

Chapter 181

Gulf Coast Ultra Low Sulfur Diesel (ULSD) Futures

181.01. SCOPE

The provisions of these rules shall apply to all Ultra Low Sulfur Diesel (ULSD) bought or sold for future delivery in the Gulf Coast on the Exchange.

181.02. DEFINITIONS

(A) The term "Free in Pipe" and "F.I.P." shall mean a delivery in which the Seller's Customer provides to Buyer's Customer the gasoline for which the Seller's Customer has full legal title at a Colonial Pipeline injection station which is free of all liens, fees, encumbrances, unpaid taxes, or other charges;

(B) The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively.

(C) The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer, respectively, of the physical product.

(D) The term "Notice Day" shall mean the business day after the day the Clearing House receives copies of the Notices of Intention to Deliver and Notices of Intention to Accept from the respective Clearing Members. The Notice Day shall be the second business day after the final day of trading in the expiring delivery month.

(E) The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price on the third business day prior to the twenty-fifth calendar day of the month preceding the delivery month. The final settlement price shall be determined in accordance with the procedures set forth in Rule 6.25.

181.03. CONTRACT UNIT

The contract unit to be delivered by the seller shall be 42,000 U.S. gallons (1,000 U.S. barrels). Except for a delivery made by book transfer or stock transfer (Rules 181.04(C)(2)(a), a loading tolerance of two percent (2%) above or below 1020 U.S. barrels or 980 U.S. barrels) the contract unit is permitted. The volume delivered shall be determined at 60Å° F using A.S.T.M. Standard D1250, Table 6 B.

181.04. GRADE AND QUALITY SPECIFICATIONS

The ULSD delivered shall meet the specifications then in effect at the time of delivery for the Colonial Pipeline Company (Atlanta, Georgia) fungible Grade 61, Ultra Low Sulfur Diesel, using the "Origin" requirements where applicable.

181.05. DELIVERY

(A) Delivery shall be made Free in Pipe (F.I.P.) into the Colonial Pipeline ratably in increments of 25 contracts during each cycle of the delivery month. All duties, entitlements, taxes, fees and other charges imposed prior to or as a result of delivery shall be paid by the seller. Delivery shall be made in accordance with applicable Federal, State and local laws. Buyer shall reimburse seller for any tax as had been or will be paid by the seller. At buyer's option, such delivery shall be made by any of the following methods:

(1) By delivery into Colonial Pipeline, in accordance with scheduling deadline dates imposed by Colonial Pipeline as posted on the Date Info bulletin on the www.Transport4.com website;

(2) By book transfer if both Buyer and Seller agree to such transfer;

(B) DELIVERY SIZES

All matches of buyers and sellers pursuant to Rule 181.11(B) ("Tenders") for deliveries of contracts in the delivery month shall be in increments of 25 contracts, as required by Colonial Pipeline, in accordance with the following:

- (1) where Buyer and Seller each have 150 or more total contracts in the delivery month, and the total number of contracts is divisible by 150 contracts, then delivery shall be ratable in each cycle during the month;
- (2) where Buyer and Seller each have 150 or more total contracts in the delivery month, but the total number of contracts is not divisible by 150 contracts, then delivery shall be ratable in each cycle during the month to the extent possible, and Buyer and Seller shall mutually agree on the cycle for delivery of the remaining lots of less than 150 contracts; if Buyer and Seller are not able to mutually agree on the timing of the remaining lots of less than 150 contracts, then these remaining lots shall be delivered in the third cycle of the delivery month;
- (3) where Seller has 150 or more total contracts, but Buyer has less than 150 contracts, then Seller shall designate the cycle during the month that delivery shall take place;
- (4) where Buyer has 150 or more total contracts, but Seller has less than 150 contracts, then Buyer shall designate the cycle during the month that delivery shall take place;
- (5) where Buyer and Seller each have less than 150 contracts in the delivery month, then delivery shall take place in the third cycle of the delivery month.
- (6) when Termination of Trading, as defined in Section 181.09, occurs after the origin scheduling deadline date imposed by Colonial Pipeline for the first cycle of the delivery month as posted on the Date Info bulletin on the www.Transport4.com website, the delivery volume for the first cycle will be added to the delivery volume for the second cycle for the delivery month.

