

Chapter 260

Central Appalachian Coal Futures Contract

260. TERMS AND CONDITIONS

The provisions of these rules shall apply to all Central Appalachian coal bought and sold for future delivery on the Exchange

260.01. SCOPE

The provisions of these rules shall apply to all Central Appalachian coal bought and sold for future delivery on the Exchange

260.02. DEFINITIONS

For the purpose of this Chapter, the terms set forth below shall mean:

(A) Coal shall mean crushed, bituminous coal, substantially free of any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specifications of this contract delivered in accordance with the rules of this contract, for which the only cause for non-delivery or non-receipt of such coal shall be the circumstances set forth in Rule 260.21.

(B) The term Btu (British thermal unit) shall mean the amount of heat required to raise the temperature of one (1) pound of avoirdupois pure water from fifty-eight and five tenths degrees (58.5) Fahrenheit to fifty-nine and five tenths degrees (59.5) Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute. MMBtu shall mean one million (1,000,000) Btu.

(C) As-received shall mean that analysis data is calculated to the moisture condition of the sample as it arrived at the laboratory, and before any processing or conditioning. If the sample has been maintained in a sealed state so that there has been no gain or loss, the as-received basis is equivalent to the moisture basis as sampled.

(D) Analysis tolerance is the maximum variation in the delivered quality of coal pursuant to Rules 260.06.

(E) A.S.T.M. refers to the American Society for Testing and Materials.

(F) All times referred to in these rules shall be New York time unless otherwise specified.

260.03. COAL ADVISORY COMMITTEE

The Board of Directors shall appoint a Coal Advisory Committee which shall advise the Board with respect to the futures contracts traded under these rules.

260.04. REFERENCE TO BUYER AND SELLER

(A) Except with respect to Rules 260.19 and 260.20, the term "Seller" and "Buyer" shall mean the short Clearing Member, and the long Clearing Member respectively.

(B) In Rules 260.19 and 260.20, the terms "seller" and "buyer" shall mean the seller and buyer of the coal.

260.05. CONTRACT UNIT

The contract unit shall be 1,550 tons of coal per contract. A loading tolerance of sixty (60) tons or two percent (2%), whichever is greater, over the total number of contracts delivered per scheduled delivery pursuant to 260.13(E)(2) is permitted.

260.06. QUALITY SPECIFICATION

(A) Coal delivered under this contract shall meet the following quality specifications on an as-received basis, (as-received does not refer to subsections (6) and (7)):

(1) Btu: Minimum 12,000 btu/lb., gross calorific value, with an analysis tolerance of 250 btu/lb below (A.S.T.M. D1989)

(2) Ash: Maximum 13.50%, with no analysis tolerance (A.S.T.M. D3174 or D5142)

(3) Sulfur: Maximum 1.00%, with an analysis tolerance of 0.050% above (A.S.T.M. D4239)

(4) Moisture: Maximum 10.00%, with no analysis tolerance (A.S.T.M. D3302 or D5142)

(5) Volatile Matter: Minimum 30.00%, with no analysis tolerance (A.S.T.M. D5142 or D3175)

(6) Grindability: Minimum 41 Hardgrove Index (HGI) with three-point analysis tolerance below. (A.S.T.M. D409)

(7) Sizing: Three inches topsize, nominal, with maximum fifty five per cent passing one quarter inch square wire cloth sieve to be determined basis the primary cutter of the mechanical sampling system. (A.S.T.M. D4749)

(B) Testing: The tests for Grindability and Sizing are at the buyer's option, with the buyer required to:

(1) Direct its inspection company to collect whatever additional samples are necessary for these tests to be performed according to the specified A.S.T.M. guidelines. The buyer will bear any costs for additional sample collection.

(2) Notify the seller whether the test is to be conducted pursuant to Rule 260.13(D)(1)(b).

260.07. DELIVERY

(A) Location of Delivery: Delivery Shall be made F.O.B. buyer's barge at seller's delivery facility on the Ohio River between Mileposts 306 and 317 or on the Big Sandy River with all duties, entitlements, taxes, fees and other charges imposed prior to delivery on or in respect to the product paid by the seller. Delivery shall be made in accordance with applicable Federal, State and local laws.

