Proposed Rulemaking, Airspace Docket No. 10–ANE–106, as published in the **Federal Register** on July 22, 2010 (75 FR 42630) (FR Doc. 2010–0323), is hereby withdrawn.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in College Park, Georgia, on October 15, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–26943 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD23

Agricultural Commodity Definition

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Dodd-Frank Act, which amends the Commodity Exchange Act ("CEA" or "Act"), includes provisions applicable to "a swap in an agricultural commodity (as defined by the [CFTC])." Neither Congress nor the CFTC has previously promulgated a definition of that term for purposes of the CEA or CFTC regulations. This notice reviews the statutory and regulatory history of the term "agricultural commodity" in the context of the CEA and Commission regulations and proposes a definition of that term for purposes of the CEA and Commission regulations.

DATES: Comments must be received on or before November 26, 2010. The Commission is not inclined to grant extensions of this comment period.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD21, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail for Comments: agdefnprm@cftc.gov.* Include the RIN number 3038–AD21 in the subject line of the message.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Part I—Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] Title VII of the Dodd-Frank Act[3] amended the CEA[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

The Dodd-Frank Act includes provisions applicable to "a swap in an agricultural commodity (as defined by the [CFTC])." Neither Congress nor the CFTC has previously promulgated a definition of that term for purposes of the CEA or CFTC regulations. This notice reviews the statutory and regulatory history of the term "agricultural commodity" in the context of the CEA and Commission regulations and proposes a definition of that term for purposes of the CEA and Commission regulations.

A. Statutory Framework and History—"Agricultural Commodity"

1. The Commodity Exchange Act

In developing a proposed definition of "agricultural commodity" for purposes of the CEA and CFTC regulations, the Commission first considered the historical development of federal commodities regulation in the United States. Before 1974, the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* gave the Commodity Exchange Authority[5] jurisdiction over only those commodities specifically enumerated in the Act. Starting with the 1936 Act, the CEA applied to certain transactions in commodities then being traded for future delivery on certain U.S. futures exchanges, including wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghum, mill feeds, butter, eggs, and Solanum tuberosum (Irish potatoes).[6] As the exchanges regulated under the CEA added futures contracts for additional commodities, all of which were agricultural in nature, subsequent amendments to the Act added those

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to § 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] The Commodity Exchange Authority was an agency of the United States Department of Agriculture and was established to administer the CEA. For a detailed history of the evolution of the various agencies charged with administering the CEA, *see http://www.archives.gov/research/guide-fed-records/groups/180.html.* The Commodity Exchange Authority was the predecessor of the CFTC.

[6] *See* Act of June 15, 1936, Public Law 74–675, 49 Stat. 1491 (1936), which, among other things, set out the original list of enumerated commodities and changed the name of the "Grain Futures Act" to the "Commodity Exchange Act." However, the CEA did not apply to all commodity futures markets then in existence, such as markets for coffee, cocoa, sugar, and metals.

additional commodities to the Act's list of enumerated commodities.[7] Thus, prior to 1974, the CEA provided authority exclusively for the regulation of futures transactions in those commodities enumerated in the statute, all of which were agricultural in nature.

With the enactment of the Commodity Futures Trading Commission Act of 1974 ("the 1974 Act"),[8] Congress overhauled the CEA and created the Commodity Futures Trading Commission, an independent regulatory agency with powers greater than those of its predecessor agency, the Commodity Exchange Authority. For the purposes of this Notice, the most significant change was that, while the Commodity Exchange Authority only regulated those commodities enumerated in the CEA, which were all agricultural in nature, the 1974 Act granted the CFTC exclusive jurisdiction over futures trading in all commodities traded for future delivery, including not only the enumerated commodities, but also "all other goods and articles * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." [9] For the first time, the CEA would apply to all U.S. futures exchanges and to the full range of commodities that were or could be traded for future delivery thereon, including many commodities that did not fall under the enumerated agricultural category—for example, coffee, sugar, cocoa, metals and energy products, as well as interest rates, currencies, and other financial commodities.[10]

2. The Commodity Futures Modernization Act

In 2000, the Commodity Futures Modernization Act of 2000 ("CFMA") [11]added certain exemptions for swaps [12] transactions to the CEA. One exemption appears in current CEA § 2(g).[13] With the § 2(g) swaps exemption, Congress for the first time made an explicit distinction between agricultural commodities and other commodity categories. The § 2(g) exemption explicitly excluded any "agreement, contract, or transaction" in an "agricultural commodity." Instead of providing a definition for agricultural commodity in this context, Congress used the term in conjunction with the definition of exempt commodity—defined as neither an agricultural commodity nor an excluded commodity.[14] Excluded commodities were in turn defined at current CEA § 1a(13) to include financial commodities such as interest rates, currencies, economic indexes, and other similar items. Thus, of the three operative terms, only agricultural commodity was not ascribed a formal definition.[15]