(C) DELIVERY LOCATIONS

Delivery will be made F.I.P. into the Colonial Pipeline at the injections station selected by the Seller at Pasadena, Texas; Houston, Texas; Hebert, Texas; Port Arthur, Texas; Lake Charles, Louisiana; Krotz Springs, Louisiana; Baton Rouge, Louisiana; Collins, Mississippi; Moundville, Alabama; and any other origin injection location that Colonial Pipeline may add in the future. There shall be a price adjustment payable from Buyer to Seller for all deliveries at a Colonial Pipeline injection station other than at Pasadena or Houston, Texas, computed as per Section 181.11(G).

(D) TITLE TRANSFER

- (1) Product delivered shall comply with all Colonial Pipeline requirements and operating procedures. Delivery shall be made in accordance with all applicable Federal, State and local laws and regulations.
- (2) The term F.I.P. shall mean a delivery in which the Seller:
 - (a) provides the product for which the Seller has full legal title at a Colonial Pipeline injection station which is free of all liens, fees, encumbrances, unpaid taxes, or other charges;
 - (b) bears the risk of loss for and retains title to the product until the product enters the Colonial Pipeline at the Seller's designated Colonial Pipeline injection station.
- (E) All deliveries made under these rules shall be final and there shall be no appeal.

181.06. PETROLEUM COMMITTEE

The Board of Directors shall appoint a Petroleum Committee whose duty it shall be to advise the Board with respect to the futures contracts traded under these rules.

181.07. DELIVERY MONTHS

Trading shall be conducted in contract months providing for delivery in such months as shall be determined by the Board of Directors. Trading in the delivery periods shall commence on the day fixed by the Board of Directors.

181.08. PRICES AND FLUCTUATIONS

(A) Prices shall be quoted in dollars and cents per gallon. The minimum price fluctuation shall be \$.0001 per gallon. There shall be no maximum price fluctuation.

181.09. TERMINATION OF TRADING

Trading in the current delivery month shall cease on the third business day prior to the twenty-fifth calendar day of the month preceding the delivery month. If the twenty-fifth calendar day of the month is a non-business day, trading shall cease on the third business day prior to the last

business day preceding the twenty-fifth calendar day. The termination schedule will correspond to the same termination schedule as Light "Sweet" Crude Oil Futures as posted on the NYMEX website.

181.10. RESERVED

181.11. DELIVERY PROCEDURE

(A) Notice of Intention to Deliver and Notice of Intention to Accept

By 3:00 p.m. on the first business day after the last day of trading in the delivery month:

(1)(a) Each Clearing Member holding an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver. The Notice of Intention to Deliver shall be in the form prescribed by the Exchange and shall include:

- (i) Name of the Seller's Customer;
 - (ii) Number of contracts to be delivered;
 - (iii) NYMEX Tender Number;
 - (iv) any additional information as may be required by the Exchange;
- (b) Each Clearing Member shall submit one and only one Notice of Intention to Deliver for each customer.

(2)(a) Each Clearing Member holding an open long position shall file with the Exchange a properly completed and signed Notice of Intention to Accept. The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include:

- (i) Name of the Buyer's Customer;
 - (ii) Number of contracts to be delivered; and
 - (iii) Any additional information as may be required by the Exchange;
- (b) Each Clearing Member shall submit one and only one Notice of Intention to Accept for each customer.

(B) Notice Day

(1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.

(2) The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members by 5:00 p.m. one business day after the final day of trading.

(3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day." Tender Allocation Notices are not transferable.

