



American Cotton Shippers Association
88 Union Avenue, Suite 1204
Memphis, TN 38103
United States

P +1 901 525-2272
F +1 901 527-8303
www.acsa-cotton.org

Digital Commodities Consumer Protection Act of 2022

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Provided by:



Today, Senate Ag Committee Chair Debbie Stabenow (D-MI) and Ranking Member John Boozman (R-AR) introduced a new bill that would amend the Commodity Exchange Act (CEA) to provide the Commodity Futures Trading Commission (CFTC) with exclusive jurisdiction over digital asset commodity spot trading. Digital asset commodities, such as bitcoin and ether, make up the majority of market value in digital assets.

The bill treats digital asset spot market jurisdiction in a similar way to the [Digital Commodity Exchange Act](#) (DCEA) introduced by House Ag Ranking Member GT Thompson (R-PA) and Reps. Tom Emmer (R-MN), Ro Khanna (D-CA), Darren Soto (D-FL), Byron Donalds (R-FL), and Eric Swalwell (D-CA) and the [Responsible Financial Innovation Act](#) (RFIA) introduced by Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY).

The bill defines digital commodities as fungible digital property that can be transferred without an intermediary. This does not include a token representing interest in a physical commodity, securities, central bank digital currencies, or any token that the CFTC says is not a digital commodity.

One key difference between the Senate Ag bill and the DCEA is that it would create a mandatory registration regime at the CFTC for digital commodity platforms, whereas the DCEA is a voluntary regime that would permit companies to maintain state-level registration if they prefer.

Under the legislation, entities defined as digital commodity platforms would include trading facilities, custodians, brokers, and dealers. Entities that are registered with the CFTC would be required to meet CEA core principals, and associated persons of these new digital commodity brokers and dealers would also be required to register with the CFTC. Under this legislation, digital commodity trading facilities would have to establish and enforce compliance with CFTC rules, maintain that they are not readily susceptible to manipulation, monitor trading and trade processing, and ensure open access for market participants.

A digital commodity trading facility can self-certify that a digital commodity it seeks to list is not readily susceptible to manipulation and otherwise meets the CFTC core principles requirements for listing. Brokers and dealers cannot trade contracts that are not listed by trading facilities and all spot trading must be done on a trading facility. Note that spot trading does not include retail purchases of goods and services or transactions between individuals who are not in the business of trading (i.e. brokers and dealers).

Like the DCEA and RFIA, this bill would give the CFTC jurisdiction over digital commodities; however, this bill does not provide a safe harbor or other means for a digital asset to be deemed a commodity instead of a security. While a trading facility can self-certify any contract with an underlying token that it deems to meet the core principles and listing requirements (and thus affirmatively represent that a particular token is a digital commodity), the CFTC can review and deny such certification. Therefore, the bill does not provide a clear path to certainty about which tokens might be deemed a security or a commodity.

The bill instructs the CFTC to write rules for all aspects of the legislation, including rules for customer protection, margin or leveraged trading of spot digital commodities, trade reporting, conflicts of interest, lending activity (like the activity currently undertaken by Blockfi and Celsius), reporting of trades and other information, stablecoins and the like. The bill also requires a trading facility to gather information about the energy requirements to create and transfer any digital commodity traded on the trading facility. An entity can register as more than one of the new registration categories and an FCM can also register for these categories. The bill requires digital commodity brokers, dealers, and custodians to be a member of an SRO. The bill also has a provision to fund this new regulatory regime through user fees assessed on registrants.

The bill also requires the CFTC to complete a report studying the energy consumption and sources of energy used in connection with the creation and transfer of digital commodities and to publish and regularly update this information on its website.

Sen. Stabenow said that digital asset spot markets needed more transparency and accountability. She said, "That's why we are closing the regulatory gaps and requiring that these markets operate under straightforward rules that protect customers and keep our financial system safe."