There is limited legislative history regarding the CFMA to explain Congress' intent in excluding "agricultural commodities" from the § 2(g) swaps exemption.[16] However, the legislative history of H.R. 4541 (106th Congress), the predecessor to the CFMA (H.R. 5660),[17] which included the same basic structure of excluded and exempt commodities, indicates that Congress did not intend that the term "agricultural commodity" be limited to those commodities enumerated in the definition of the term "commodity" in current CEA § 1a(4).[18] The House Committee on Agriculture stated the following:

> The Committee notes that the term "exempt commodity" means a commodity other than an "excluded commodity" or an "agricultural commodity." For purposes of this definition, the Committee intends "agricultural commodity" to include all agricultural commodities, whether or not such agricultural commodities are specifically enumerated in the definition of "commodity" in section 1a[4] of the CEA.[19]

Notably, the definition of exempt commodity, and its interplay with both agricultural and excluded commodities, did not change from H.R. 4541 to H.R. 5660, the final version of the CFMA as enacted into law.

3. The Dodd-Frank Act

The Dodd-Frank Act, when it becomes effective, will delete two references to "agricultural commodity" that were added to the CEA by the CFMA.[20] First, the Dodd-Frank Act will

[7] Wool tops were added in 1938. Commodity Exchange Act Amendment of 1938, Public Law 75–471, 52 Stat. 205 (1938). Fats and oils, cottonseed meal, cottonseed, peanuts, soybeans and soybean meal were added in 1940. Commodity Exchange Act Amendment of 1940, Public Law No. 76–818, 54 Stat. 1059 (1940). Livestock, livestock products, and frozen concentrated orange juice were added in 1968. Commodity Exchange Act Amendment of 1968, Public Law 90–258, 82 Stat. 26 (1968) (livestock and livestock products); Act of July 23, 1968, Public Law 90–418, 82 Stat. 413 (1968) (frozen concentrated orange juice). Trading in onion futures on United States exchanges was prohibited in 1958. Commodity Exchange Act Amendment of 1958, Public Law 85–839, 72 Stat. 1013 (1958).

[8] See Commodity Futures Trading Commission Act of 1974, Public Law 93–463, 88 Stat. 1389 (1974).

[9] Except, of course, onions, which were excluded in 1958. *See* cite in footnote 7, above.

[10] *See* the pre-Dodd-Frank CEA definition of "commodity," which had remained unchanged since the 1974 amendments: "The term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85–839 (7 U.S.C. 13–1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."

The agricultural commodities specifically identified in current CEA § 1a(4) are often referred to as the "enumerated" agricultural commodities. The Dodd-Frank Act redesignates current CEA § 1a(4) as new CEA § 1a(9) and adds "motion picture box office receipts (or any index, measure, value or data related to such receipts)" as a second commodity which, along with onions, is specifically excluded from the Act's definition of commodity.

[11] The CFMA was enacted into law as Appendix E to Public Law 106–554, the Consolidated Appropriations Act, 2001 (2000).

[12] Prior to the Dodd-Frank Act, the Commission had defined a "swap" as follows: "A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap [including an agricultural swap], at least one of the assets or cash flows is related to the price of one or more commodities." (*See* 72 FR 66099, note 7 (November 27, 2007)). *See* new CEA § 1a(47) for the statutory definition of a "swap," as added to the CEA by § 721 of the Dodd-Frank Act.

[13] Current § 2(g) provides:

Excluded swap transactions

No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) Entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

CEA § 2(g), 7 U.S.C. § 2(g). Current CEA § 2(g) was added to the CEA by § 105(b) of the CFMA, enacted as Appendix E to Public Law 106–554.

[14] "The term 'exempt commodity' means a commodity that is not an excluded commodity or an agricultural commodity." Current CEA § 1a(14).

[15] Another swap exemption was provided in current CEA § 2(h), which affects transactions in exempt commodities. Current CEA § 2(h) was added to the CEA by § 106 of the CFMA. Also, current CEA § 2(d) contains a swap exemption for transactions in excluded commodities. Current CEA § 2(d) was added to the CEA by § 103 of the CFMA.

[16] H.R. 5660, the final version of the CFMA, which was enacted into law as an appendix to Public Law 106–554, the Consolidated Appropriations Act, 2001, was not accompanied by congressional committee reports.

[17] H.R. 4541, also titled the Commodity Futures Modernization Act of 2000, was reported by all three committees of jurisdiction (Agriculture, Commerce, and Banking and Financial Services) in the House of Representatives and was passed by the House on October 19, 2000 by a vote of 377 yeas to 4 nays. On December 14, 2000, H.R. 5660 was introduced and contained major provisions of the House-passed version of H.R. 4541.

[18] *See* footnote 10 above.

[19] H.R. Rep. No. 106–711, Part 1, at 33 (June 29, 2000).