(C) Buyer's Initial Delivery Instructions

(1) For All NYMEX Tenders:

As soon as possible after receipt from the Exchange of a Tender Allocation Notice but not later than 10:30 a.m. on the third business day after the last trading day, the Buyer shall deliver to the Seller identified in such Tender Allocation Notice, with copy to the Exchange, properly completed and signed Initial Delivery Instructions, in the form prescribed by the Exchange, which shall include the following information:

- (a) Name of Seller;
 - (b) NYMEX Tender Number;
 - (c) Number of Contracts;
 - (d) Such additional information as may be required by the Exchange;
- (2) Where Buyer has 150 or more total contracts, but Seller has less than 150 contracts, then Buyer shall designate in the Buyer's Initial Delivery Instructions the cycle during the month that delivery shall take place.

(D) Seller's Delivery Instructions

Seller shall advise Buyer of the number of contracts for injection into Colonial Pipeline during the delivery month in the Seller's Delivery Instruction, with a copy to the Exchange, no later than 5:00 p.m. two business days following receipt of the Buyer's Initial Delivery Instructions. Where Seller has 150 or more total contracts, but

Buyer has less than 150 contracts, then Seller shall designate in the Seller's Delivery Instructions the cycle during the month that delivery shall take place.

(E) Amendment of Initial Delivery Instructions or Delivery Instructions

Buyer's Initial Delivery Instructions and Seller's™s Delivery Instructions may not be amended after they have been given, except that:

(1) Upon mutual consent of the parties and upon written notice to the Exchange, on the form and in the manner provided by the Exchange, the parties may change the Colonial Pipeline cycles.

(F) Settlement Price

The settlement price on the final day of trading shall be the basis of delivery.

(G) Transportation and Line Loss Adjustment

There shall be a price adjustment, payable from Buyer to Seller for all deliveries at a Colonial Pipeline injection station other than at Pasadena or Houston, Texas, computed as the difference between the Colonial Pipeline tariff (described in and subject to the Provisions of FERC 38 and 39, supplements thereto, or reissues thereof, issued by the Colonial Pipeline Company) for:

- (1) transportation from Pasadena and Houston, Texas to Greensboro, North Carolina, and
- (2) transportation from Seller's™s chosen injection station and the same point, Greensboro, North Carolina.

(H) Payment and Delivery Margins

(1) Definitions

- (a) "Long" shall mean the customer of a long clearing member ("Buyer") or the long clearing member if such clearing member is acting for its own account;
- (b) "Short" shall mean the customer of a short clearing member ("Seller") or the short clearing member if such member is action for its own account;
- (c) "Payment" shall include the settlement price times the number of contracts times 42,000, and any transportation adjustment pursuant to Rule 181.11(E).
- (d) "Payment Date" shall mean the second business day after the Long's receipt of proper Colonial Pipeline ticket and supporting documentation from the Short, provided that such invoice and documentation is supplied to the Long by no later than 12:00 noon. Ticket and documentation supplied to Buyer after 12:00 noon on any Exchange business day, shall be considered received on the following Exchange business day.
- (e) The Buyer shall pay the Seller at the office of the seller by certified check by 12:00 noon on the payment date.
- (f) The Buyer shall obtain from the Buyer's Customer, no later than 10:00 a.m. one business day prior to the commencement of the delivery set for in the Buyer's Delivery Instructions margin equal to the full value of the product to be delivered. Full value of the product to be delivered for purposes of delivery margin shall be equal to Payment as defined in Rule 181.11(F)(1)(c) of this chapter.
- (g) The Seller shall obtain from the Seller's Customer margin in an amount fixed, from time to time, by the Board.
- (h) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins which shall not be greater than the margins charged to the Longs and Shorts, shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.
- (i) By 4:30 p.m. on the Payment Date, the Short, if any, shall advise the Seller of receipt of payment. The Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange. Upon receipt of such notice the delivery shall be complete.
- (j) Any payment made on Payment Date shall be based on volume actually delivered determined at sixty degrees (60) Fahrenheit using ASTM Standard D1250 Table 6B. If quantitative results are unavailable prior to the time established in the Rules for payment of the product, a pro-forma payment based on 1,000 U.S. barrels per contract shall be made. Payment adjusts based on the actual quantity transferred shall be completed by 12:00 noon on the fifth business day after initial payment.

