

# **NGFA<sup>®</sup> Trade Rules and Arbitration Rules Booklet**

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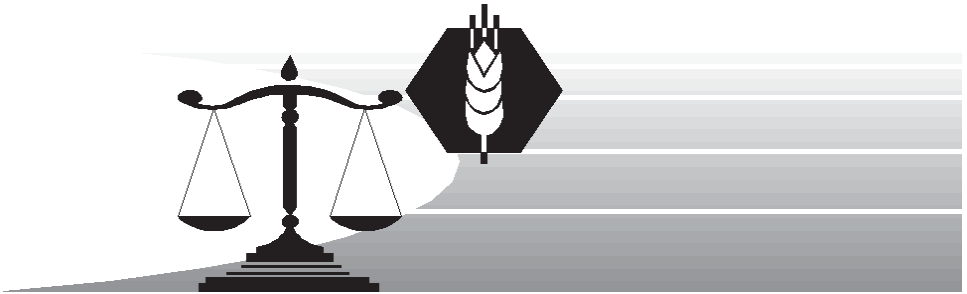
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# NGFA® Trade Rules, Arbitration Rules, Rail Arbitration Rules and Rail Mediation Rules<sup>©</sup>



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The NGFA Trade Rules and Arbitration Rules are amended periodically pursuant to the NGFA Bylaws. Current copies of the rules are available to the general public by contacting the NGFA or through the NGFA website. But only NGFA members are ensured access to the NGFA Arbitration System.

# General Explanation of NGFA Trade Rules and Arbitration System

**T**here 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.



**F**ormally 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.

# General Explanation

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](http://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. 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, typically consisting of a permanent chairman and four others selected from a standing Arbitration Appeals Panel appointed by the NGFA chairman.

Either party may elect an oral hearing before the Arbitration Committee or the Arbitration Appeals Committee.

Arbitration committees endeavor to decide cases as soon as reasonably possible 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.

# Grain Trade Rules of the National Grain and Feed Association

Adopted Oct. 3, 1902	Amended Oct. 11, 1949	Amended March 26, 1981
Amended Oct. 8, 1903	Amended Sept. 26, 1950	Amended March 23, 1982
Revised Jan. 1, 1906	Amended Sept. 11, 1951	Amended March 15, 1983
Amended June 5, 1906	Amended Sept. 20, 1954	Amended March 13, 1984
Revised Oct. 12, 1910	Amended Sept. 9, 1957	Amended March 14, 1989
Amended Oct. 2, 1912	Amended Sept. 14, 1959	Amended March 27, 1990
Revised Oct. 14, 1914	Amended March 8, 1960	Amended March 12, 1991
Amended Oct. 13, 1915	Amended March 23, 1962	Amended March 24, 1992
Amended Sept. 26, 1917	Amended March 14, 1963	Amended March 23, 1993
Amended Sept. 25, 1918	Amended March 6, 1964	Amended March 21, 1994
Amended Oct. 15, 1919	Amended March 19, 1965	Amended March 13, 1995
Amended Oct. 13, 1920	Amended March 23, 24, 1966	Amended March 15, 1996
Amended Oct. 5, 1921	Amended March 27, 1969	Amended March 21, 1997
Amended Oct. 3, 1922	Amended March 12, 1970	Amended March 10, 1998
Amended Oct. 3, 1923	Amended March 25, 1971	Amended March 23, 1999
Amended Sept. 24, 1924	Amended March 23, 1972	Amended March 31, 2000
Amended Oct. 13, 1925	Amended March 1, 1973	Amended March 16, 2001
Amended Oct. 13, 1931	Amended March 14, 1974	Amended March 19, 2002
Amended Sept. 21, 1932	Amended March 20, 1975	Amended March 20, 2007
Amended Sept. 20, 1933	Amended March 25, 1976	Amended March 28, 2008
Amended Oct. 13, 1937	Amended March 23, 1977	Amended March 31, 2009
Amended Nov. 26, 1942	Amended March 31, 1978	Amended March 5, 2010
Amended Sept. 16, 1947	Amended March 8, 1979	Amended March 15, 2011
Amended Sept. 30, 1948	Amended March 20, 1980	

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# NGFA Grain Trade Rules

**Preamble:** The following rules shall govern all transactions of a financial, mercantile, or commercial character connected with grain including oilseeds as defined by the United States Grain Standards Act, 7 United States Code Sections 71 et.seq., as now existing or hereinafter amended, arising between Active members of the National Grain and Feed Association and other parties using these rules unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

## Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Quantity
- (C) Kind and grade of grain including type, class and quality characteristics (if any)
- (D) Price or pricing method
- (E) Type of inspection
- (F) Type of weights
- (G) Applicable Trade Rules
- (H) Transportation specifications:
  - (1) Type of conveyance
  - (2) Type of billing
    - (a) Export
    - (b) Multi-car specifications
  - (3) Point of origin or delivery or rate basing point
  - (4) Loading weight requirements
  - (5) Time of shipment or delivery
  - (6) Route
  - (7) Responsibility for freight increases or decreases
  - (8) Buyer's or Seller's conveyance
  - (9) Type of bill of lading
  - (10) Length of time permitted for loading or unloading
  - (11) Mechanical seals
- (I) Payment terms
- (J) Other terms

If the Buyer and Seller have been trading on agreed terms and conditions, the use of the phrase "usual terms" in the confirmation shall mean that such terms and conditions that governed previous trades of a like character shall apply instead of the specifications required above.

## Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged for others, at least partially on a commission basis, in negotiating, or facilitating the execution of, contracts relative to property of which he has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

(1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom grain is consigned for sale is not a broker.)

(2) who receives a salary instead of a commission or brokerage.

(3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the execution of, a contract in accordance with instructions from both principals; that, at the time of negotiations, or the facilitation, advises each principal the name of the other; and that completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

(F) Brokerage shall be credited when shipments are invoiced or when contract is otherwise consummated or terminated.

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## Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

## Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.

## Rule 5. Electronic Data Interchange and Email

(A) These rules may be applied to trades that include electronic transmission and receipt of data in agreed formats, e.g., Electronic Data Interchange (EDI), in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party

an electronic transmission in agreed formats to which the parties have given their prior written consent.

(B) These rules may be applied to trades that occur by email in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an email, and such email shall substitute for a written document provided that the parties have previously so agreed.

## Rule 6. Passing of Title as Well as Risk of Loss and/or Damage

Title, as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.

(B) On delivered contracts:

(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination.

(2) By truck, upon arrival at the Buyer's final destination.

(C) On in-store contracts, at the time of contract, transfer, or sending of documents, unless, and to the extent that the warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

## Rule 7. Net Bushels

If grain is sold subject to dockage and/or foreign material in accordance with the U.S. Grain Standards Act, the trade shall be executed on the basis of the net weight. The Seller shall pay the freight charges on the gross weight to the price-basing point.

## Rule 8. Sample Grain

If grain is sold on the basis of samples, it shall be the duty of the Seller to furnish grain fully up to sample. The term "sample" used in this context shall mean a portion of the shipment, or of the lot, from which the shipment is to be made, and must represent the identical grain shipped or to be shipped. The phrase "type sample" shall mean a sample of like character but not necessarily identical in all respects to the grain shipped or to be shipped.

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Shipments rejected because of quality discrepancies shall be compared with the sale sample by either the inspection committee or some other duly authorized or agreed committee of the market in which such rejection is made, and the finding of said committee shall be final. If the finding is in favor of the Buyer, the Buyer shall at once notify the Seller by telephone. It shall then be the duty of the Seller to make satisfactory adjustment with the Buyer not later than 12 noon of the following business day. If not adjusted within this time frame, the shipment shall be subject to the order of the Seller and the Buyer shall buy-in for the account of the Seller, cancel, or extend the defaulted contract and notify the Seller of his action.

If the Buyer and the Seller fail to arrive at a basis for adjustment that enables the Buyer to handle such grain not up to sample, and should the grain be finally rejected, the Seller shall promptly reimburse the Buyer for the full amount of money advanced on the rejected shipment.

## Rule 9. Unpriced Contracts

All unpriced contracts shall be priced within the day's price range at Buyer's option while futures markets are open and tradable. Pricing shall not go beyond the requested date of shipment, the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first.

## Rule 10. Inspection

### (A) Official Inspections

(1) **Class A Official Inspection** (white certificate) is an inspection and certification by an official inspector employed by an official inspection agency of an official sample taken by an official sampler employed by an official inspection agency.

(2) **Class B Official Inspection** (yellow certificate) is an inspection and certification by an official inspector employed by an official inspection agency of an official sample taken by a grain elevator or warehouse employee licensed under the U.S. Grain Standards Act.

(3) **Class C Official Inspection** (pink certificate) is an inspection and certification by an official inspector employed by an official inspection agency of any submitted sample.

(4) **Class D Official Commercial Inspection** (green certificate) is an inspection and certification (if requested) by an official inspector employed by an official inspection agency of a sample-lot of grain obtained by an official sampler employed by an official agency in accordance with the procedures mutually agreed to between the person requesting the service and the official agency.