[20] Two other references to agricultural commodities that were added to the CEA by the CFMA will remain in the CEA, but are not relevant to defining an agricultural commodity. CEA § 5c(c) provides that a designated contract market must seek prior Commission approval for any rule amendment that would make material changes in

Continued

delete the current CEA § 2(g) swaps exemption.[21] Second, the Dodd-Frank Act will eliminate a provision, found in current CEA § 5a(b)(2)(F), that deals with the permissibility of trading agricultural commodities on a derivatives transaction execution facility ("DTEF"). The Dodd-Frank Act repeals current CEA § 5a[22] (which provides for the registration and regulation of DTEFs).[23]

The Dodd-Frank Act also contains several new provisions relating to agricultural commodities. Section 721(a)(21) of the Dodd-Frank Act adds a new § 1a(47) to the CEA that defines the term "swap." As part of the definition, clause (iii) of § 1a(47)(A) provides that a swap includes "any agreement, contract, or transaction commonly known as * * * an agricultural swap * * *."[24] In addition, the Dodd-Frank Act's definition of swap includes commodity options, other than exchange-traded options on futures, thus requiring off-exchange options on agricultural commodities to be regulated as swaps.[25]

Section 723(c)(3)(A) of the Dodd-Frank Act, which is a free-standing provision that does not amend the CEA, contains a general rule that, except as provided in § 723(c)(3)(B), "no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the [CFTC])." Section 723(c)(3)(B) provides that a swap in an agricultural commodity may be permitted pursuant to the Commission's exemptive authority under CEA § 4(c), "or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the [CFTC] to allow swaps under such terms and conditions as the Commission shall prescribe."

Section 733 of the Dodd-Frank Act adds a new § 5h to the CEA that governs the registration and regulation of swap execution facilities. New CEA § 5h(b)(2) provides that a swap execution facility "may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe."

Section 737 of the Dodd-Frank Act amends CEA § 4a to direct the Commission to adopt position limits for futures, exchange-traded options, and swaps that are economically equivalent to futures and exchange-traded options within 180 days of the date of enactment of the Dodd-Frank Act for exempt commodities and within 270 days of the date of enactment of the Dodd-Frank Act for agricultural commodities.

B. Regulatory Framework

1. "Agricultural Commodity" in Current Regulations

The term agricultural commodity appears in the Commission's regulations in multiple places, the most relevant of which are the rules for swaps and options.

a. Part 35 Swaps Exemption

Regarding the pre Dodd-Frank Act swaps rules, Part 35 of the Commission's regulations provides a broad-based exemption for certain swap agreements. Adopted by the Commission under its § 4(c) exemptive authority in 1993,[26] Part 35 allows for swaps to transact bilaterally if certain conditions are met.[27] As mentioned above, the CFMA swaps exemption, current CEA §§ 2(d), 2(g) and 2(h), provided an even broader exemption for excluded and exempt commodities than that provided by Part 35. As a result, only swap transactions in agricultural commodities still rely on the exemption found in Part 35. With the exception of three outstanding § 4(c) exemptions related to cleared agricultural basis and calendar swaps,[28] Part 35 is the sole authority under which market participants may transact agricultural swaps that are not options—until such

---

any futures contract in an enumerated agricultural commodity, if the rule amendment applies to contracts and delivery months which have been listed for trading and have open interest. CEA § 4q requires the Commission to consider procedures to encourage bona fide hedging on contract markets by domestic agricultural producers.

Title IV of the CFMA included an additional reference to "agricultural commodity" that was not an amendment to the CEA. The Legal Certainty for Bank Products Act, enacted as Title IV of the CFMA, includes a definition of "covered swap agreement" that incorporates a reference to "a commodity other than an agricultural commodity enumerated in section 1a(4)." Section 725(g) of the Dodd-Frank Act deletes all references to "covered swap agreement," including the reference to agricultural commodities, from the Legal Certainty for Bank Products Act.

[21] *See* § 723(a)(1)(A) of the Dodd-Frank Act. That provision of the Dodd-Frank Act will also delete current CEA § 2(h) regarding swaps in exempt commodities. Current CEA § 2(h) does not explicitly mention agricultural commodities but, as noted above, exempt commodities are defined as those that are neither agricultural nor excluded commodities.

[22] *See* § 734(a) of the Dodd-Frank Act.

[23] In addition, CEA § 5(e)(2), which was added to the CEA by the CFMA, provides that the Commission, through notice and comment rulemaking, may allow futures and options in agricultural commodities to trade on DTEFs. Once the Dodd-Frank Act repeals the authority for DTEFs, § 5(e)(2) will no longer have any practical effect.

[24] *See* new CEA § 1a(47)(A)(iii)(XX) as added by § 721(a)(21) of the Dodd-Frank Act.

[25] *See* new CEA § 1a(47)(A)(i) and new CEA § 1a(47)(B)(i) as added by § 721(a)(21) of the Dodd-Frank Act:

* * * SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—

(i) That is * * * [an] option of any kind that is for the purchase or sale * * * [of] commodities * * *.

(B) EXCLUSIONS.—The term 'swap' does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract) * * *.

