



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule Regarding the Definition of Agricultural Commodity

The Commodity Futures Trading Commission (CFTC or Commission) will consider for publication in the Federal Register a proposed rule which will define the term “agricultural commodity.” The proposed rule implements provisions Commodity Exchange Act (CEA or Act), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, the Dodd-Frank Act further amended the CEA to:

- **Permit the CFTC** to issue rules regarding transacting swaps in an “agricultural commodity,” as that term is defined by the Commission. An Advance Notice of Proposed Rulemaking seeking comment on the appropriate conditions, restrictions or protections to be included in any rules governing agricultural swaps transactions is currently out for comment. The comment period closes on October 28th, 2010.
- **Require the CFTC** to issue rules establishing speculative position limits for contracts involving an “agricultural commodity.” Section 737 of the Dodd-Frank Act amends § 4a of the CEA and directs the Commission to adopt speculative position limits for agricultural commodities within 270 days of the enactment of the Dodd-Frank Act.

Neither Congress nor the Commission has previously issued a definition of the term agricultural commodity with respect to the CEA or the Commission’s regulations thereunder.

Because there is no existing definition of the term agricultural commodity – as used in connection with the CEA or the Commission’s regulations thereunder – the rule proposes a definition of agricultural commodity. The CFTC is proposing to define the term agricultural commodity in order to, among other things, define the scope of the Dodd-Frank agricultural swaps rulemaking and the Dodd-Frank agricultural commodity position limit rulemaking.

The proposed agricultural commodity definition is broken down into four categories:

1. The enumerated commodities listed in section 1a of the Act, including such things as wheat, cotton, corn, the soybean complex, livestock, etc.;
2. A general operational definition that covers: “All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;”
3. A catch-all category for commodities that would generally be recognized as agricultural in nature, but which don’t fit within the general operational definition: “Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation, or order designate after notice and opportunity for hearing;” and
4. Finally, a provision applicable to: “Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.”

Looking more closely at the four categories:

Category one, the enumerated commodities, is self-explanatory. Congress has effectively declared those things to be agricultural commodities.

Category two seeks to draw a line between products derived from living organisms that are used for human food, shelter, animal feed or natural fiber (covered by the definition) and products that are produced through processing plant or animal-based inputs to create products largely used as industrial inputs (outside the definition). To give a simple example, polylactic acid, a corn derivative used in biodegradable packaging, falls outside the definition. Therefore, when you buy a bag of Sun Chips with biodegradable packaging, the chips would fall within the definition but the packaging would not.

Category three, as noted, includes commodities that do not readily fit within the first two categories but would generally be recognized as agricultural in nature. The two examples in the definition are tobacco and products of horticulture – for example ornamental plants. Anything else used or consumed by humans or animals that does not fit within categories one or two, the Commission would deal with under this category on a case-by-case basis as questions arise in the context of specific markets or products.

Category four covers contracts that are based wholly or principally on a single underlying agricultural commodity. Such contracts do not necessarily involve the potential for physical delivery of the underlying agricultural commodity – for example basis swaps, calendar swaps or crop yield swaps would all fall within this commodity-based contract category. Category four would also include an index based wholly or principally on a single underlying agricultural commodity – for example, the Minneapolis Grain Exchange wheat, corn and soybean price index contracts. Likewise, any index made up of more than 50 percent of any single agricultural commodity would fall within the definition. On the other hand, a contract based on an index of the prices of multiple agricultural commodities would not fall within the commodity-based contract category. Thus, for example, a swap based on a price index of equal parts wheat, corn and soybeans, or even a swap based on a price index of 50 percent corn and 50 percent wheat, would not be based wholly or principally on a single underlying agricultural commodity and so would not fall within the agricultural commodity definition. Such index-based swaps would not be subject to special rules (if any) that might be adopted for agricultural commodity swaps. Rather, such swaps would appear to fall within the excluded commodity definition.