



Commodity Futures Trading Commission

Office of Public Affairs

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Final Rule Regarding the Definition of Agricultural Commodity

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

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. A Notice of Proposed Rulemaking (NPRM) seeking comment on a proposed definition of agricultural commodity was published on October 26, 2010 (75 FR 65586). The comment period closed on June 3, 2011. The NPRM received 15 substantive comments.
- Require the CFTC to issue rules establishing speculative position limits for contracts involving an “agricultural commodity” (see Section 737 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 final rule will promulgate a definition of agricultural commodity. The CFTC is defining the term agricultural commodity in order to, among other things, define the scope of the Dodd-Frank agricultural swaps rulemaking.

Agricultural Commodity Definition

The final 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 indexes based wholly or principally on underlying agricultural commodities.”

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 draws 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 indexes that are based wholly or principally on underlying agricultural commodities. Contracts based on such indexes do not necessarily involve the potential for physical delivery of the underlying agricultural commodity – for example, the indexes underlying basis swaps, calendar swaps or crop yield swaps would all fall within this commodity-based index category. Category four includes any index based wholly or principally on underlying agricultural commodities – that is, any index made up of more than 50% of agricultural commodities, since it is based principally on underlying agricultural commodities, would be considered an agricultural commodity for purposes of including it within the agricultural commodity definition. Thus, for example, a commodity-based index composed of 20% each, wheat, corn, soybeans, crude oil and gold, since it is composed of more than 50% agricultural commodities, would be an agricultural commodity. Therefore, swaps on such an index would be subject to special rules (if any) that might be adopted for agricultural commodity swaps (see Commodity Options and Agricultural Swaps, 75 FR 6095, Feb. 3, 2011). As proposed, the rules for agricultural commodity swaps would treat such swaps in exactly the same manner as swaps in any other commodity.