[26] *See* 58 FR 5587 (Jan. 22, 1993). Note that because Part 35 was implemented pursuant to a § 4(c) exemption, agricultural swaps that rely on Part 35 for their legal authority will continue to be permitted under the Dodd-Frank language whereby existing agricultural swaps provisions adopted pursuant to § 4(c), including Part 35, are grandfathered (*See* Dodd-Frank § 723(c)(3)(B)).

[27] The requirements are: (1) The swap agreements are entered into solely between eligible swap participants; (2) the swap agreements are not part of a fungible class of agreements that are standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement must be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms; and (4) the swap agreement is not entered into and traded on or through a multilateral transaction execution facility. *See id.* at 5590–5591; *see also* 17 CFR 35.2(a)–(d).

[28] Part 35, at § 35.2(d), also provides that "any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B) [liability of principal for act of agent]) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes." *See* 17 CFR 35.2(d). The Commission has granted three such exemptions from Part 35, which have in each instance been styled as § 4(c) exemptive orders. *See:*

Order: (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The- Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015 (Dec. 18, 2008);

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 74 FR 12316 (March 24, 2009); and

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983 (June 21, 2010).

time as the Commission issues other or different rules and regulations for agricultural swaps transactions.[29]

b. Part 32 and Options

The Commission maintains plenary authority over commodity options pursuant to CEA § 4c(b). It has used that authority to, among other things, issue Part 32 of the Commission's regulations, which includes a general ban on off-exchange options.[30] However, Part 32 allows for off-exchange option transactions under certain conditions, including allowing off-exchange options on agricultural commodities in two instances.[31]

Rule 32.13 establishes rules for trading off-exchange options on the "enumerated" agricultural commodities ("agricultural trade options" or "ATOs") whereby ATOs may only be sold by an Agricultural Trade Option Merchant ("ATOM"), who must first register with the Commission as such pursuant to CFTC rule 3.13. Since its 1998 adoption and one amendment in 1999,[32] the ATOM registration scheme has attracted only one registrant, which registrant has since withdrawn its ATOM registration. Accordingly, ATOs currently may only be transacted pursuant to an exemptive provision found at § 32.13(g)(1). The exemption at § 32.13(g)(1) allows ATOs to be sold when: (1) The option is offered to a commercial ("a producer, processor, or commercial user of, or a merchant handling" the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than $10 million.

In either case (whether transacted pursuant to the ATOM registration scheme or accomplished via the ATO exemption at § 32.13(g)), the phrase "agricultural trade option" refers specifically to an off-exchange option on an enumerated agricultural commodity.

In addition to the § 32.13(g) ATO exemption, Part 32 includes, at § 32.4, a basic trade option exemption applicable to options on commodities other than the enumerated agricultural commodities. The terms of the § 32.4 exemption are essentially the same as those of the § 32.13(g) exemption with one significant difference. Under § 32.4, the option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such. However, § 32.4 does not include any net worth requirement. Because the term "agricultural commodity" in the Act refers to more than just the enumerated commodities, the Commission recognizes that certain options authorized under § 32.4 (*e.g.* off-exchange options on coffee, sugar, cocoa, and other agricultural products that do not appear in the enumerated commodity list) will be considered to be swaps in an agricultural commodity—and subject to any Commission rules that specifically address agricultural swaps.

c. Other Regulations

The definition of agricultural commodity will also apply to any other Commission regulation that references agricultural commodity and is not specifically limited to the enumerated agricultural commodities.[33] However, the definition is not anticipated to have any significant substantive impact outside of the Part 35 swaps rules, the Part 32 options rules, and the position limit rulemaking that will address agricultural commodities (*see* discussion in next section).

2. "Agricultural Commodity" in New CFTC Regulations

The definition of agricultural commodity will also be necessary in order to provide context for certain rulemakings under the Dodd-Frank Act. For example, if the Commission proceeds with an agricultural swaps rulemaking, the definition will identify the scope of commodities that will be subject to it.[34] Any such rulemaking would provide rules and regulations governing the trading of swaps in an agricultural commodity. The definition will similarly provide a basis for the Commission's planned rulemaking addressing speculative position limits on agricultural commodities,[35] and by reverse implication, speculative position limits on exempt commodities (defined as a commodity that is not an excluded commodity or an agricultural commodity)—*i.e.,* once a definition of agricultural commodity is adopted, any commodity that does not fall within that definition, or the definition of excluded commodity, will be considered an exempt commodity.[36]

Similarly, defining an agricultural commodity could clarify those swaps that are eligible for the exemptions in current CEA § 2(g) and 2(h) (which are not available to swaps in agricultural commodities). As noted above, the Dodd-Frank Act provides for the eventual repeal of current CEA § 2(g) and § 2(h). However, if the definition of an agricultural commodity is made effective prior to the repeal of those provisions, it would provide greater certainty as to the proper scope of those provisions during the interim.