(5) **Class E Official Commercial Inspection** (blue certificate) is an inspection and certification (if requested) by an official inspector employed by an official inspection agency of any submitted sample in accordance with the procedures mutually agreed to between the person requesting the service and the official agency.

(B) An unofficial inspection is any inspection performed by an unofficial inspector that results in the issuance of a scale ticket or other document attesting to the quality of the grain.

(C) The term "official inspection" without specifying class shall mean Class A Official Inspection.

(D) Official Inspection shall include only official grading factors that are included in the U.S. Grain Standards Act.

## Rule 11. Rail Inspections

(A) If grain is sold basis official origin inspection, the Seller shall furnish the Buyer an inspection certificate as specified in the contract. The Seller shall send such certificate directly to the Buyer within five (5) days of the date of inspection.

If the Seller fails to send the inspection certificate to the Buyer within the above time limits, the Buyer has the right to delay payment of invoice or draft until the Seller has complied, or else to make prompt settlement based on an inspection en route or at destination. At the time of such final settlement, the Buyer shall send the Seller a Class A, Class B, or Class C official inspection, whichever is available, as described in Rule 10.

(B) If grain is sold basis official destination inspection and the Buyer and Seller agree that payment is to be net cash upon unload, the Buyer shall, except for rail at export terminals, make final settlement to the Seller on each shipment within ten (10) calendar days after the date of unload, or after the identity of the Seller is known, whichever is later. This is considered to be the normal time to clear the paperwork involved.

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For grain which is unloaded at export terminals, the unloading Buyer shall notify the original shipper or designated agent of the official destination inspection by telephone or rapid written communication within two (2) business days of unload. The unloading Buyer shall send the original inspection certificate or duplicate copy thereof to the original shipper or designated agent within five (5) business days of the date of inspection. A Class A, Class B, or Class C official inspection certificate, whichever is specified by the contract, and as defined by Rule 10 shall accompany such final settlements.

For grain that is sold basis official destination grades, shipments may not be diverted by the Buyer to a destination where an official inspection of the class specified by the contract is not available without the permission of the Seller. Such diversion agreement must be confirmed in writing and shall describe what type of alternative inspection certificate was agreed upon for final settlement.

(C) If grain is sold basis destination inspection, and the Buyer, by the terms of the contract, has the option of selecting the destination, settlement shall be based upon inspection at the first contractually acceptable inspection point to which the grain is shipped.

## **Rule 12. Grades Outside of Contract Terms for Rail Shipments**

### **(A) Destination Grades**

(1) It shall be the duty of all Buyers to exercise due diligence in seeing that cars are promptly inspected on arrival. The Buyer shall notify the Seller of any cars which fail to grade according to the contract terms by a telephone call placed, and confirmed in writing, not later than 12 noon of the next business day after the date of official inspection. This notice shall contain the grade of grain and the Buyer's rejection of the shipment or acceptance of the shipment with a discount. It shall then be the duty of the Seller receiving such notice to agree upon the discount with the Buyer or to give disposition instructions for the car(s) at once.

(2) Off grade grain sold for the account of shippers shall not apply on contract.

(3) Replacement of shipments rejected under this rule shall be shipped within ten (10) calendar days.

(4) When mechanical samplers are used for unload grades, prevailing discounts will apply.

### **(B) Origin Grades**

Grain that is sold for delivery, origin inspection, shall be covered by an inspection certificate of the grade contracted. If the Seller wishes to apply grain that is not in accordance with the contract specifications, he shall notify the Buyer by telephone. The Buyer shall immediately notify the Seller if he will accept the grain and at what discount.

If the Seller submits an inspection certificate of a lower grade to apply on a contract for a higher grade without notifying the Buyer in accordance with the above, the Buyer shall have the authority to reject or sell the grain represented by such certificate for the account of whom it may concern, and proceed to buy-in, extend or cancel the affected portion of the contract for the account of the Seller. The Buyer shall notify the Seller on the same business day of such action.

## **Rule 13. Condition Guaranteed on Arrival of Rail Cars**

(A) If grain is sold with condition guaranteed on arrival at destination, and the destination is provided in the billing instructions, the Buyer shall ascertain the condition and official grade of the grain. The Buyer shall report the condition and official grade to the shipper by a telephone call placed not later than 12 noon of the next business day after arrival of the car of grain at the destination.