(B) Timing of Delivery: The seller may not schedule delivery of coal earlier than the first calendar day and not later than a date such that there are a minimum of seven (7) calendar days remaining in the delivery month. The seller may not complete delivery of coal later than the last calendar day of the delivery month.

(C) Big Sandy River Delivery: The seller who delivers to a terminal on the Big Sandy River shall receive a \$0.10 per ton discount below the last settlement price.

(D) Mechanical Samplers at Delivery Facility: The seller's delivery facility must have a mechanical sampler in working condition that is bias-tested in accord with A.S.T.M. D6518.

(E) All deliveries made under these rules shall be final and there shall be no appeal.

(F) The seller shall pay all applicable barge demurrage charges if the seller is unable to deliver the coal at a rate sufficient to meet normal requirements for loading a barge. The buyer shall pay all

other demurrage charges.

(G) At buyer's option, such delivery shall be made by book-out if the seller agrees to such transfer.

260.08 DELIVERY MONTHS

Trading shall be conducted in contracts providing for delivery in such months as shall be determined by the Board of Directors. Trading in a delivery month shall commence on the day fixed by resolution of the Board of Directors.

230.09. PRICES AND FLUCTUATION

(A) Prices shall be quoted in dollars and cents per ton. The minimum price fluctuation shall be \$0.01 per ton.

230.10. SPECIAL PRICE FLUCTUATION LIMITS

There are no price fluctuation limits for this contract.

260.11. TERMINATION OF TRADING

Trading in any delivery month shall cease at the close of business four business days prior to the first calendar day of the delivery month.

260.12. RESERVED

260.13. DELIVERY PROCEDURES

A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS (BUYERS)

(1) NOTICE OF INTENTION TO ACCEPT

A Buyer having an open long position shall give the Clearing House a Notice of Intention to Accept delivery by 11:00 a.m. on the first business day after the final day of trading. The Notice of Intention to Accept shall be in the form prescribed by the Exchange, which shall: be properly completed and signed, and indicate the name(s) of the Clearing Member's customer(s), the number of contracts to be accepted and such other information as required by the Exchange.

(B) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS (SELLERS)

(1) NOTICE OF INTENTION TO DELIVER

A Seller having an open short position shall give the Clearing House a Notice of Intention to Deliver by 11:00 a.m. on the first business day after the final day of trading. The Notice of Intention to Deliver shall be in the form prescribed by the Exchange, and shall: be properly completed and signed, and indicate the name(s) of the Clearing Member's customer(s), the number of contracts to be delivered and such other information as may be required by the Exchange.

(C) 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 3:00 p.m. on the first 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."

(4) The Clearing Members that receive Tender Allocation Notices from the Clearing House shall have agreed to accept or deliver coal, as the case may be. Tender Allocation Notices are not transferable.

(D) RESPONSIBILITIES OF CLEARING MEMBERS THAT HAVE RECEIVED TENDER ALLOCATION NOTICES TO ACCEPT DELIVERY OF COAL (BUYERS)

(1) NOTICE OF BUYER'S INSPECTION COMPANY

As soon as possible after receipt from the Exchange of a Tender Allocation Notice, but not later than 11:00 a.m. on the second business day after the final day of trading, the buyer shall deliver to the seller identified in such Tender Allocation Notice, with a copy to the Exchange, a properly completed and signed Notice of Buyer's Inspection Company, in the form prescribed by the Exchange, which shall include the following information:

- (a) Name of the designated inspection company;
- (b) The optional quality inspections that the buyer may select pursuant to Rule 260.06 (B); and,
- (c) Such additional information as may be required by the Exchange.

(2) NOTICE OF BARGE COMPANY

As soon as possible after receipt from the Exchange of a Tender Allocation Notice, but not later than 11:00 a.m. on the second business day after the final day of trading, the buyer shall deliver to the seller identified in such Tender Allocation Notice, with a copy to the Exchange, a properly completed and signed Notice of Barge Company, in the form prescribed by the Exchange, which shall identify the barge company that the buyer intends to use to accept delivery of coal as prescribed under the terms of this contract.