Part II—Explanation of the Definition

A. Terms of the Proposed Definition

This notice of proposed rulemaking proposes to add the following definition to section 1.3, the Definitions section, of the Commission's regulations:

As used in the Act and CFTC regulations, the term "agricultural commodity" means:

(1) The following commodities specifically enumerated in the definition of a "commodity" found in section 1a of the Act: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) 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) 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) Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.

B. Explaining the Definition

Category One—Enumerated Agricultural Commodities

Category one includes the "enumerated agricultural commodities"

[29] *See* Agricultural Swaps, Advance Notice of Proposed Rulemaking and Request for Comment, 75 FR 59666 (September 28, 2010) (the "Agricultural Swaps ANPRM").

[30] *See* Commission regulation 32.11, 17 CFR 32.11.

[31] Note that Part 32 was not issued under the Commission's § 4(c) exemptive authority. After the effective date of the Dodd-Frank Act, options on agricultural commodities will also fall under the Dodd-Frank Act's provisions governing the trading of swaps (and, specifically, agricultural swaps) since options on commodities will fall within the CEA's definition of a swap. Accordingly, it is important to identify what options on agricultural commodities are currently being traded pursuant to Part 32.

[32] 63 FR 18821 (April 16, 1998); and 64 FR 68011 (December 6, 1999), respectively.

[33] For example, *see* current Commission regulation 150.5(e)(3) (17 CFR 150.5(e)(3)), which applies to exchange-set speculative position limits for, among other things, the "international soft agricultural products." Section 150.5 may be amended when the Commission adopts position limits for agricultural commodities pursuant to § 737(a) of the Dodd-Frank Act.

[34] *See* §§ 723(c)(3) and 733 of the Dodd-Frank Act and the Agricultural Swaps ANPRM.

[35] *See* § 737(a) of the Dodd-Frank Act.

[36] *Id.*

specified in current § 1a(4) of the Act (renumbered as § 1a(9) under the Dodd-Frank Act). While there is considerable overlap between categories one and two, category one includes some commodities that would not qualify under category two. For example, "fats and oils" would include plant-based oils, such as tung oil and linseed oil, which are used solely for industrial purposes (and thus would not fall within category two). Section 1a(4)'s reference to "oils" would not, however, extend to petroleum products.[37]

Category Two: Operative Definition of Agricultural Commodities

As a general matter, category 2 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). In that context, some of the terms used in describing the second category require further clarification, particularly the terms, "generally fungible," "used primarily," "human food" and "natural fiber."

"*Generally fungible*"—means substitutable or interchangeable within general classes. For example, apples, coffee beans, and cheese are generally fungible within general classes, even though there are various grades and types, and so they would be agricultural commodities. On the other hand, commodities that have been processed and have taken on a unique identity would not be generally fungible. Thus, while flax or mohair are generally fungible natural fibers, lace and linen garments made from flax, or sweaters made from mohair, are not generally fungible and would not be agricultural commodities under category two.

"*Used primarily*"—means any amount of usage over 50%. If 50% of the peaches harvested, plus one, are used for human food, then peaches fall within category two.

"*Human food*"—includes drink. Thus fruit juice, wine and beer are "food" for purposes of the definition of "agricultural commodity."

"*Natural fiber*"—means any naturally occurring fiber that is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

Based on the foregoing, therefore, category two would include such products as: Fruits and fruit juices; vegetables and edible vegetable products; edible products of enumerated commodities, such as wheat flour and corn meal; poultry; milk and milk products, including cheese, nonfat dry milk and dry whey; distiller's dried grain; eggs; cocoa beans, cocoa butter and cocoa; coffee beans and ground coffee; sugarcane, sugar beets, beet pulp (used as animal feed), raw sugar, molasses and refined sugar; honey; beer and wine; shrimp; and silk, flax and mohair.

Category two would also include stud lumber, plywood, strand board and structural panels because they are derived from living organisms (trees), are generally fungible (*e.g.,* random length 2 x 4s and 4 x 8 standard sheets of plywood) and are used primarily for human shelter—*i.e.,* in the construction of dwellings. Category two would not, however, include industrial inputs such as wood pulp, paper or cardboard, nor would it include raw rubber, turpentine or rosin. Although derived from living organisms—trees—and generally fungible, none of these products are used primarily for human food, shelter, animal feed or natural fibers. On the other hand, maple syrup and maple sugar, also derived from trees, would be "agricultural commodities." Rayon, which is a fiber derived from trees or other plants, falls out of category two because it is not a natural fiber—*i.e.,* it must be chemically processed from cellulose before it becomes fiber.

Category two would include high fructose corn syrup, but not corn-based products such as polylactic acid (a corn derivative used in biodegradable packaging), butanol (a chemical derived from cornstarch and used in plasticizers, resins, and brake fluid) or other plant-based industrial products. Category two would include pure ethanol, which is derived from living organisms (corn and other plants), is generally fungible, and may be used for human food (as an ingredient of alcoholic beverages). However, it would not include denatured ethanol, which is used for fuel and for other industrial uses, because denatured ethanol cannot be used for human food. Likewise, neither would Category 2 include other plant or animal based renewable fuels, such as methane or biodiesel. Fertilizer and other agricultural chemicals, even though they are used almost exclusively in agriculture, would not fall within the definition because they would not fit into the food, shelter, animal feed or natural fiber category.