If the Buyer fails to ascertain and report the condition and official grade as provided above, he shall waive all rights under the guarantee for that portion of the contract. Diversion of the shipment by the Buyer to a point beyond the original destination shall constitute an acceptance of the grain and a waiver of the guarantee.

(B) If grain is sold for shipment to specified rate group or rate basis points, with condition guaranteed on arrival at destination and the shipment is ordered billed to a blind billing or diversion point, the Buyer shall file diversion orders with the carrier within the free time permitted by the carrier's rules at such diversion point. The Buyer shall send a copy of such notice of diversion to the shipper. The Buyer shall assume all expenses incident to, or caused by, such diversion.

If the Buyer fails to notify the carrier within the time limit named, the Seller's liability under the guarantee shall cease at such diversion point. Only one diversion shall be permitted under the guarantee. The Seller's liability shall not continue

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to points taking a higher rate than the rate basis on which the grain is sold.

(C) If the Buyer receives a shipment that is out of condition on arrival, and the Buyer has given notice in accordance with (A) or (B) above, the Seller may request the Buyer to unload, recondition, and salvage the grain to the best advantage of the Seller.

If the Buyer is unable to unload, recondition and salvage the grain as requested by the Seller, he shall immediately notify the Seller of this fact. The Seller shall then dispose of the shipment. The Buyer shall then elect either to cancel the affected portion of the contract or request a replacement shipment.

(1) If the Buyer elects to cancel the affected portion of the contract, the cancellation shall be at the fair market price. The Buyer shall reimburse the Seller for any market loss suffered through cancellation and the Seller shall reimburse the Buyer for any market gain received through cancellation.

(2) If the Buyer requests replacement, the Seller shall be obligated to make a replacement, and the Buyer shall be obligated to accept such a replacement. The replacement shipment must be made within ten (10) calendar days from the date of the Buyer's request.

## Rule 14. Weights

### (A) Official Weights

#### (1) U.S. Official

(a) U.S. Class X Weights: An official Class X weight shall be any weight that meets the requirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) U.S. Class Y Weights: An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

#### (2) Canadian Official

Canadian Official Weights: An official weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada, and the weighing is 100% supervised by a licensed Canadian Grain Commission Weigher.

### (B) Other Weights

(1) U.S. Certified Weights: A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) Canadian Certified Weights: A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

(3) Affidavit Weights: Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

## Rule 15. Weight Settlements

(A) Multiple Cars and Unit Trains: Official and certified weights for multiple cars and unit train shipments billed on one bill of lading may be batch weights.

(B) On rail grain shipments, truck weights shall not apply.

(C) If grain is sold basis official or certified origin weights, the Seller shall furnish the Buyer a weight certificate meeting the qualifications of Rule 14(A), (B)(1) or (B)(2).

# NGFA Grain Trade Rules

The Seller shall send the weight certificate directly to the Buyer within three (3) days of the date of shipment, unless attached to a subsequent draft and/or invoice, but no later than five (5) calendar days after weighing.

If the Seller fails to send the weight certificate to the Buyer within the above time limits, the Buyer has the right in accordance with Rule 22 to delay payment of the invoice or draft until the Seller has complied, or else to make prompt settlement on official or other destination weight, if possible, or on railroad track scale weight. At the time of such final settlement, the Buyer shall send the Seller a weight certificate meeting the requirements of Rule 14(A), (B)(1) or (B)(2) or a weight certificate or freight bill from the railroad to document a railroad track scale weight.

(D) If grain is sold basis official or certified destination weights, the Buyer shall furnish billing instructions to a destination where official or certified weights are available, as described in Rule 14(A), (B)(1) or (B)(2). Grain that is sold basis official or certified destination weights may not be diverted by the Buyer to a destination where official or certified weights are not available except with the permission of the Seller. Such diversion agreement must be confirmed in writing, and shall specify the type of alternative weights that were agreed upon for final settlement.

If the Buyer and Seller agree that payment is to be net cash upon unload the Buyer shall, except for rail at export terminals, make final settlement to the Seller on each shipment within ten (10) calendar days after date of unload, or after identity of the Seller is known, whichever is later.

For rail grain which is unloaded at export terminals, the unloading Buyer shall notify the original shipper or, at shipper's option, his designated agent of the final unload weights by telephone or rapid written communication within two (2) business days of unload. The unloading Buyer shall send the original weight certificate or duplicate copy thereof to the original shipper or designated agent within five (5) business days of unload, accompanied by a statement covering the cost of weighing charges. The original shipper or designated agent shall make final settlement with the original weight certificate or duplicate copy. All invoices are due and payable upon presentation.

