Commodity Futures Trading Commission
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Q & A – Final Rulemaking on Agricultural Commodity Definition

What is the goal of the final rulemaking?

The final rulemaking adopts a definition of the term agricultural commodity, which is necessary for, among other things, the Commission's agricultural swaps rulemaking and the Commission's agricultural commodity speculative position limit rulemaking – both of which stem from the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Will the definition replace the current or existing definition of agricultural commodity?

There is not currently a formal definition of agricultural commodity as it relates to the Commodity Exchange Act or the Commission's regulations thereunder. Once adopted, the final rule represents the first time that either Congress or the Commission will have defined the term agricultural commodity for this purpose.

What is included in the final definition?

The proposed definition includes four categories:

1. The enumerated commodities listed in section1a 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."

What is category one intended to cover?

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

What is category two intended to cover?

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.

What is category three intended to cover?

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.

What is category four intended to cover?

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.