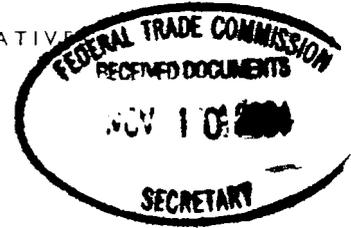




NATIONAL COUNCIL OF FARMER COOPERATIVES



Via email and Messenger

November 10, 2004

Mr. Donald S. Clark, Secretary
Federal Trade Commission
Room H-159 (Annex W)
600 Pennsylvania Avenue, N.W.

Re: Franchise Rule Staff Report (16 C.F.R. Part 436)

Dear Mr. Clark:

These comments are submitted in response to the Commissioner's invitation to interested parties to submit comments on the Staff Report on the Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures -- (Franchise Rule)" published on August 25, 2004. These comments specifically address the deletion of the current exclusion for Cooperative Associations from the proposed Franchise Rule. The National Council of Farmer Cooperatives (NCFC) is concerned that, under the objective of streamlining, the Commission is taking a course that would create confusion and throw into doubt the long-standing exclusion for cooperatives.

Farmer cooperatives provide over 300,000 jobs in the United States, with a total payroll in excess of \$8 billion, and contribute significantly to the economic well-being of rural America. Farmer cooperatives handle, process and market almost every type of agricultural commodity; furnish farm supplies; and provide credit and related financial services, including export financing to their farmer members. Earnings from these activities are returned to their farmer members on a patronage basis, helping improve their income from the marketplace.

Since 1929, NCFC has been the voice of America's farmer cooperatives. Our members are regional and national farmer cooperatives, which are in turn comprised of more than 3,000 local farmer cooperatives across the country. The majority of America's 2 million farmers and ranchers belong to one or more farmer cooperative. NCFC members also include 26 state and regional councils of cooperatives.

As the national association representing the interests of farmer cooperatives, NCFC is very concerned with the elimination of the Cooperative Association exclusion as currently set forth in 16 C.F.R. section 436.2(a)(4)(ii). As noted in the Staff Report, the Commission has historically recognized that although Cooperative Associations are not franchises, they could possibly be perceived as falling within the definition of a franchise. To avoid confusion, the Commission expressly excluded Cooperative Associations from Disclosure Rule coverage. The Commission has clarified that the proposed elimination of this exclusion is part of an effort to streamline the Rule and has suggested that the proper place for an explanation of the status of Cooperative Associations is in the Compliance Guides that will accompany the revised Rule. (Staff Report, pp. 251-252.)

The exclusion from disclosure requirements for Cooperative Associations has been a long-standing policy of the FTC. Although the removal of the exclusion from the guidelines does not indicate a ruling by the FTC that cooperatives are franchises, it may cause confusion and lead to claims that Cooperative Associations are franchises, thus subjecting cooperatives to harmful and costly litigation.

In addition, Trade Regulation Rules may only be changed through the Notice and Comment procedure, while Guidelines can be changed without Notice and Comment. Thus, NCFC is concerned that the Commission's policy concerning Cooperative Associations may be changed without the proper consideration afforded a change to the Rules.

In summary, our farmer cooperative members rely on the exclusion for Cooperative Associations; they are concerned that its elimination for streamlining purposes will be misconstrued and could lead to claims that farmer cooperatives are franchises. Accordingly, we strongly recommend you retain existing language that expressly exempts cooperatives from the Rule by defining terms and setting forth the exclusion for Cooperative Associations in the Franchise Rule, thus preventing confusion and providing valuable clarification for farmer cooperatives.

Thank you for this opportunity to provide comments on the Staff Report on the Franchise Rule.

Sincerely,



Jean-Mari Peltier
President and CEO

National Council of Farmer Cooperatives