

## Chapter 12 Deliveries

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## Chapter 12

# Deliveries

### **Kansas City Board of Trade Grain Clearing Corporation (Clearing Corporation)**

**1200.00 Deliveries; Clearing Corporation.** Deliveries on all futures contracts shall be made through the Clearing Corporation. Delivery notices will be given and received, based upon positions (short and long) as shown on the records of the Clearing Corporation as of the close of the business day next preceding the day of delivery notice.

**1200.01 Seller; Delivery Notice.** A seller obligated to make delivery of commodities shall issue and deliver to the Clearing Corporation a signed delivery notice which shall contain the name and business address of the issuer and which shall state the quantity and kind of grain to be delivered.

**1200.02 Seller; Time.** Delivery notices must be issued and delivered to the Clearing Corporation before 4:00 p.m. on the second business day preceding the day of delivery except that, on the last notice day of the delivery month, delivery notices may be delivered to the Clearing Corporation until 2:00 p.m. on the last notice day (business day preceding the last delivery day).

**1200.03 Seller; Warehouse Receipts Delivered.** When warehouse receipts are to be delivered, notice shall describe the warehouse receipts by giving the name of the elevator, the serial number, the quantity, and the grade of grain.

**1200.04 Clearing Corporation; Notice To Buyer.** The Clearing Corporation, upon receipt of such notice of intention to deliver, shall immediately issue notice to the buyer to whom the delivery will be made. Delivery must be accepted by the said buyer.

**1200.05 Time Of Delivery; Application By Clearing Corporation.** Deliveries on futures contracts shall be made to the Clearing Corporation not later than 11:00 A.M. The Clearing Corporation shall apply such deliveries as soon as possible that same day. This limit shall not be changed by any resolution of the Board of Directors advancing the hours of trading and other time limits contained in these rules. The Clearing Corporation shall refuse to accept any tender of delivery after the time limit here provided.

**1200.06 Longer Notice.** Whenever the Commodity Futures Trading Commission, pursuant to Section 5a (5) of the Commodity Exchange Act, as amended, by order requires the giving of longer notice of delivery than herein provided, such order shall be observed by sellers, but the time of delivery of notices to the Clearing Corporation shall be as herein provided. No order of the Commodity Futures Trading Commission shall apply to then existing contracts.

**1201.00 Failure To Deliver.** Failure to make delivery of commodities within proper time after tender of notice as herein provided shall be deemed uncommercial conduct subject to the disciplinary procedure of Chapter 14. Further, such failure shall be deemed a default and the provisions of Rules 1225.00 through 1228.00 shall be applicable.

### Warehouse Receipts

**1205.00 Delivery By Warehouse Receipts.** Except as otherwise provided, delivery of commodities shall be made by the delivery of registered warehouse receipts issued by warehousemen against stocks in warehouses which have been declared regular by the Board of Directors.

**1206.00 Deliverable Warehouse Receipts.** All warehouse receipts deliverable on futures contracts shall be for quantities or parcels sold, accompanied by a memorandum of the property to be delivered, with the price of the same, together with the amount due therefore. All warehouse receipts which are tendered on a contract shall be for 5,000 bushels of grain.

**1207.00 Storage Allowance and Other Allowances.** Effective with the September 2011 wheat futures contract month, no warehouse receipts covering grain in store shall be valid for delivery on futures contracts unless the storage and insurance charges set forth in Resolution 17-1715.00-2 (but not load-out fee) on such grain have been paid up to the first calendar day of each contract delivery month (whether or not such receipts will be delivered in satisfaction of futures contracts) and such payment endorsed on the warehouse receipt. Such endorsement may be made, at the option of the holder, by the regular warehouse issuing the receipt or by the Secretary of the Board of Trade upon payment to the Secretary as agent of the warehouse company. Unpaid accumulated storage and insurance charges and the load-out fee shall be assumed by the buyer. Failure to pay the storage and insurance charges by the business day preceding the first calendar day of each contract delivery month shall be deemed a violation subject to the disciplinary procedures set forth in Chapter 14 of the KCBT rules.

