Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Agricultural Commodity Definition Proposed Rulemaking Q & A

What is the goal of the proposed rulemaking?

The notice of proposed rulemaking proposes a definition of the term agricultural commodity, which will be 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 proposed 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. If ultimately adopted, the proposed 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 proposed 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 contracts based wholly or principally on a single underlying agricultural commodity."

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 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.

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 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 also would 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.