



National Grain and Feed Association
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NGFA: Rules - Arbitration

General Explanation of NGFA Trade Rules and Arbitration System

There are five sets of Trade Rules established and maintained by the National Grain and Feed Association:

- **Grain Trade Rules:** Adopted in 1902, these rules govern all transactions of a financial, mercantile or commercial nature involving grain. Grain, as defined by the U.S. Grain Standards Act, means corn, wheat, rye, oats, barley, flaxseed, grain sorghum, soybeans, mixed grain and any other food grains, feed grains and oilseeds for which standards are established under 7 U.S.C. Section 76.
- **Feed Trade Rules:** Adopted in 1921, these rules govern transactions of all feedstuffs (including mill products or byproducts). Users of these rules should note that references are made to American Association of Feed Control Officials (AAFCO) definitions. Additional information on AAFCO is available through a direct link from the NGFA web site at: <http://www.ngfa.org>.
- **Barge Trade Rules:** Adopted in 1964, these rules supplement the Grain Trade Rules and Feed Trade Rules whenever such shipments are designated by contract to be transported by barge.
- **Barge Freight Trading Rules (affreightment):** Adopted in 1981, these rules govern all disputes of a financial, mercantile or commercial character involving transactions in the purchase and/or sale of barge transportation.
- **Secondary Rail Freight Trading Rules:** Adopted in 2007, these rules govern all disputes of a financial, mercantile or commercial character involving transactions between non-railroad parties in the purchase and/or sale of secondary rail freight transportation.

The NGFA's Trade Rules Committee formulates and recommends rule changes to the NGFA membership. Rules are proposed that reflect trade practice and facilitate trade between NGFA members specifically, as well as between all firms in the grain, feed and processing industry generally.

The Trade Rules Committee consists of four subcommittees - Grain Trade Rules, Feed Trade Rules, Barge Trade Rules and Barge Freight Trading Rules - with a general chairman and four subcommittee chairmen. The subcommittees annually or more frequently if needed, review the rules to ensure they reflect current trade practices.

Pursuant to the NGFA Bylaws, NGFA members receive 30 days' notice of proposed changes to the Trade Rules. Approval is by a two-thirds majority vote of the membership at the annual business meeting. Amendments to the Trade Rules become effective 30 days after the date of adoption.

The NGFA Bylaws also provide that changes to the Trade Rules may be approved by the Board of Directors, subject to affirmation by the membership at the next annual meeting.

Formally established in 1901, the NGFA's Arbitration System has operated in some form since the formation of the Association on November 9, 1896. It is believed to be North America's oldest industry-based arbitration system.

The Arbitration System provides a fair, cost-effective and timely way to resolve disputes involving grain, feed, barge and barge freight transactions. Its use is compulsory for resolution of disputes between Active members under the NGFA's Bylaws. The Arbitration System is also available for resolving disputes with and between Associate/Trading members if the Arbitration Rules are referenced in the underlying contractual agreement or the parties otherwise consent. The Arbitration System is kept current through the amendment process at the NGFA's annual business meeting.

The Rail Arbitration Rules, first adopted on Aug. 24, 1998, supplement the Arbitration Rules. The Rail Arbitration Rules are applicable to disputes between railroads and their customers using the NGFA Arbitration System.

NGFA-member railroads and their customers can use the NGFA Arbitration System to resolve any type of dispute where both agree. All NGFA Active and Associate/Trading members are covered by, and have access to, NGFA rail arbitration unless they notify the NGFA of their desire to withdraw from the Rail Arbitration System within 30 days of membership approval. Thereafter, an Active or Associate/Trading member may withdraw from the Rail Arbitration System after providing 90-day's advance notice to the National Secretary. A list of any NGFA-member rail carrier(s) or Active member(s) electing to withdraw from the Rail Arbitration System is posted on the NGFA Web Site at: www.ngfa.org.

In addition, all Class I railroads and some shortline and regional railroads have agreed to enter confidential mediation on certain rate-related issues upon request by a NGFA Active or Associate/Trading member. The text of these agreements is set forth in this publication.

Arbitration cases are prepared by the parties involved. Decisions are based upon evidence submitted by the parties.

Cases are considered by an Arbitration Committee comprised of three persons selected by the NGFA secretary and approved by the NGFA chairman. Arbitrators are employees, active partners, principals, officers, or directors of Active and Associate/Trading members from different geographical areas. Arbitrators generally are selected based upon their personal experience in the type of trade practices or questions involved in the case. Arbitrators must have no commercial interest in the case.

Parties involved in an arbitration case may appeal the decision of the Arbitration Committee to an Arbitration Appeals Committee, consisting of a permanent chairman and four others selected from a standing Arbitration Appeals Panel appointed by the NGFA chairman.

Usually, the Arbitration Committee or the Arbitration Appeals Committee processes cases by mailing to one another the documentation involved. However, either party may request an oral hearing, in which case it must be granted.

Arbitration committees endeavor to decide cases within 30 days after receipt of papers and documentary evidence pertaining to the case. Each award under the Arbitration System subsequently is published as an Arbitration Decision bulletin and is mailed to all NGFA members. New decisions are also posted on the NGFA web site at <http://www.ngfa.org>.

Further information about the NGFA's Trade Rules and Arbitration System is available by contacting the NGFA at (202) 289-0873.

Use of NGFA Trade Rules and Arbitration Rules for Cross-Border Transactions in North America

Increasingly, NGFA members reference the NGFA's Trade Rules and Arbitration Rules in contracts with firms located in Mexico and Canada. In addition, Canadian and Mexican firms that become NGFA Associate/Trading members are expressly permitted to reference the NGFA's Trade Rules and/or Arbitration Rules in their contracts, or otherwise consent to have the NGFA's rules apply. However, before referencing the rules in cross-border trade, it is advisable to consult competent legal counsel and review at least three international treaties that govern such transactions, which are summarized below:

- ***"The United Nations Convention on Contracts for the International Sales of Goods"*** (52 Fed. Reg. 6262). The United States, Mexico and Canada are signatories to this treaty, which creates a type of international code for sales of goods. Importantly, parties can exclude application of this treaty to particular transactions by express contractual provisions.
- ***"The Convention on the Recognition and Enforcement of Foreign Arbitral Awards"*** (9 U.S.C. Section 201 et. seq.), which governs the enforcement of arbitration provisions and awards between United States and Canadian firms.
- ***"The Inter-American Convention on International Commercial Arbitration"*** (9 U.S.C. Section 301 et. seq.), which governs the enforcement of arbitration provisions and awards between United States and Mexican firms.