**1208.00 Charges.** On all deliveries by regular warehouse receipts, the deliverer (seller) shall allow storage and insurance charges accrued to date of delivery.

**1209.00 Loading Out; Documents Required.** Delivery of grain by regular warehouses when ordered loaded out by holders of regular warehouse receipts shall be by tender of an Official Inspection Certificate (see Rule 3025.03), and with a weight certificate supplied by a Federally licensed weighmaster attached. All deliveries on regular warehouse receipts shall be settled on weights and grades of the respective market.

**1209.01 No Freight Requirement.** The Warehouseman is not required to furnish transit billing on grain represented by warehouse receipt deliveries. Delivery shall be flat.

**1210.00 Inspection Governing.** Grain loaded against warehouse receipts that have been delivered on futures contracts shall grade at the loading elevator according to the Official Inspection (see rule 3025.03) the same grade as specified on warehouse receipt surrendered.

**Deliveries On Warehouse Receipts; Procedure**

**1215.00 Surrender Warehouse Receipts.** Members who hold warehouse receipts and desire delivery of grain shall surrender the warehouse receipts to the issuer thereof with written load-out instructions in duplicate, stating the grade and amount of grain called for by said receipts. The parties issuing said warehouse receipts shall deliver the amount and kind of grain called for into covered hopper rail cars (hereinafter referred to as cars), or such other equipment mutually agreed upon by the parties. The duplicate order shall be signed by the issuer to acknowledge receipt thereof, and returned to the holder.

**1215.01 United States Origin Only.** A futures contract for the sale of wheat shall be performed on the basis of United States origin only upon written request by a taker of delivery at the time load-out instructions are submitted. (See also Rule 2000.05)

**1216.00 Order Cars.** In accordance with trade practices the issuer of warehouse receipts shall be responsible for ordering, in writing, the cars necessary for the shipment ordered to be loaded against such receipts and shall give a copy thereof to the holder. However, the holder of the warehouse receipts may elect, in writing, to furnish cars to the elevator of the warehouse receipts issuer to expedite shipment and shall give notice to the loading elevator accordingly. Cars furnished by the taker on delivery shall apply against the delivering elevator's empty car order. Any charges incurred for the ordering or cancellation of car orders made at the request of the holder by written instructions shall be for the account of the holder.

**1217.00 Evidence.** In case the receipt holder elects, in the notice given, to have the issuer order the cars necessary for the loading requested, or in the event that railroad companies will furnish empty cars only on the order of elevator operators, the issuer shall immediately place an order with the railroad for all of such cars as the notice specifies and furnish to the receipt holder the railroad order number or other communication from the respective railroad company giving satisfactory evidence that the cars have been ordered.

**1218.00 Loading Cars.** Within five (5) business days after the receipt of the loading order request the delivering elevator shall commence loading all applicable rail equipment that has been actually placed or constructively placed to the delivering elevator at the applicable daily/weekly rate pursuant to subsections (a) and (b) below. The cars are to be loaded in the order they are placed and applied to the respective loading instruction in the order they were furnished. However, in the event cars for more than one set of loading instructions are on constructive placement, the loading elevator shall be required to order from constructive placement those cars furnished for the earliest loading request.

a.	Warehouse Receipted Wheat Delivered and <u>Not Loaded Out</u>	Load-Out Requirements In Hopper Cars	
		<u>Daily</u>	<u>Weekly</u>
	Up to 3,000,000 Bushels	30	150
	3,005,000 to 4,000,000 bu.	40	200
	4,005,000 to 5,000,000 bu.	50	250
	Each Like Increment up, Add	10	50

b. Reporting requirements  
The operator of a facility that is declared regular for delivery is to report the total quantity delivered on current and prior contracts that has not yet been loaded-out as of the close of business on the last business day of the expiring contract month. Such information shall be reported to the KCBT not later than 9:00 a.m. on the next following business day (first business day of the month immediately following the expiring month).