(E) RESPONSIBILITIES OF CLEARING MEMBERS THAT HAVE RECEIVED TENDER ALLOCATION NOTICES TO DELIVER COAL (SELLERS)

(1) NOTICES OF SELLER'S INSPECTION COMPANY

As soon as possible after receipt from the Exchange of a Tender Allocation Notice, but not later than 11:00 a.m. on the second business day after the final day of trading, the seller shall deliver to the buyer identified in such Tender Allocation Notice, with a copy to the Exchange, a properly completed and signed Notice of Seller's Inspection Company, in the form prescribed by the Exchange, which shall include the following information:

- (a) Name of the designated inspection company; and
- (b) Such additional information as may be required by the Exchange.

(2) NOTICE OF TIMING AND TERMINAL

As soon as possible after receipt from the Exchange of a Tender Allocation Notice, but not later than 11:00 a.m. on the second business day after the final day of trading, the seller shall deliver to the buyer identified in such Tender Allocation Notice, with a copy to the Exchange, a properly completed and signed Notice of Timing and Terminal, in the form prescribed by the Exchange, which shall include the following information:

(a) When the seller intends to schedule delivery of coal as prescribed under the terms of this contract. The seller may not schedule delivery of coal earlier than three calendar days after the filing of Notice of Timing and Terminal without written consent of the buyer; and

(b) Name of eligible delivery terminal at which the seller intends to deliver coal as prescribed under the terms of this contract.

(3) NOTICE OF CONFIRMATION OF DELIVERY SCHEDULE

The seller shall, immediately upon receipt from its designated delivery terminal that its schedule for delivery of coal has been confirmed, deliver to the buyer identified in the Tender Allocation Notice, with a copy to the Exchange, a properly completed and signed Notice of Confirmation of Delivery Schedule, in the form prescribed by the Exchange, which shall identify the scheduled date for delivery of coal at the terminal and the number of contracts to be delivered.

(F) SETTLEMENT PRICE

The settlement price on the final day of trading shall be the basis for delivery. To determine the delivery price to be utilized in calculating the seller's invoice: multiply the settlement price on the final day of trading for the delivery month, (which shall include any adjustment for delivery location as prescribed in Rule 260.07(C)), by the ratio of the heat content of the delivered coal to the contract standard (See Rules 260.06, 260.13 and 260.15).

(G) DELIVERY DAY

(1) Delivery will commence when coal is loaded into the buyer's barge; at such time title shall pass to the buyer when the coal enters the buyer's barge and buyer shall bear the risk of loss.

(2) The day the buyer receives the coal shall be referred to as the Delivery Day.

(H) TIMING OF INSPECTION

(1) The buyer and seller shall deliver to the seller and buyer copies of the reports of the inspectors on the quality and quantity of coal delivered and inspected pursuant to the terms of this contract no later than 36 hours from completion of barge loading.

(2) If an inspection result for either the buyer or seller is not delivered in accordance with (H)(1) above, such inspection results will not be used to determine quality and quantity of coal delivered as specified in (1) below. In the event that a buyer or seller does not receive the inspection results from its counterparty in accordance with this Rule, such buyer or seller shall immediately notify the Exchange in writing.

(3) Failure to deliver inspection results in accordance with (H)(1) above will be considered Late Performance in accordance with Rule 260.21.

(I) FINAL INSPECTION RESULTS

(1) The results for each of the quality and quantity tests performed by the buyer's and seller's respective inspection company will be averaged. The average of the results shall determine whether the coal delivered meets the required quality and quantity specifications, and shall be the basis for payment.

(2) If the buyer and seller choose the same inspector, only one inspection will be taken and shall serve as the basis for determining coal quality, quantity and heat content. In such instance the buyer and seller shall share equally the cost of such inspection.