(I) Delivery Day

The day the Buyer receives the product shall be referred to as the Delivery Day.

[back to top](#)

181.12. DELIVERY PERIOD

(A) Delivery shall be ratable in increments of 25 contracts and shall take place in each Colonial Pipeline cycle, in accordance with the operating procedures of Colonial Pipeline.

(B) The following schedule shall apply for Colonial Pipeline deliveries:

Contract	Deliverable Colonial Cycles
January	1 through 6
February	7 through 12
March	13 through 18
April	19 through 24
May	25 through 30
June	31 through 36
July	37 through 42
August	43 through 48
September	49 through 54
October	55 through 60
November	61 through 66
December	67 through 72

(C) In the event that a Colonial Pipeline cycle is cancelled, then the delivery obligation in the affected cycle or cycles will be applied to the subsequent cycle immediately following the cancelled cycle or cycles.

181.13. VALIDITY OF DOCUMENTS

The Exchange makes no representation respecting the authenticity, validity or accuracy of any inspection certificate, Notice of Intention to Deliver, Notice of Intention to Accept, bill of lading, check or of any document or instrument delivered pursuant to these rules.

181.14. INSPECTION

(A) Inspection of product shall be made in accordance with Colonial Pipeline practices.

(B) If the product meets quality specifications, the Buyer and Seller shall share equally the cost of the inspection. If the product does not meet quality specifications, the Seller shall pay the cost of the inspection. The cost of verifying the quantity of product transferred shall be shared equally by Buyer and Seller.

(C) If the product does not meet quantity or quality specifications, the Buyer shall deliver to the Exchange, not later than 11:00 a.m. on the next business day, a copy of the report of the inspection company. Within one business day of receipt of the report by the Exchange a Panel of the Petroleum Delivery Committee shall meet to review the delivery if necessary, pursuant to the procedures set forth in Rule 181.17(C).

In addition, the Seller shall require its customer to post additional margin equal to 100% of the total contract value of all contracts listed in the Delivery Instructions. Such additional margin shall be posted by the Seller with the Exchange not later than 11:00 a.m. on the next business day.

(D) The inspection company shall not be affiliated with the parties to delivery. The inspection company must be capable of performing the quantity or quality tests requested by the Buyer or Seller in such a manner so as to assure that the product delivered conforms with these Rules. The inspection company shall determine the quantity or quality of product transferred by using the prevailing practices in effect at the time of delivery of the Buyer's facility at which product is received.

181.15. EXCHANGE OF FUTURES FOR PHYSICAL (EFP) AND EXCHANGE OF FUTURES FOR SWAPS (EFS)

(A) An exchange of futures for, or in connection with, the product (EFP) or exchange of futures for swaps (EFS) consist of two discrete, but related, transactions; a physical commodity or swap transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and Seller's Customer of the futures must be the Seller's Customer and Buyer's Customer of a quantity of the physical product or swaps agreement covered by this Section (or any derivative, by-product or related product). The quantity of physical product or swap agreement must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP or EFS must take place during the hours of trading for the futures contract. An EFP or EFS is permitted at any time before 2:00 PM of the first business day following termination of trading in an expired futures contract, provided, however, that an EFP or EFS which establishes a futures position for both the Buyer's Customer and Seller's Customer shall not be permitted on the first business day following the expired contract.

(C) Any EFP or EFS shall be governed by the provisions of this Rule and by the provisions of Rules 538 and 538.A respectively.

(D) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to the EFP or EFS, including, without limitation, evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their customers and made available by the Clearing Members for examination by the Exchange upon request.

(E) A report of each EFP or EFS transaction shall be given, and notice thereof shall be posted on the floor of the Exchange, on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFP or EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP or EFS transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.