- c. **Publicizing the Load-Out Rate**  
The Exchange is charged with publicizing the load-out rate for each warehouse declared regular whose load-out rate is above the minimum 30 cars per day.
- d. **Duration of Established Load-Out Rate**  
The published load-out requirement is to remain in effect through the close of business on the last delivery day of the next following contract month, at which time the new load-out rate will be determined pursuant to subsections (a) and (b) above.

**1219.00 Storage Charges.** Storage charges for account of the holder of the warehouse receipts will cease on any amount on the date that amount is loaded. Furthermore, provided cars are actually or constructively placed, storage charges for the account of the holder will also cease on any bushels not meeting the minimum weekly load-out requirements on the final day that loading is due. In the event loading orders are subsequently cancelled before completion, storage charges will accrue on the total remaining balance.

**1220.00 Default.** A default on the entire remaining delivery obligation shall be deemed to have been made if the loading elevator becomes more than twenty (20) business days delinquent in maintaining the minimum load-out capacity, if applicable cars are available, or does not comply with other provisions of these rules.

**1220.01 Conditions Beyond Control.** No default shall exist if the deliverer can submit satisfactory proof that, because of conditions beyond the deliverer's control, the deliverer has not been able to load the grain as prescribed. These conditions include, but are not limited to fire, flood, strike, windstorm, and other conditions generally considered acts of God.

## **Default**

**1225.00 Defaulted Delivery; Purchaser's Options.** In case any property contracted for future delivery is not delivered at maturity of contract, the purchaser may elect to:

- a. Consider the contract forfeited and cancel the same at the last settlement price as determined by Rule 1187.00;
- b. Purchase the property on the market for the account of the seller by 11:00 P.M. of the next business day and notify the seller of such purchase before 2:30 P.M. of the same day; or
- c. Require a settlement with the seller at the average market price on the day of the maturity of contract.

Any damage or loss due to the purchaser by reason of such purchase or declared settlement shall be due and payable by the seller immediately.

**1226.00 Buyer's Default; Seller's Rights.** In case any property contracted for future delivery is not received and paid for when property tendered, it shall be the duty of the seller, in order to establish any claim on the purchaser, to sell the property at any time during the next twenty-four (24) hours after such default shall have been made. The purchaser shall be notified within one (1) hour of such sale. Any loss resulting to the seller shall be paid by the party in default.

**1227.00 Unreasonable Charges Not Allowed.** Rules 1225.00 and 1226.00 shall not be construed as authorizing unjust or unreasonable claims based upon manipulated or fictitious markets. In case of any disagreement arising from any action taken under these rules, the expressed willingness of either party to the controversy to submit the controversy to arbitration under these rules shall be accepted and construed by the appropriate committee as evidence of the member's readiness to equitably adjust and settle the disputed obligation. Such member shall not be subject to discipline while the matter is pending arbitration. Such member shall abide by the same in good faith and in case of an award, shall promptly perform such award.

**1228.00 Parties To Arbitration On Default.** In case of default on any contract month's deliveries, when the transactions have been carried through the Clearing Corporation, the arbitration of all disputes in reference thereto shall be in one (1) arbitration, so that all the controversies and rights of all parties for any one (1) month's deliveries may be settled at one and the same time. The parties to such arbitration shall be the Clearing Corporation and all parties to whom deliveries were to have been made. All the provisions of the rules and regulations of the KCBT as to arbitration shall apply.

