

David A. Stawick, Secretary
Commodity Futures Trading Commission
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- **17 CFR Part 1**
- **RIN Number 3038-AD64**
- **Retail Commodity Transactions Under Commodity Exchange Act**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your Interpretation and Request for comments on: Retail Commodity Transactions Under Commodity Exchange Act.

You are now issuing an interpretation of the term “actual delivery” as set forth in section 2(c)(2)(D)(ii)(III)(aa) of the Commodity Exchange Act (CEA) pursuant to section 742(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The CFTC requests comment on whether this interpretation accurately construes the statutory language.

I support your interpretation of “actual delivery” as a determination based on a “functional approach” that will “examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction”.¹ I fully agree that this functional approach best accomplishes the statutory intent under the Dodd-Frank Act.

I agree that the relevant factors in the determination include: ownership, possession, title, and physical location of the commodity purchased or sold, both before and after execution of the agreement, contract, or transaction; the nature of the relationship between the buyer, seller, and possessor of the commodity purchased or sold; and the manner in which the purchase or sale is recorded and completed. I might add that other relevant factors include: transfer of control of the commodity purchased or sold; and transfer of the benefits and risks associated with the commodity purchased or sold.

¹ Quotes taken from Interpretation and Request for comments.

Please note that the comments expressed herein are solely my personal views

I also believe that whether “actual delivery” has occurred should depend on the commercial basis of the agreement, contract, or transaction. Ideally the actual agreement, contract, or transaction should have commercial substance in order to exclude wholly frivolous, fake, or even manipulative transactions.

Yours sincerely

C.R.B.

Chris Barnard