Category Three—Other Agricultural Commodities

Category three would include commodities that do not readily fit into the first two categories, but would nevertheless be widely recognized as commodities of an agricultural nature. Such commodities would include, for example, tobacco, products of horticulture (*e.g.,* ornamental plants), 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. The Commission would determine the status of any such other commodities for purposes of the Act and CFTC regulations on a case-by-case basis as questions arise in the context of specific markets or transactions.

Category Four—Commodity-Based Contracts

The term, "agricultural commodity," also 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. The commodity-based contracts category would also include an index based wholly or principally on a single underlying agricultural commodity. Thus, for example, the Minneapolis Grain Exchange ("MGE") wheat, corn and soybean price index contracts[38] would be considered agricultural commodities. Also, any index made up of more than 50% of any single agricultural commodity, since it is based principally on a single underlying agricultural commodity, would be considered a commodity-based contract for purposes of including it within the agricultural commodity definition.

For purposes of the commodity-based contract category, the soybean complex

[37] Petroleum products clearly would not fall within the enumerated commodities. "These itemized commodities are agricultural in nature." Philip McBride Johnson, Commodities Regulation, § 1.01, p. 3 (1982). The Commission has never even considered treating petroleum products as agricultural commodities. Nor would petroleum products fall within the second category. Even though they could be viewed as derived from living organisms—albeit organisms that lived millions of years ago—such products would not qualify under the "used primarily for human food, shelter, animal feed or natural fiber" standard of category two.

[38] The MGE agricultural index products are currently available for corn, soybeans, and various types of wheat. These index products are financially settled to a spot index of country origin pricing as calculated by a firm called Data Transmission Network ("DTN"). Cash settlement is based upon the simple average of the spot prices published on the last three trading days of the settlement month.

would be considered a single commodity, so that an index based on the prices of soybeans, soybean meal and soybean oil would be an agricultural commodity under this provision. Likewise, for purposes of this provision, wheat would be considered a single commodity, so that an index based on the prices of Chicago Board of Trade ("CBT") soft red winter wheat, Kansas City Board of Trade ("KCBT") hard red winter wheat and MGE hard red spring wheat would be an agricultural commodity under the commodity-based contract provision.

On the other hand, a contract based on an index of the prices of multiple agricultural commodities would not be based wholly or principally on a single agricultural commodity and would not fall within the commodity-based contract category. Thus, for example, under the commodity-based contract provision, a swap contract based on a price index of equal parts wheat, corn and soybeans, or even a swap based on a price index of 50% corn and 50% wheat, would not be based wholly or principally on a single underlying agricultural commodity and so would not fall within the agricultural commodity definition. Therefore, such index-based swaps would not be subject to special rules (if any) that might be adopted for agricultural commodity swaps.[39]

The definition of an "excluded commodity" in current CEA § 1a(13)(iii)[40] could be read to include any index of agricultural commodities. That definition provides that "excluded commodity" means, among other things, "any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction." However, such a reading would frustrate the requirement in Dodd-Frank that swaps in agricultural commodities be permitted only pursuant to a § 4(c) order of the Commission. For example, a swap contract based on a price index of solely wheat should reasonably be considered as a swap in agricultural commodity. Applying a mechanical interpretation of the definition of excluded commodity could permit "gaming" by allowing an index based principally, or even overwhelmingly, on one agricultural commodity to evade the limitations on trading agricultural swaps that are found in the Dodd-Frank Act. For this reason, the definition proposed herein would include an index based wholly or principally on a single underlying agricultural commodity.

Onions

Onions present a unique case in that onions are the only agricultural product specifically excluded from the enumerated commodities list in current § 1a(4). Also, Public Law 85–839 prohibits the trading of onion futures on any board of trade in the United States.[41] Nothing in the definition proposed herein affects the prohibition on onion futures trading.

In defining an agricultural commodity, given the foregoing statutory history, as well as the Act's grammatical construction, it would appear that "agricultural commodity" is a subset of "commodity" and, since onions are excluded from the definition of "commodity," onions cannot be considered an "agricultural commodity." However, under the Dodd-Frank Act, the definition of "swap" in new § 1a(47) of the CEA is not limited to transactions based upon "commodities" as defined in current § 1a(4) of the Act. Therefore, under the CEA as amended by Dodd-Frank, a swap may be based upon an item that is not defined as a "commodity." Thus, onion swaps would seem to be permissible, but would not be considered to be swaps in an "agricultural commodity" under the definition proposed herein.

C. Effects of Applying the Definition

It is also important to consider the uses to which the definition will be put—*i.e.,* what would be the practical effect of a commodity being classified as an "agricultural commodity" under the definition proposed herein? One effect is that the commodity would be covered by any rules the Commission ultimately adopts for agricultural swaps. If, based on the comments received on the Agricultural Swaps ANPRM,[42] it is determined that agricultural swaps should be treated the same as other physical commodity swaps, the definition will have no effect in the agricultural swaps context.