**1240.00 thru 1260.00 Reserved**

**1270.00 Deliveries in Bankruptcy Situation.**

- a. For purposes of this by-law:
- (i) The term "carrying clearing member" means a clearing member which carries accounts for customers of a debtor on an omnibus basis.
  - (ii) The term "customer" shall mean any person for whom a member carries a KCBT futures contract.
  - (iii) The term "debtor" shall mean any member with respect to which an order for relief is entered under the Bankruptcy Code.
  - (iv) The term "person" shall include an individual, partnership, corporation, trust, association or any other organization.
  - (v) The term "order for relief" means the filing of a petition in bankruptcy in a voluntary case and the adjudication of bankruptcy in an involuntary case.
  - (vi) The term "tender" with respect to a notice of delivery shall mean:
    - A. In the case of a short clearing member that has presented such a notice to the Clearing Corporation, the assignment of such notice by the Clearing Corporation to a long clearing member;
    - B. In the case of a long clearing member, the acceptance by such member of such notice from the Clearing Corporation;
    - C. In the case of a short non-clearing member that has requested its clearing member to issue such a notice, the presentment by such carrying clearing member of such notice to the Clearing Corporation; and
    - D. In the case of a long non-clearing member, the allocation of such notice to the debtor by its carrying clearing member and the allocation of such notice to a customer by the long non-clearing member.
- b. This By-Law, Rule 1270 shall apply only in the event and under the circumstances set forth in paragraph (c) hereof.

c. Any provision of the By-Laws and Rules or the Clearing Corporation by-laws and rules to the contrary notwithstanding, in the event that a debtor carries for a customer any KCBT futures contract in the current delivery month with respect to which the underlying physical commodity has not become a part of the debtor's estate on the date of the entry of the order for relief, and with respect to which:

- (i) Trading has ceased on the date of the entry of the order for relief; or
- (ii) Notice of delivery has been tendered on or before the date of the entry of the order of relief; or
- (iii) Trading ceases before such futures contract can be liquidated by the trustee of the debtor's estate;

then, any customer for whose account such debtor is holding any such futures contract shall make delivery of and receive payment for, or receive delivery of and make payment for, the physical commodity as required to fulfill such contract as follows:

- A. If the debtor is a clearing member, directly with the Clearing Corporation and the Clearing Corporation shall receive delivery of and make payment for, or make delivery of and receive payment for, such commodity in accordance with the Clearing Corporation rules; provided, however, that in lieu of making and taking delivery, any such customer and the Clearing Corporation may settle any such contract in any manner permitted under the Clearing Corporation rules.
- B. If the debtor is not a clearing member, through the carrying clearing member that carried the customer's account in an omnibus account for the debtor in accordance with the provisions of paragraph (d).

d. (i) Immediately upon learning that an order for relief under the Bankruptcy Code has been entered with respect to a debtor which is not a clearing member, the carrying clearing member shall communicate with the debtor or its trustee in bankruptcy to ascertain the identity and address of each customer of the debtor who is to make or take delivery pursuant to this Rule 1270.

(ii) Immediately upon ascertaining such information, the carrying clearing member shall:

- A. Notify each such customer that such customer is to make or take delivery, as the case may be, through the carrying clearing member as if the customer maintained an account directly with the carrying clearing member, and
- B. Specify the actions which the customer is required to take to consummate such delivery.

(iii) If, prior to the time when delivery is required to be consummated pursuant to the By-Laws and Rules and the by-laws and rules of the Clearing Corporation, the carrying clearing member, after good faith efforts, is unable to communicate with a customer or if the customer, for any reason fails or refuses to timely undertake the actions required pursuant to Rule 1270, the carrying clearing member shall have no further obligation or liability to the debtor or such customer in connection with such delivery.

(iv) Nothing contained in this Rule 1270 shall prevent a customer and a carrying clearing member from making mutually agreeable arrangements to settle deliveries on terms other than those set forth in paragraph (d).

e. The making or taking of delivery or payment with respect to any futures contract in accordance with paragraph (c) or (d) shall discharge in full the obligations of such customer and such opposite clearing member or carrying clearing member, as the case may be, to the debtor with respect thereto, but shall not discharge the debtor from any of its obligations with respect to such contract except to the extent that such delivery or payment is made.

f. Nothing contained in this Rule 1270 shall relieve any customer of its obligation to make or take delivery under any KCBT futures contract for the sole reason that delivery must be made to or taken from a commodity broker which is a debtor.

