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Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Adaptation of Regulations to Incorporate Swaps; Notice of Proposed Rulemaking (Federal Register/Vol. 76, No. 109)

Dear Mr. Stawick:

On behalf of the more than two million farmers and ranchers who belong to farmer cooperatives, the National Council of Farmer Cooperatives (NCFC) submits the following comments in response to the Commodity Futures Trading Commission's (the Commission) request for comments: *Adaptation of Regulations to Incorporate Swaps; Notice of Proposed Rulemaking,* to amend the Commodity Exchange Act regulations to implement regulatory requirements contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Since 1929, NCFC has been the voice of America's farmer cooperatives. Our members are regional and national farmer cooperatives, which are in turn composed of over 2,500 local farmer cooperatives across the country. NCFC members also include 21 state and regional councils of cooperatives.

America's farmer-owned cooperatives provide a comprehensive array of services for their members. These diverse organizations handle, process and market virtually every type of agricultural commodity produced. They also provide farmers with access to infrastructure necessary to manufacture, distribute and sell a variety of farm inputs. For example, a cooperative may consist of a closely coordinated network to ensure timely and cost-efficient origination, storage, transportation and marketing of grain and oilseeds.

Proposed Changes to Regulation 1.35

NCFC is concerned with this proposal because it would not only add swaps to the new recordkeeping requirements, but also would extend the new recordkeeping requirements to cash purchase and forward cash contracts entered into by any member of a designated contract market (DCM).

This would require all farmer cooperatives that are members of DCMs (CME, KCBT, MGE, etc.), and by extension every one of their local facilities, to be bound by this regulation. For example, cooperatives that are members of DCMs have an integrated network of grain elevators to originate and store grain purchased from farmers. As such, the proposed change to 1.35(a) would require those elevators to record, among other things, all oral communications that lead to execution of cash transactions with farmers. The proposal includes (*proposed additions in italics*):

> Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of its business of dealing in commodity interests and cash commodities, ***and all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. Each transaction record shall be maintained as a separate electronic file identifiable by transaction and counterparty.***

Additionally, all such recorded communications would be required to be maintained for five years.

A requirement to record all communication leading to a cash purchase or cash forward contract would impose huge regulatory burdens and costs on cooperatives and other businesses and farmers in rural America. In fact, the necessary investment to put in place and maintain such a system would not only greatly add to the cost of doing business, but would be an extreme compliance burden for the cash grain community.

The Commission states these recordkeeping requirements would protect customers from abusive sales practices; protect registrants from risks associated with transactional disputes; allow registrants to follow up more effectively on customer complaints; and preserve evidence that could increase the effectiveness of the Commission's enforcement actions. We do not believe that requiring this additional information to be recorded and maintained is necessary to achieve the stated goals in the cash commodity markets.

Additionally, we do not believe the intent of the Dodd-Frank Act was to subject cash purchases and forward cash contracts to the additional new recordkeeping requirements proposed under regulation 1.35. In fact, cash and forward contracts have been excluded from the definition of a swap in the proposed product definitions rule. Commission Chairman Gary Gensler has highlighted that point on several occasions while testifying before Congress. We believe this proposed regulation, as written to apply to the cash market, is in direct contradiction to that exclusion and to the Congressional intent of the Dodd-Frank Act.

We would be pleased to discuss with the Commission our concerns with proposed regulation 1.35. Thank you taking our views into account as the Commission finalizes rules in the coming months. We appreciate the opportunity to provide input throughout the process of implementation of Title VII of the Dodd-Frank Act.

Sincerely,

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Charles F. Conner
President & CEO