The other significant effect of a commodity being classified as an "agricultural commodity" is that the commodity would be subject to the speculative position limits for agricultural commodities,[43] rather than the speculative limits for exempt commodities. Again, the classification of a given commodity as "agricultural" vs. "exempt" should have no practical effect on the commodity or how it is traded in the speculative limits context because: (1) The definition will only apply to commodities that are the subject of actual swaps or futures trading; and (2) the speculative limits for any such commodities will be based not on any general across-the-board definition or principle, but on the individual characteristics of each commodity, its swaps/futures market and its underlying cash market.

Also, as noted above, during the interim period until §§ 2(g) and 2(h) are repealed, any commodities falling within the new "agricultural commodity" definition could not legally be traded pursuant to either section (although Part 35 would still be available to commodities/contracts meeting its requirements).

Part III—Request for Comments Regarding the Proposed Definition

The Commission requests comments on any aspect of the agricultural commodity definition proposed herein, and also on the following specific questions:

(1) Are there any commodities that *do not* fit within the terms of the definition proposed herein, but which nevertheless *should be* considered to be "agricultural commodities" for purposes of the CEA and Commission regulations? If so, why, and what undesirable effects, if any, might result from omitting such commodities from the definition?

(2) Are there any commodities that *do* fit within the terms of the definition proposed herein, but which nevertheless *should not be* considered to be "agricultural commodities" for purposes of the CEA and Commission regulations? If so, why, and what undesirable effects, if any, might result from including such commodities in the definition?

(3) Does the definition's proposed treatment of commodity-based contracts, including index contracts, for purposes of the agricultural commodity definition constitute an appropriate mechanism for classifying such contracts? If not, what other treatment would be a better alternative?

(4) Are biofuels, such as methane and biodiesel, appropriately excluded from the agricultural commodity definition? If not, why should such products be included in the definition and what undesirable effects, if any, might result from omitting them from the definition?

(5) Under the proposed definition, lumber, plywood and other products of

[39] *See* the Agricultural Swaps ANPRM.

[40] New § 1a(19)(iii) as renumbered under the Dodd-Frank Act.

[41] 7 U.S.C. 13–1.

[42] *See* Agricultural Swaps, Advance Notice of Proposed Rulemaking and Request for Comment, 75 FR 59666 (September 28, 2010).

[43] The Commission is required to adopt speculative position limits for agricultural commodities within 270 days of the adoption of the Dodd-Frank Act.

trees used in human shelter would fall within the agricultural commodity definition, whereas products of trees used as industrial inputs, such as wood pulp, paper, raw rubber and turpentine, would fall outside the definition. Does this formulation draw an appropriate dividing line between the products of trees that are covered by the agricultural commodity definition and those that are not?

(6) As noted above, if the definition of an agricultural commodity is made effective upon the publication of a final rule, it would provide clarity as to what swaps are or are not eligible for the exemptions found in current CEA §§ 2(g) and 2(h) until the point at which their repeal by the Dodd-Frank Act becomes effective. Is there any reason *not* to make the definition of agricultural commodity effective upon the publication of a final rule? Are there swaps currently being transacted under § 2(g) or § 2(h) that would be considered transactions in an agricultural commodity (and thus potentially, temporarily illegal) under the definition proposed herein? If so, should the effective date of the definition be postponed until the repeal of current CEA §§ 2(g) and 2(h), for all purposes other than for the setting of speculative position limits, which will become effective prior to the repeal?

Part IV—Related Matters

A. Paperwork Reduction Act

The proposed rule will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act.[44] The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

B. Cost Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the costs and benefits of the subject regulations in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, not withstanding its costs, a particular regulation is necessary or appropriate to protect the public interest.

Defining an agricultural commodity for purposes of the CEA would seem to have limited immediate practical effects. However, the definition will be necessary for later substantive rulemakings, such as setting speculative position limits for exempt and agricultural commodities under § 737 of the Dodd-Frank Act and determining the permissibility of trading agricultural swaps under § 723(c)(3) and § 733 of the Dodd-Frank Act. Accordingly, this analysis will focus on the prospective costs/benefits of defining "agricultural commodity."

As noted above, § 737(a) of the Dodd-Frank Act amends CEA § 4a(a) to direct the Commission to adopt speculative position limits for futures, exchange-traded options, and swaps that are economically equivalent to futures and exchange-traded options within 180 days of the date of enactment of the Dodd-Frank Act for exempt commodities and within 270 days of the date of enactment of the Dodd-Frank Act for agricultural commodities. Under CEA § 4a(a)(3), the Commission in setting position limits must balance the goals of: (1) Diminishing, eliminating, or preventing excessive speculation; (2) deterring and preventing market manipulation, squeezes, and corners; (3) ensuring sufficient liquidity for bona fide hedgers; and (4) ensuring that the price discovery function of the underlying market is not disrupted. If speculative position limits for exempt and agricultural commodities are set at an inappropriate level, it could have the consequence of not achieving the optimum blend of these important goals and could be detrimental to the competitiveness and financial integrity of these markets.

