June 9, 2020

Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Office of Information and Regulatory Affairs:

Thank you for the opportunity to discuss Docket Number 1545-BO90, the regulatory action associated with the "Domestic Production Activities Deduction for Specified Agricultural or Horticultural Cooperatives", a provision from the Tax Cuts and Jobs Act (Pub. L. 115-97).

In December of 2017, Congress passed the Tax Cuts and Jobs Act (TCJA). The TCJA contained a provision that became known as the "Grain Glitch" because it conferred a tax benefit on cooperatives of such magnitude that it would have made private companies uncompetitive. The tax benefit was so significant that farmers would have been left with very little incentive to sell grain to a private, non-cooperative grain company. Within days of passage of the TCJA, Congress recognized the severe, negative consequences the "Grain Glitch" provision would have on the grain marketing industry and its inherent competitive unfairness. Therefore, in the first quarter of 2018, sponsors of the TCJA and the authors of the "Grain Glitch" began working expeditiously with the affected parties to negotiate, legislate and pass into law a provision that corrected the inequity.

OMB is now reviewing the Treasury Department's final rule to implement the 2018 law. Treasury Department's initial rule provided that the 199A(g) deduction should be calculated without taking into account a cooperative's non-patronage income. They had a technical and policy basis for this position: non-patronage income was always treated like "corporate" income to a cooperative, the 199 deduction was going away for all corporations, and cooperatives (like all corporations) were already getting a 14% rate reduction. Any other approach would create a tax windfall for cooperatives with non-patronage business.

The parties to this letter support the Treasury's initial proposed rule, and further request that OMB approve a final rule that is consistent with that initial proposal.

Changing the rule from the Treasury Department's initial proposal would reduce taxes paid by cooperatives, which in turn would create a competitive imbalance in the finely tuned grain marketplace, where margins are small and little shifts can make a big difference. Private grain companies that cannot compete with low-taxed cooperatives would lose out and may shutter. This would ultimately hurt American farmers who would have fewer outlets for their grain and commodity pricing would be impacted throughout the supply chain. It is difficult to quantify the magnitude of these disruptions, but given the cooperatives' aggressive advocacy, they clearly understand the potential benefit at stake.

Please consider the following views of these non-cooperative grain companies, which serve an important function in America's agricultural landscape:

"Our family-owned business currently struggles to compete with neighboring cooperatives and cannot afford to be put at a competitive disadvantage if the cooperatives are given the tax deduction they are requesting."

--Jesse Ruff, President, Ruff Brothers Grain Company, Toluca, IL

"Kokomo Grain started in 1950 and has over 57 million bushels of grain storage space. Congress passed the law to fix 199A to level the playing field between cooperatives and private companies. If the law is interpreted to give the advantage back to cooperatives by letting them have a deduction for sales to non-farmers, business will be taken away from private companies and given to coops. Kokomo Grain and similar private companies could go away with a stroke of a pen. Congress acted so that they would not be picking winners and losers. If the intent of this law is changed by the rule, then Treasury and OMB will be picking winners and losers. Not only will private grain companies lose, but so will local farmers by not having a competitive outlet for their grain."

--Tom Madru, Kokomo Grain Company, Kokomo, Indiana

"Every day our ethanol plants across the Midwest bid for farmers corn directly against surrounding cooperatives, some of whom are also ethanol producers. If 199A is applied in this way [as proposed by cooperatives], it would put us at a competitive disadvantage and materially reduce our profitability."

--Green Plains, Inc, Omaha, Nebraska

"If Treasury makes the change being sought by cooperatives, the result would be a significant competitive imbalance in the grain marketplace that advantages cooperatives. The losers would be public and private, non-cooperative grain companies that cannot effectively compete under such tax circumstances. Just as importantly, farmers will have far less competition for their grain if such an unlevel playing field is created. Altering and damaging the competitive landscape for farmers would significantly hurt an already difficult supply/demand situation."

--Mark Hobrock, The Andersons, Maumee, Ohio

"Scoular is a privately held, employee owned, U.S. headquartered agricultural company, significantly focused on providing supply chain solutions to end users and suppliers of grain. Scoular owns and operates 75-plus grain locations throughout rural America. Many of our U.S. grain locations compete locally with cooperatives. Scoular would be at a significant competitive disadvantage because the proposed tax benefit is of such magnitude that farmers would have very little incentive to sell grain to a

private grain company. As proposed by the cooperatives, the 199A rule would impact our business and the communities in which we operate and significantly narrow the competitive landscape. Farmers would have fewer options, service levels for farmers would fall, and farm gate prices could be impacted. For companies like ours with a regional, grain focused footprint that overlaps with those of cooperatives, it would create a truly unfair playing ground with a material business impact to Scoular, as well as our farmer-customers."

--Scoular, Omaha, Nebraska

"We are an independent grain company that also sells fuel at two of our twelve locations. At some of locations where we do not sell fuel, we purchase fuel for operations from nearby cooperative fuel stations. Members of the public who are not farmers also purchase fuel from these cooperative fuel stations. Like all corporations under the new tax laws, cooperatives are taxed at the lower corporate tax rate of 21% for these non-patronage sales. If cooperatives are allowed to have a 199A deduction on these non-patronage (non-farmer) sales, they will have an additional tax break and competitive advantage over independents like my company. Farmers are not hurt by disallowing the 199A deduction on non-patronage sales because non-patronage sales are taxed at the co-op level and are not passed through to farmers."

-- Todd Lafferty, Wheeler Brothers Grain Company, LLC, Watonga, OK

"Columbia Grain Intl. LLC has made substantial investments into assets that would be placed at a tax-imposed competitive disadvantage to cooperatives. Our industry survives on very small margins and any advantage given to one style of business structure over another effectively eliminates the viability of a large swath of the industry, including ourselves. We are also one of the largest players in the specialty crop business with a substantial percentage of the capital investment for peas, beans, lentils and chickpeas in the industry. These products are a staple for the USDA food aid programs and we would be compromised versus the cooperatives, who aren't invested with the capability to supply. Competition and choices for farmers will ultimately be reduced, hurting infrastructure, choices and services. We opposed this change before and we strongly oppose any changes now.

--Jeff Van Pevenage, President and CEO, Columbia Grain

Cooperatives have argued that Treasury's initial proposal raises taxes on farmers by denying farmers a tax deduction. This is not the case; in fact, cooperatives are attempting to lower their

own taxes.[1] Please review the attached examples for analysis of the cooperatives' misleading argument.

OMB should approve a final rule that is consistent with a Treasury Department's initial rule on 199A and not allow the cooperatives' lobbying efforts to derail the well-reasoned analysis that the Treasury Department initially applied to this important issue.

Sincerely,

ADM

THE ANDERSONS

BEACHNER GRAIN, INC.

BUNGE

CGB ENTERPRISES, INC.

COLUMBIA GRAIN

LOUIS DREYFUS COMPANY, LLC

GAVILON

GREEN PLAINS, INC.

KOKOMO GRAIN COMPANY

RUFF BROTHERS GRAIN COMPANY

SCOULAR

UNITED GRAIN CORPORATION

WHEELER BROTHERS GRAIN COMPANY, LLC

[1] It is possible that the cooperatives think that, by expanding the 199A(g) deduction to non-patronage income, they would also be able to shoehorn the non-patronage deduction related to corporate income into a potential passthrough to farmers. This is a complete break from the longstanding policy approach of separate taxation for patronage and nonpatronage income for cooperatives, and would be yet another distortion in favor of cooperatives that would severely disrupt the current market.