly and validly executed and delivered by AFLP; and (vii) this Agreement constitutes a legal, valid and binding obligation of AFLP, enforceable against AFLP in accordance with its terms.

(b) AFLP hereby covenants that, during the period described in the following sentence, it will maintain ownership interest in and to all of the AFLP Interests, and will not, directly or indirectly, offer for sale, sell, distribute, grant any option, right to purchase, suffer any lien or encumbrance upon, pledge, hypothecate or otherwise dispose of any of the AFLP Interests. The restrictions in the foregoing sentence shall apply from the date of this Agreement until the earlier to occur of (i) the purchase of all of the AFLP Interests pursuant to the exercise of the Option or (ii) the termination of the Option Period.

(c) AFLP hereby represents and warrants to DFA and covenants for the benefit of DFA that at Closing, AFLP shall deliver such executed instruments of assignment, as applicable, evidencing the sale and transfer of the AFLP Interests to DFA or a bill of sale and any other documents, instruments or certificates necessary to evidence the transfer of any of the Assets.

6. *Representations, Warranties and Covenants of DFA.* DFA hereby represents and warrants to AFLP as follows: (i) DFA has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) contingent on and subject to full and final settlement of the DOJ Litigation and the simultaneous execution of an Acquisition Agreement with an Acquirer as described herein and subject to the conditions set forth herein, the execution and delivery of the Agreement by DFA and the performance of its obligations hereunder, have been duly and validly authorized by the Board of Directors of DFA and no other corporate proceedings on the part of the DFA or consents from for filings with any person or entity or regulatory body, other than the provisions of the Revised and Restated Limited Liability Company Agreement of Southern Belle, are necessary to authorize this Agreement, for DFA to perform its obligations hereunder; (iii) this Agreement has been duly and validly executed and delivered by DFA; and (iv) this Agreement constitutes a legal, valid and binding obligation of the DFA enforceable against DFA in accordance with its terms, subject to full and final settlement of the DOJ Litigation and ability of DFA to simultaneously execute of an Acquisition Agreement with an Acquirer of the Assets and/or the DFA and AFLP Interests from DFA, and subject to the conditions set forth herein.

7. *Amendments: Entire Agreement.* This Agreement may not be modified except by written instrument executed by the parties hereto. This Agreement contains the entire agreement among the parties hereto with respect to the transactions contemplated hereby and supersedes all prior understandings, representations, warranties, promises and undertakings between the parties hereto with respect to the transactions contemplated hereby.

8. *Assignment.* Neither of the parties hereto may assign any of its rights or obligations under this Agreement or the Option created hereunder to any other person without the express written consent of the other party.

9. *Validity.* If any term, provision, covenant or restriction contained in this Agreement is held by a court or a federal or state regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions and covenants and restrictions contained in this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated; *provided* that each party is able to receive substantially all of the rights and substantially all of the benefits it is to have

had/or receive, as applicable, under this Agreement.

10. *Notices.* All notices, requests, claims, demands and other communications hereunder shall be deemed to have been duly given when delivered in person, by fax, telecopy, or by registered or certified mail (postage prepaid, return receipt requested) at the address set forth on the signature page hereto.

11. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely in that State and without regard to any of its conflicts of law principles which could result in the application of the laws of another jurisdiction.

12. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile signature, which shall constitute a legal and valid signature for all purposes hereof. This Agreement shall not be effective until counterparts executed by AFLP and DFA have been delivered to each of them.

13. *Costs.* Except as otherwise expressly provided for herein, each of the parties hereto shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its accountants and counsel.

14. *Additional Documents.* In the event of the exercise of the Option by DFA, DFA and AFLP agree to execute and deliver all other documents and instruments and take all other action that may be reasonably requested in writing by the other party hereto in order to consummate the transactions provided for by such exercise and to effectuate the intents of this Agreement, but not including any indemnities, warranties, representations or similar covenants other than with respect to good title to the AFLP interests to be assigned and transferred.

In Witness Whereof, each of the parties has caused this Agreement to be executed individually or on its behalf by its officers thereunto duly authorized, all as of the date first above written.

ALLEN FAMILY LIMITED PARTNERSHIP

By: /s/ Robert W. Allen.
Name: Robert W. Allen.
Title: General Partner, 2400 Ballybunion Road, Center Valley, Pennsylvania 18034.

DAIRY FARMERS OF AMERICA, INC.

By: /s/ David A. Geisler.
Name: David A. Geisler.
Title: Senior Vice-President/Legal, 10220 North Ambassador Drive, Kansas City, Missouri 64153.

Acknowledgement and Consent

The undersigned specifically acknowledges and consents to the transactions as set forth in the Agreement and will cooperate to effectuate the consummation of said transactions insofar as legally necessary and reasonably appropriate.

MID–AM CAPITAL, L.L.C.

By: Dairy Farmers of America, Inc., as sole manager.
By: /s/ David G. Meyer.
Name: David G. Meyer.
Title: Senior Vice President/Finance.

[FR Doc. 06–8795 Filed 11–3–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 31, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain,* or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov.*

In July 2004, ETA solicited comments from the general public on the establishment of a single, streamlined reporting and recordkeeping system, formally called the ETA Management Information and Longitudinal Evaluation (EMILE) reporting system. The notice of 60-day public comment on the proposed EMILE reporting system was published in the **Federal Register** on July 16, 2004 (Vol. 69, No. 136, pages 42777–42779). The proposed EMILE reporting system was designed to streamline 12 ETA program reporting systems into one comprehensive reporting structure that would allow for consistent, comparable analysis across ETA funded employment and training programs, using the definitions for a set of common performance measures initially specified in Training and Employment Guidance Letter (TEGL) 15–03, Common Measures Policy, and subsequently revised by TEGL 17–05, Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues.

ETA received comments from 161 unique entities, including state workforce agencies and boards, local workforce investment areas, non-profit organizations and national associations, Native American and other tribal organizations, public interest and advocacy groups, and other private citizens and stakeholders. Due to the large volume of comments submitted by each entity, ETA worked during calendar year 2005 to organize and analyze the public comments, make appropriate revisions to agency policy guidance on the common measures, and assess the feasibility of implementing the proposed EMILE reporting requirements in several States.

ETA has reconciled the public comments and made appropriate revisions to the original EMILE proposal, which has been re-named to the Workforce Investment Streamlined Performance Reporting (WISPR) system. This revised proposal will replace the current quarterly reporting requirements of the following seven ETA activities: Wagner-Peyser Act, Veterans Employment and Training Service, the Workforce Investment Act (WIA) Adult, WIA Dislocated Worker, WIA Youth, and Trade Adjustment Assistance Act programs, and National Emergency Grants.

The Department is seeking or has already received separate OMB clearances on revisions to the following program reporting systems to incorporate standardized data collection necessary to implement a set of common performance measures: National Farm Worker Jobs Program, Indian and Native American Program, Senior Community Service and Employment Program, and entities receiving H–1B Technical Skills Training or Responsible Reintegration of Youthful Offenders grants. These programs will continue to report separately, and the data elements collected for these programs have been aligned, to the extent practicable, with those in the proposed WISPR System. The decision to not include these programs in the WISPR System was based on concerns about burden (time and resources) expressed by many commenters.

While the proposed WISPR System represents a comprehensive data collection and reporting approach, it is important to note that every effort has been made to establish common data definitions and formats with minimum burden to grantees. At its foundation, the proposed WISPR System organizes customer information that is maintained by states in order to run their day-to-day operations, and includes a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, hold states and grantees appropriately accountable for the Federal funds they receive, and allow the Department to fulfill its