(J) REJECTION

(1) If the coal tendered for delivery does not meet the quality and quantity specifications of Rules

260.05 and 260.06, the buyer may reject such non-conforming coal with notification to the Seller and to the Exchange in the form prescribed by the Exchange by 12:00 noon of the first business day following receipt of the inspection reports for the coal. The buyer shall return the coal to the seller at seller's cost. The seller shall be required to replace the rejected coal no later than the last calendar day of the delivery month.

(2) The Seller shall require its customer to post additional margin equal to 25% of the total contract value of all contracts listed in the Notice of Confirmation of Delivery Schedule. Such additional margin shall be posted by the Seller with the Exchange on the next business day.

260.14. AMENDMENTS TO DELIVERY

(A) The buyer may unilaterally amend, only prior to the commencement of delivery as defined in this contract and upon prior written notification to the seller, the following provisions of this contract:

- (1) The inspection company as identified in the Buyer's Notice of Inspection Company; and
- (2) The optional quality inspections identified in the Buyer's Notice of Inspection Company; and
- (3) The barge company as identified in the Notice of Barge Company.

(B) Upon written notification to the buyer, the seller may unilaterally amend the contract terms specified in subparagraphs (1) and (2) below prior to the filing of the Confirmation of Delivery Schedule as defined in this contract, and the contract term specified in subparagraph (3) below prior to the commencement of delivery as defined in this contract.

- (1) The eligible delivery terminal as identified in the Notice of Timing and Terminal; and
- (2) The timing of delivery as identified in the Notice of Timing and Terminal.
- (3) The inspection company as identified in the Seller's Notice of Inspection Company.

(C) After the Confirmation of Delivery Schedule has been filed, the Seller may only amend delivery terminal and timing of delivery upon mutual written agreement of the buyer.

260.15. INSPECTION SAMPLING AND WEIGHING

(A) Inspection Companies: The buyer and the seller shall each select and bear the cost of its own inspection company to:

- (1) jointly supervise the sampling procedures which are to be done with the delivery facility's mechanical sampler as the buyer's barge is being loaded according to A.S.T.M. guideline D 2234, or a mutually agreed upon method, or, in the case of a failure of the mechanical sampler during loading, a method selected by the buyer;
- (2) individually conduct weighing procedures;
- (3) individually run their own tests on the samples in accordance with Rule 260.06.

(B) Weight: Weighing shall be done by draft survey or if the delivery facility has a certified belt scale for weighing coal loaded into the barge, the buyer and seller shall use the weight determined by that scale in lieu of draft weighing.

(C) The inspection companies shall not be affiliated with the parties to the delivery. The inspection companies must be capable of performing the quantity or quality tests requested by the buyer and the seller in such a manner so as to assure that the coal delivered conforms with these rules.

260.16. 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.

260.17. TRADING IN SPREADS

(A) A spread shall consist of the simultaneous purchase of one future month and sale of another future month at a stated price difference. The purchase and the sale shall be for one account. Floor brokers executing spreads shall properly record them in writing so as to permit the identification of the transactions and the parties thereto. All spread trading must be made by open outcry. All spread trading must be in line with current spread differentials. (i) If both of the respective months have traded in a price range during the day, and the differential is such that the price for both months may be within such ranges, then the price for both months must be within such range for each of the month; (ii) if both months have had a price range and the differential for the spread fall outside such ranges, then the prices for the respective months shall be fixed within the range of one month and within the permissible price limits of the other month; (iii), if one month involved in the transaction has had no price range for the day, the prices for the respective months shall be fixed within the range of the month that has had a price range for the day and within the permissible daily price limits of the other month; (iv) if neither month has had a price range, prices shall be fixed within the permissible daily price limits of the months involved in the transaction so long as prices so fixed are consistent with the differential and the trading range in the nearest active month. The seller in each contract must report on a pit card the spread price and differential to the Floor Supervisor. Spread transactions shall be recorded on special spread sales panels. The ticker shall record and publish a spread differential only. Spread transactions shall not set off stops in any contract except for spread stops.