## **INTERPRETATION OF CHAPTER 12 RULES**

Note: Any examples used in this Interpretation are based on the minimum load-out rate of 30 cars per day or 150 cars per week. Any elevator subject to a higher load-out rate pursuant to Rule 1218.00 must take such higher rate of load-out into consideration and adjust such examples accordingly.

The delivery rules charge the loading elevator to begin loading requested delivery wheat within five (5) business days, which is on day six (6) following receipt of the taker's load-out instructions on day one. Business days do not count Saturdays, Sundays or holidays. Rules include loading requirements per day or per week because some elevators may have to load on a daily basis rather than on a weekly basis. However, an elevator may choose to consolidate his loadings to even once a week. The stop storage rule is to be figured on a weekly basis. Under these rules neither prior business nor new business is of any consequence and does not affect loading requirements or applicable stop of storage. However, an elevator may choose to delay loading, for whatever reason, and allow storage to stop, but must load at a rate adequate to avoid default. Therefore, storage would stop with day ten (10) on 495,000 bushels if no wheat has been loaded or on any portion of this amount that has not been previously loaded. Storage charges would include day ten (10). Loadings made prior to a stop storage deadline would have charges due through the actual day of loading. Storage would stop in a like manner on additional 495,000 bushels at five (5) business day increments thereafter.

Because communications between parties is encouraged, any amendments to the loading request would continue to have time count for stop storage requirements. However, if the order is cancelled and reinstated at a later date, the time begins again at the reinstatement date. Also, if the order is cancelled, then storage charges will accrue from day one on the total remaining balance, whether or not any of the bushels had previously passed a stop storage date. Subsequent amendments or modifications of an existing load-out request does not constitute cancellation of a loading order. A taker may request any railroad covered rail hopper cars or elect to provide private car equipment. Any charges that may be incurred for the ordering or cancellation of car orders shall be paid by the taker. The intent is for the taker to be responsible for reasonable costs of placing and canceling car orders. If cars are not available, as requested in load-out instructions, then the obligation to load is suspended and time does not count until cars are available.

While an elevator may choose to load the required amount after a stop storage date, the intent is not to delay loading unreasonably. The intent of the default rule is therefore intended as only a serious extreme limit. An elevator would be in default on the entire remaining delivery obligation on day 31 if it has not loaded at least 495,000 bushels by day 30. Default on the entire remaining delivery obligation would also be deemed to have occurred after each following five day increment if the elevator becomes more than 20 business days delinquent in maintaining the minimum load-out schedule.

While communication is encouraged, throughout the delivery rules there are various requirements that communication be confirmed in writing. This is intended to provide a clear audit trail of the delivery process.

## Interpretations

### **INTRP 12-1209.00-1 Charges To Move Or Transport Grain**

Be it resolved that the Board of Directors interprets that warehouse receipts delivered to fulfill a futures contract obligation shall be interpreted as "in store" a regular elevator and that any and all charges to move or transport the grain from the elevator is for the account of the warehouse receipt holder. This includes elevation, weight certificates, grade certificates and other charges known or unknown at this time. (Adopted by the Board of Directors September 25, 1990.)

### **RES 12-1215.00-1 Deliveries on Warehouse Receipts; Requirements**

#### **Deoxynivalenol (also known as Vomitoxin) Restriction**

RESOLVED, that when warehouse receipts are surrendered to the issuer for load-out pursuant to Rule 1215.00, the taker of delivery shall have the option to, at taker's expense, request in such written load-out instructions that the wheat contain no more than 2 ppm (two parts per million) of deoxynivalenol (vomitoxin). A determination of the level of deoxynivalenol shall be made at the point of origin by the Federal Grain Inspection Service or such other third party inspection service mutually agreeable to the maker and taker of delivery. The determination of the level of deoxynivalenol shall be based on the average test results of the wheat loaded in a single day from a single warehouse for each taker of delivery. As of the effective date of this rule (September 1, 2011), any warehouse receipts previously issued and outstanding shall be subject to the provisions of this Resolution.