181.16. ALTERNATIVE DELIVERY PROCEDURE

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or Seller's Customer with which it has been matched by the Clearing House under Rule 181.05(B) to make and take delivery under terms or conditions which differ from the terms and conditions described by this section. In such a case, Clearing Members shall execute an Alternate Notice of Intention to Deliver on the form prescribed by the Clearing House and shall deliver a completed executed copy of such Notice to the Clearing House. The delivery of an executed Alternative Notice of Intention to Deliver to the Clearing House shall release the Clearing Members and the Clearing House from their respective obligations under the Clearing House contracts.

In executing such Notice, Clearing Members shall indemnify the Clearing House against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or

performance of such contracts or such agreement, or any breach thereof or default thereunder. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Clearing House will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

181.17. FORCE MAJEURE LATE PERFORMANCE AND FAILURE TO PERFORM

(A) DEFINITION. As used in this Rule 181.17 the following terms, as well as variations thereof, shall have the meanings described below.

(1) "Late Performance" means the failure of a buyer or a seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules. No Late Performance may exceed the lesser of five continuous business days or eight consecutive calendar days.

(2) "Failure to Perform" means the failure of a buyer or a seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" means the amount equal to the settlement price on the last day of trading in the contract times 42,000 times the number of contracts to be delivered.

(4) (a) "Party" means a buyer or seller.

(b) "Other Party" means the corresponding buyer when the seller is late in performance or has failed to perform and the corresponding seller when the buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" means the twenty-four hour period commencing twelve hours after a buyer or a seller was to have performed, provided however, with respect to the obligations of buyers and sellers to submit documents to the Exchange pursuant to the Rules in this chapter, "day of late performance" means the twenty-four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent day of Late Performance shall commence twenty-four hours after the beginning of the prior day of Late Performance. When a party is late in performance, the day when the act is performed shall be a day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such buyer or seller, and which prevents the buyer or seller from making or taking delivery of product when and as provided for in these Rules.

(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY

(1) The parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a party has failed to perform.

(2) A party which has failed to perform its obligations may no longer perform such obligations; provided, however, that a buyer which has failed to make a payment shall make such payment.

(C) PETROLEUM DELIVERY COMMITTEE

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Petroleum Delivery Committee as set forth below. The Chairman of the Petroleum Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) when the Chairman is advised by the President or any person designated by the President that it appears that the performance of a party to the delivery is late;

(b) upon the written request of both the buyer and the seller;

(c) when the President or any person designated by the President requests such appointment; or

(d) when either party of the delivery notifies the Exchange that circumstances exist constituting force majeure.

(2) The Chairman shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a party has been found to have failed to perform such delivery. Exchange Counsel shall serve as advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists, whether a buyer or seller is late in performing or has failed to perform its obligations as provided in the Rules, and advise the Compliance Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible.

(4) Absent a declaration of a force majeure, the Panel may, with the consent of both the buyer and the seller, take any one or combination of the following actions as it deems suitable:

(a) grant an extension of time not to exceed five days from the date of the scheduled delivery, provided, however, that each delivery shall be completed not later than the fifth business day of the calendar month following the delivery month or the last day of the period provided for late performance of the contract, whichever is earlier;

(b) change the delivery site to a site within New York Harbor, provided that the seller has product or will have product at such site in time for delivery; or,

(c) modify the method of taking delivery.

Nothing in this Subsection shall preclude a party or the Exchange from seeking the remedies set forth in Sections (D) and (E) of this Rule.

(5) Upon a finding of force majeure, the Panel may take any one or combination of the following actions as it deems suitable:

a) order an extension of time not to exceed five days from the date of the scheduled delivery, provided, however, that each delivery shall be completed not later than the fifth business day of the calendar month following the delivery month;

b) change the delivery site to a site within New York Harbor, provided that the seller has product or will have product at such site in time for delivery;

c) modify the method of taking delivery if such method is acceptable to the buyer;

d) allocate deliveries; or,

e) refer to Board of Directors for emergency action as provided in Article 7.

(6) The Panel may appoint an inspection company as provided in Rule 181.09 (A)(3), provided, however, that the inspection company appointed by the Panel shall not be either of the two inspection companies listed in the Notice of Intention to Accept.