260.18. DELIVERY MARGINS AND PAYMENT

(A) No later than the business day following the day that the buyer receives from the seller a Notice of Confirmation of Delivery Schedule, the buyer shall require its customer to post with it the full purchase price of all coal to be purchased under all contracts covered by such Notice.

(B) The buyer shall pay the seller at the office of the seller by certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 noon of the business day following the receipt of inspection reports pursuant to Rule 260.13(H) and (I). The amount of payment shall be equal to the tons as determined according to 260.13 and 260.15 multiplied by the delivery price as specified in 260.1 (F).

(C) The seller, upon receipt of payment, shall give the buyer all appropriate documents necessary to transfer ownership of the coal to the buyer, and should notify the Exchange in the form prescribed by the Exchange.

260.19. EXCHANGE OF FUTURES, OR IN CONNECTION with, PRODUCT

(A) An exchange of futures for or in connection with the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be the seller and buyer of the quantity of the physical product covered by this Section (or any derivative, by-product or related product). The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.

(B) Except as provided below, an EFP must take place during the hours of futures trading for the coal futures contract. An EFP is permitted in the expiring futures contract at any time before 10:00 a.m. on the first business day following termination of trading in a futures contract, provided, however, that an EFP which establishes a futures position for both the buyer and the seller shall not be permitted during the first business day following termination of trading in a futures contract.

(C) Any Exchange of Futures for, or in Connection with, Product (EFP) shall be governed by the provisions of Rule 538.

(D) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EFP transaction. All documentary evidence relating to the exchange, including, without limitation, evidence as to change of ownership of the cash commodity or a commitment therefore shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange upon request.

(E) A report of such EFP 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 transactions shall be cleared through the exchange in accordance with normal procedures, shall be clearly identified as EFP transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.

260.19A Exchange of Futures for, or in Connection with, Transactions

(A) An exchange of futures for, or in connection with, a swap (EFS) consists of two discrete, but related, transactions; a swap transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be the seller and buyer of a quantity of the swap. The swap component shall involve the commodity underlying the futures contract (or any derivative, by-product or related product). The swap component of an EFS transaction must comply with the applicable CFTC swap regulatory requirements.

(B) Except as provided below, an EFS must take place during the hours of futures trading for the Central Appalachian Coal futures contract. An EFS is permitted at any time before 10:00 a.m. of the first business day following termination of trading in an expired futures contract, provided, however, that an EFS which establishes a futures position for both the buyer and the seller shall not be permitted on the first business day following the expired contract.

(C) Any Exchange of Futures for, or in Connection with, Swap (EFS) shall be governed by the provisions of Rule 538.A.

(D) Each buyer and seller must satisfy the Exchange, at its request, that the transaction is a legitimate EFS transaction. All documentary evidence relating to the EFS, including a master swap agreement and any supplements thereto, shall be obtained by the Clearing Members from the buyer or seller and made available by the Clearing Members for examination by the Exchange upon request. Additionally, if the buyer or seller is a Member/Member Firm, the Exchange may obtain the information directly from such persons.

260.20. ALTERNATIVE DELIVERY PROCEDURE

A seller or buyer may agree with the buyer or seller with which it has been matched by the Exchange under Rule 260.13 (C) (1) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such case, Clearing Members shall execute an Alternative Delivery Notice on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Delivery Notice to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange 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 Delivery Notice, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

260.21. FORCE MAJEURE, LATE PERFORMANCE AND FAILURE TO PERFORM

(A) DEFINITIONS. As used in this Rule 260.21 the following terms, as well as variations thereof, shall have the meanings described below.

(1) "Force Majeure" shall mean any circumstance (including but not limited to a strike, lockout,

national emergency, governmental action, or act of God) which is beyond the control of the buyer or seller, and which prevents the buyer or seller from making or taking delivery of coal or effecting payment when and as provided for in this Chapter and which by exercise of due diligence the affected Party could not have been reasonably expected to avoid and which by exercise of due diligence said Party is unable to overcome.

(2) "Late Performance" shall mean the failure of a buyer to make payment on the payment date as defined in Rule 260.18(A) or a buyer or a seller to deliver inspection reports in accordance with Rule 260.13(I).