As noted above, § 723(c)(3) of the Dodd-Frank Act contains a general rule that "no person shall offer to enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the [CFTC])." Section 723(c)(3) contains an exception to that general rule that provides that a swap in an agricultural commodity may be permitted pursuant to the Commission's exemptive authority under CEA § 4(c), "or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the [CFTC] to allow swaps under such terms and conditions as the Commission shall prescribe."

Also as noted above, § 733 of the Dodd-Frank Act adds a new § 5h to the CEA that governs the registration and regulation of swap execution facilities. New CEA § 5h(b)(2) provides that a swap execution facility "may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe."

Both § 723 and § 733 require the Commission to define an agricultural commodity if agricultural swaps (beyond those currently allowed under CEA § 4(c) exemptions) are to be traded. If the Commission decides to promulgate a rule permitting additional types of agricultural swaps to trade, such a rule could enhance price discovery and improve risk management for the agricultural commodities involved.

The Commission invites public comments on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[45] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The rules proposed by the Commission provide a definition that will largely be used in future rulemakings and which, by itself, imposes no significant new regulatory requirements. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Definitions, Agriculture, Agricultural commodity.

In consideration of the foregoing, and pursuant to the authority contained in

[44] 44 U.S.C. 3501 *et seq.*

[45] 5 U.S.C. 601 *et seq.*

the Commodity Exchange Act and, in particular, sections 2(a)(1), 5h, and 8a thereof, 7 U.S.C. 2, 7b–3, and 12a, and pursuant to the authority contained in section 723(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), the Commission hereby proposes to amend Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a–6p, 7, 7a, 7b, 7b–3, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.3 is amended by adding paragraph (zz) to read as follows:

§ 1.3 Definitions.

* * * * *

(zz) *Agricultural commodity.* As used in the Act and CFTC regulations, this term means:

(1) The following commodities specifically enumerated in the definition of a "commodity" found in section 1a of the Act:Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) 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) 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) Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.

Issued in Washington, DC, on October 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Agriculture Commodity Definition

October 19, 2010

I support the proposal to publish for comment a definition of the term, "agricultural commodity." This is necessary as the Dodd-Frank Act includes two provisions that apply to swaps in an agricultural commodity, as defined by the CFTC. First, the definition will be used to fulfill the Dodd-Frank Act's requirement that swaps in an "agricultural commodity" be prohibited unless permitted under the Commission's general exemptive authority. An Advance Notice of Proposed Rulemaking seeking comment on the appropriate conditions, restrictions or protections to be included in any rules governing agricultural swaps is currently out for comment. Second, the Dodd-Frank Act directs the Commission to adopt speculative position limits for "agricultural commodities" within 270 days of the enactment of Dodd-Frank. I believe the proposed agricultural commodity definition draws a good line between agricultural and non-agricultural commodities, though I am very interested to hear the public's views on this definition.

[FR Doc. 2010–26951 Filed 10–25–10; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[RM2011–1; Order No. 552]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of temporary waiver request.

SUMMARY: The Commission is establishing a docket to address a recent Postal Service request for approval of a temporary waiver of rules requiring it to provide periodic reports on service performance for certain market dominant postal services. The Postal Service's request reflects the expectation that a transition period likely would be needed before full compliance with new reporting rules could be accomplished. This notice informs the public about the Postal Service's interest in obtaining a temporary waiver and invites comments that will inform the Commission's decision on the request.

DATES: *Comments Due:* October 29, 2010.

Reply Comments Due: November 15, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for information on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2010, the Postal Service filed a request for temporary waivers from periodic reporting of service performance measurement for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465.[1]

Order No. 465 established a process for the Postal Service to achieve full compliance with all periodic service performance reporting requirements by the filing date of the FY 2011 Annual Compliance Report. Order No. 465 at 18–24. As part of the process, the Commission directed the Postal Service to seek temporary waivers where it cannot immediately comply with specific reporting requirements. As a condition of granting any waiver, the Commission directed the Postal Service to develop and present implementation plans addressing each reporting requirement for which the Postal Service cannot provide the required information. The "plans at a minimum should provide an explanation of why a reporting requirement cannot be complied with, the steps necessary to come into compliance, and a timeline of events necessary to achieve compliance. Interim milestones shall be included in the plans where applicable such that both the Postal Service and the Commission can evaluate progress being made." *Id.* at 23.

In the instant Request, the Postal Service seeks temporary waivers for First-Class Mail Flats at the district level, non-retail First-Class Mail Parcels, all categories of Standard Mail, Outside County Periodicals, non-retail Media Mail, Library Mail, Bound Printed Matter Parcels, and Stamp Fulfillment

[1] United States Postal Service Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement, October 1, 2010 (Request); *see also* Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 22–24 (Order No. 465).