(D) EXCHANGE ACTION

(1) Whenever a buyer or a seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment in accordance with subsections (2) and (3) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) Either one or both parties shall be assessed a penalty to be paid to the Exchange for each day of Late Performance as follows:

- first day of late performance – 3% of contract value, but not less than \$840 per contract;
- second day of late performance – 3% of contract value, but not less than \$840 per contract;
- third day of late performance – 3% of contract value, but not less than \$840 per contract;
- fourth day of late performance – 3% of contract value, but not less than \$840 per contract;
- fifth day of late performance – 3% of contract value, but not less than \$840 per contract;
- sixth day of late performance – 3% of contract value, but not less than \$840 per contract;
- seventh day of late performance – 4% of contract value, but not less than \$1,200 per contract;
- eighth day of late performance – 5% of contract value, but not less than \$1,200 per contract;

Such charges shall be cumulative for each day of late performance.

(3) When a party has failed to perform, the Compliance Department shall issue a Notice of Assessment assessing penalties of ten percent of the contract value, but not less than \$3,000 per contract, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(4)(a) A party may appeal a Notice of Assessment by filing a Notice of Appeal with the Hearing Registrar of the Exchange and by serving a copy of the same on the Exchange's Compliance Counsel, within two business days of receipt of the Notice of Assessment from the Compliance Department. The party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the Hearing Registrar and a copy of the same served upon the Exchange's Compliance Counsel.

(b) The Compliance Department may file with the Appellant and the Hearing Register an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the party to file a Notice of Appeal or a Memorandum of Appeal with the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Bylaw 106. In the event a party fails to appeal, or waives the opportunity to appeal a Notice of Assessment the Assessment and findings of the Petroleum Delivery Committee shall constitute a final disciplinary action of the Exchange.

(5) Within ten (10) days after receipt of the Compliance Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied on by the Compliance Department or are otherwise relevant to the matter.

(6) In the event of an appeal by a party, the Chairman of the Exchange, or his designee, shall appoint an Assessment Appeal Panel to hear and decide the appeal. The Panel shall be composed of three members of the Exchange, at least one of whom shall be a member of the Board of Directors. No member of the Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Chairman any such interest which might preclude such Panel member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Panel.

(7) The procedures for the hearing of the appeal before the Assessment Appeal Panel shall be as

follows:

- (a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the Compliance Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.
- (b) At such hearing: The Appellant may appear personally and may be represented by counsel or other representative of his choice at the appeal.
- (c) The Compliance Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the Compliance Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.
- (d) The Appellant shall be entitled to rebut the Compliance Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.
- (e) The Compliance Department and the Appellant shall be entitled to cross-examine any witness called by the opposing party at the hearing.
- (f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the stenographic transcript of the appeal, any documentary evidence or other material presented to and accepted by the Panel shall constitute the record of the hearing. The decision of the Panel shall be based upon the record of the hearing.
- (g) The Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.
- (h) The Assessment Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefor.
- (i) The decision of the Assessment Appeal Panel shall be a final decision of the Exchange, and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective day of the decision or as specified. The effective day shall be fifteen (15) days after a copy of the written decision has been delivered to the appellant and to the Commission.
- (8) The Assessment Appeal Panel shall consider, and make recommendations to the Board concerning acceptance or rejection of, any offer of settlement submitted by Appellant. In the case of an offer of settlement, acceptance by the Board shall constitute the final disciplinary action of the Exchange.

(E) ARBITRATION PROCEDURE

- (1) Any claim for damages arising between a buyer and a seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.
- (2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange within three business days of the occurrence upon which the claim is based or the decision of the Petroleum Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a party's rights to arbitrate such delivery dispute under the special or Regular Arbitration Rules.
- (3) The Arbitration will be governed by the Exchange Arbitration Rules except that the Chairman of the Exchange or his designee shall appoint an Arbitration Panel composed of three Members of the Exchange, at least one of whom shall be a Member of the Board of Directors.