August 15, 2011

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

Re: *Notice of Proposed Rulemaking – Adaptation of Regulations to Incorporate Swaps (RIN 3038-AD53)*

Dear Secretary Stawick:

The American Feed Industry Association (AFIA) appreciates this opportunity to comment on the Commodities Futures Trading Commission's (CFTC) Federal Register release of June 7, 2011, a notice of proposed rulemaking covering Adaptation of Regulations to Incorporate Swaps, part of the CFTC's overall effort to implement the Dodd-Frank *Wall Street Reform and Consumer Protection Act of 2010* (P.L. 111-203). Our comment is limited to one provision in this larger rulemaking, the amendment to CFTC rule 1.35 regarding Records of Cash Commodity, Futures and Options Transactions.

The AFIA is the principal organization representing the American animal feed industry and its suppliers. Our membership includes over 500 domestic and international companies, plus state, regional, and national associations. AFIA companies today produce over 75% of the commercial feed and pet food manufactured in the United States each year. As such, they are significant contributors to our nation's food safety, nutritional health, and environmental stewardship. The U.S. feed industry is also the single largest purchaser and user of major classes of American agricultural production, including feed grains, oilseeds, and processed meals and byproducts. These commodities are critical inputs in the high-quality feed that American farm producers rely on to raise the safe, wholesome, and affordable meat, poultry, eggs and milk and American consumers enjoy every day .

As noted, our comment today concerns the proposed amendment to section 1.35 of the CFTC's rules. This provision expands record-keeping requirements for a wide range of market participants to include not only traditional trading records such as "orders (filled, unfilled, or cancelled), trading cards, signature cards, street book journals, cancelled checks, copies of confirmations, copies of statements of purchase and sale, and all other records," but also a new category including "all oral and written communications *concerning*" these types of market information "*that lead to* the execution of transactions in a commodity interests or *cash commodity*" (emphasis added), regardless of the technological media used for the communication.

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Like other commentators on this rule-making,[1] we are concerned that this new language is open-ended and can lead to unanticipated, unintended results. On its face, it can easily be read as extending far beyond areas of CFTC regulatory interest and intruding into the operation of normal cash and forward markets in rural areas across the country, thus interfering with a wide range of traditionally non-regulated business communications.

AFIA members frequently hold memberships in designated contracts markets (DCMs) where agriculture-based contracts are traded. As a result, they would be subject to the new record-keeping rules not only with respect to their hedging or regulated trading, but also with respect to their extensive non-regulated core businesses. For AFIA members, these businesses go to the heart of American agriculture. AFIA members operate local feed mills, grain elevators, and distribution facilities that deal directly with crop or livestock in virtually every rural area across the country. These crop or livestock producers, in turn, would be considered "customers" under CFTC rules who would be subject to the expanded rules as well. AFIA members would be required to create record systems covering all oral, written, and electronic contacts, even on non-regulated cash transactions involving feed purchases or grain storage, and of a relatively informal, preliminary nature. They must then retain those records for five years, or else risk being subject to regulatory penalties for failure to comply.

A major concern with the proposal is the vagueness of the new standard. At what point does a phone call, e-mail, or conversation become a step that "leads to" a cash market transaction? Given the likelihood that enforcement of the new rule would occur after the fact, the risk of interpreting it falls fully on the local feed mill, elevator, or farm producer. Unintended competitive impacts between DCM-member firms and non-member firms are also likely to result.

We understand the CFTC's need to update its rules to reflect the current state of communications technology and keep them consistent with other jurisdictions, as explained it the *Federal Register* release at pages 33071 and 33072. Nevertheless, we urge the CFTC to review this provision carefully and revise it so that it targets clearly and directly the communication it intends to cover, and limits that coverage to communications necessary to its regulatory mission. The cost to establish systems needed to cover the new rule in its current form could be substantial, and the marginal benefit small.

AFIA appreciates the opportunity to provide comments. Please do not hesitate to contact me if I can provide further information or you have questions regarding the feed industry's position on this proposed rule. AFIA looks forward to providing further comments and working with the Commission to ensure commodity markets remain an effective tool for the end users.

Respectfully submitted,

Joel G. Newman

Joel G. Newman
President & CEO

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[1] Seek for instance, the letters from the National Council of Farmer Cooperatives and the National Grain and Feed Association, both dates August 8, 2011.