National Grain and Feed Association

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922 Phone: (202) 289-0873 FAX: (202) 289-5388 Web Site: www.ngfa.org

August 8, 2011

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, Federal Register, Vol. 76, No. 10, June 7, 2011

Dear Mr. Stawick:

The National Grain and Feed Association (NGFA) appreciates the opportunity to provide comments on this proposed rule. The proposal is described as making "…a number of conforming changes to the CFTC's regulations to integrate them more fully with the new statutory and regulatory framework…" However, a literal reading of the proposed rule raises very serious concerns about potentially far-reaching new regulation among firms in the grain, feed and processing industry as detailed below. The NGFA respectfully requests that the Commission narrow and clarify its proposal, specifically with regard to amendments to Regulation 1.35, to avoid unnecessary regulation of cash grain transactions that explicitly have been exempted from regulation by the Commodity Futures Trading Commission (CFTC).

Unnecessary New Regulation of the U.S. Cash Grain Sector

The element of the proposal of greatest concern to the NGFA and its member companies seeks to require that all members of a designated contract market (DCM) "…record all oral communications that lead to the execution of transactions in a commodity interest or cash commodity." Further, the proposal would require that these records be maintained for five years and be identifiable by counterparty and transaction.

Many grain companies, feed manufacturers, processors and other commercial firms are members of DCMs where grain and oilseed contracts are traded like the Chicago Board of Trade, Kansas City Board of Trade and Minneapolis Grain Exchange. Some of these firms own and operate networks of country grain elevators, feed mills or processing facilities that purchase grains and oilseeds directly from their farmer-customers. Taken as written, this proposal would extend broadly into cash grain markets and would require that employees at hundreds of such facilities record telephone conversations with producers from whom they are purchasing cash grain, either through spot purchases or utilizing cash forward contracts. Similarly, these same country elevators and facilities would be required to preserve and maintain e-mail, facsimile and other communications with agricultural producers.

The NGFA believes strongly that such regulation of the cash marketplace was not intended by Congress nor, perhaps, by the Commission. Cash transactions, including cash forward contracts, explicitly have been exempted from CFTC regulation, but a literal reading of the proposal would seem to contradict this well-established concept. In addition, burdening facilities owned by companies that are members of a DCM with the new rules would create a highly undesirable bifurcation of the cash grain marketplace into facilities required to comply with new recording and recordkeeping requirements and facilities owned and operated by companies not members of DCMs whose facilities would not be required to comply. We urge the CFTC to narrow and clarify application of this proposed rule to exclude communications related to cash sales and cash contracts involving producers and grain purchasers such as elevators, processors and others negotiating cash transactions.

Cost and Technology Concerns from FCMs and IBs

Additional concerns have been voiced by futures commission merchants (FCMs) and introducing brokers (IBs) about the level of new investment required to comply with new CFTC proposed rules. Current regulations concerning retention of records by FCMs and IBs are dramatically expanded under the proposed rule. Many systems currently in place may not be able to identify each transaction as a separate electronic file identifiable by counterparty and transaction. Many systems may not be capable of retaining recorded conversations and other records for a period as long as five years. Handling cell phone calls and voicemail may present challenges to some current systems. While we support efforts to protect customers from abusive practices and to protect participants from disputes, we can see that there is substantial cost involved in complying with this rule, without the surety that benefits will be commensurate with costs of implementation. At the least, the NGFA urges the Commission to adopt a generous timeline and a flexible attitude toward implementation of recordkeeping requirements for FCMs and IBs, especially toward smaller firms for whom short-term adoption of the proposed standards may pose significant investment.

Conclusion

In conclusion, the NGFA urges the Commission to reconsider and amend the wording of the proposed rule to fully recognize the regulatory-exempt status of cash commodity sales and contracts. We would be happy to provide the Commission with additional information.

The NGFA is the national non-profit trade association representing more than 1,000 companies that operate an estimated 7,000 facilities nationwide in the grain, feed and processing industry. Member firms range from quite small to very large, both privately owned and cooperative, and handle or process in excess of 70% of all U.S. grains and oilseeds annually. Companies include grain elevators, feed mills, flour mills, oilseed processors, biofuels producers/co-product merchandisers, futures commission merchants and brokers, and related commercial businesses.

Sincerely,

Matt Bruns

Matt Bruns, Chair
Risk Management Committee