(3) "Failure to Perform" shall mean the failure of the seller to make or the buyer to receive delivery of coal in accordance with the requirements set forth in these Rules.

(4) "Contract Value" as used in this Rule 260.21 means the amount equal to the settlement price on the last day of trading in a futures contract times 1,550 (the number of tons per contract) times the number of contracts to be delivered.

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

(6) "Other party" means the corresponding buyer when a seller has failed to perform and the corresponding seller when a buyer has failed to perform.

(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.

(3) When a buyer is late in performance, the buyer shall be liable to the seller for any damages awarded pursuant to Section (E) of this Rule and to the Exchange for any assessments made pursuant to Section (D) of this Rule.

(4) When a buyer or a seller has failed to perform, the buyer or the seller, respectively, through which the delivery is effected shall be liable to the other party for any damages awarded pursuant to Section (E) of this Rule and to the Exchange for any assessments made pursuant to Section (D) of this Rule.

(C) Delivery Committee

(1) Force Majeure and Failure to Perform shall be determined by a Panel of the Delivery Committee as set forth below.

(2) The Chairman of the 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 a party to the delivery has failed or may fail to perform;

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

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

(d) if either party to the delivery notifies the Exchange that circumstances constituting force majeure prevent the performance of delivery obligations at the time and site designated by the parties.

(3) The Chairman shall not appoint to any Panel any in question. Each Panel Member shall disclose to the person who has a direct or indirect interest in the delivery Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial

determination. 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.

(4) The Panel shall meet within one business day, or as soon thereafter as is reasonably practicable, of its notification of the circumstances set forth in Section (2). Unless good cause for delay exists, within one business day the Panel shall determine whether force majeure exists or whether a buyer or a seller 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.

(5) Upon a finding of a failed performance, the Panel shall:

(a) in the case of a failure to perform by a seller: (i) notify the President of its determination, who shall instruct the Exchange's Clearing House to retain all delivery margins deposited by the seller for the delivery until any amounts determined to be due to the Exchange or the buyer pursuant to sections (D) or (E) of this Rule have been paid; and (ii) apprise the buyer of the remedies provided pursuant to Section (E) of this Rule.

(b) in the case of a failure to perform by a buyer: (i) notify the President of its determination, who shall instruct the Exchange's Clearing House to issue a delivery margin call to the buyer in an amount equal to the original margin then in effect for an Coal futures contract carried at the Clearing House on the last day of trading in such contract times the number of contracts to be delivered and to retain such delivery margin until any amounts determined to be due to the Exchange or the seller pursuant to Sections (D) and (E) of this Rule have been paid; and (ii) apprise the seller of the remedies provided pursuant to Section (E) of this Rule.

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

(a) grant an extension of time for delivery;

(b) change the delivery site to a site within the delivery location as defined in 260.07 (A) provided that the seller has coal or will have coal at such site in time for delivery;

(c) allocate deliveries;

(d) modify the method or timing of payment; or

(e) refer the matter to the Board of Directors for consideration of emergency action pursuant to Article 7.

(D) Exchange Action

(1) Whenever a buyer or a seller is found by the Panel to have failed to perform a delivery, the Exchange, represented by the Compliance Department, shall issue a Notice of Assessment specifying the findings of the Panel with respect to the failed delivery and assessing a penalty of twenty percent of the contract value against such party to be paid to the Exchange.

(2) Whenever a long or short is late in performance, the Compliance Department shall issue a Notice of Assessment assessing a penalty to the buyer of \$1,000.

(3) (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 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 Registrar 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 within the time specified in subsection (D)(3)(a) of this Rule shall constitute a waiver, and the penalties 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 By-Law 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 Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) 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.

(5) 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 who 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.

(6) 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 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 date of the decision or as specified. The effective date shall be fifteen (15) days after a copy of the written decision has been delivered to the Appellant and to the Commission.

(7) 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 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 a delivery dispute under the Special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 5 of the 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.

CHANGE HISTORY

260.10 Special Price Fluctuation Limits: (Amended: 06/24/2003)