Application of each shipment shall contain the telephone number of the original shipper or

designated agent and the loading elevator.

(E) If grain is sold basis other than official or certified loading weights, the Seller shall furnish to the Buyer a weight certificate meeting the requirements of Rule 14(B)(3). The Seller shall send such certificate directly to the Buyer within three (3) days of the date of shipment, unless attached to a subsequent draft and/or invoice, but in no case later than five (5) calendar days after weighing.

If the Seller fails to send the weight certificate to the Buyer within the above time limits, the Buyer has the right, in accordance with Rule 22, to delay payment of the invoice or draft until Seller has complied, or else to make prompt settlement on official or certified destination weight, if possible, or on railroad track scale weight. At the time of such final settlement, the Buyer shall send the Seller a weight certificate meeting the requirements of Rule 14(B)(3) or a weight certificate or freight bill from the railroad to document a railroad track scale weight.

(F) If grain is sold basis destination weights and the Buyer and Seller agree that payment is to be net cash upon unload, the Buyer, except for rail at export terminals, shall make final settlement to the Seller on each Shipment within ten (10) calendar days after date of unload, or after the identity of the Seller is known, whichever is later. This is considered to be the normal Time to clear the paperwork involved.

If grain is sold basis destination weights at export terminals, notification and settlement procedures will be in accordance with section (D) above. Certificates meeting requirements of Rule 14(A), (B)(1) or (B)(2) shall accompany such final settlements.

(G) For grain sold on specific destination weights, shipments may not be diverted by the Buyer to any other destination without the permission of the Seller. Such diversion agreement must be confirmed in writing, and shall describe what kind of alternative weights were agreed upon for final settlement.

## **Rule 16. Rail Loading Weight Requirements**

### **(A) FOB Contracts**

If grain is sold other than loaded, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails

# NGFA Grain Trade Rules

to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity without exceeding a maximum of 263,000 pounds gross weight. This provision shall not require the Seller to load more or less grain than set forth in the contract.

## (B) Delivered Contracts

(1) For grain which is sold basis delivered to a specific destination, the Seller shall load cars in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver grain in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(2) For grain which is sold delivered to a price basing point, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment to that price basing point, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver grain in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(C) Open top rail cars (covered or not) and boxcars are not applicable to grain contracts.

## Rule 17. Billing Instructions

(A) If grain is sold "loaded" by truck, the Buyer shall furnish the Seller billing instructions to a named destination at the time of the trade.

(B) If grain is sold by truck, with shipment at Buyer's call, Buyer shall give Seller a minimum of one (1) business day's pre-advance of delivery schedule and billing instructions.

(C) If grain is sold by truck with shipment at Seller's option, billing instructions shall be given

by the Buyer to the Seller no later than the end of the business day before the beginning of the contract shipping period.

(D) If grain is sold "loaded" by rail, the Buyer shall furnish the Seller billing instructions to a named destination at the time of the trade or by 4 p.m., Central Time, whichever is later.

(E) If grain is sold other than "loaded" and the Seller notifies the Buyer by 12 noon, Central Time, that the cars are ready for loading and billing that day, the Buyer must furnish billing instructions to a named destination by 4 p.m., Central Time on that day. If the Seller makes notification between 12 noon and 4 p.m., Central Time, the Buyer must furnish billing instructions to a named destination by 10 a.m., Central Time the following day. Notices and billing instructions may not be given on Saturdays, Sundays and legal holidays.

(F) If Unit Trains are sold for other than loaded shipment, and the seller notifies the Buyer by 12 noon, Central Time, that the unit will be ready for billing within twenty-four (24) hours, the Buyer must furnish billing to a named destination by 4 p.m., Central Time that day.

If the Seller notifies the Buyer between 12 noon and 4 p.m., Central Time, the Buyer must furnish billing instructions to a named destination by 10 a.m., Central Time, the following day. Notices and billing instructions may not be given on Saturdays, Sundays and legal holidays.

If the Seller notifies the Buyer by 12 noon, Central Time, on a Friday or a day preceding a holiday that a unit will be ready for billing on a Saturday, Sunday or legal holiday within the shipment period, the Buyer must furnish billing instructions to a named destination by 4 p.m., Central Time, the same day. The notification date need not be within the shipment period.

(G) If the Buyer fails to furnish billing instructions as specified in (A), (B), (C), (D), (E), or (F) above, the Seller shall have the right to either:

(1) agree with the Buyer to extend the time allowed; or

(2) after having given notice, sell the affected portion of the contract for the account of the Buyer; or

(3) after having given notice, cancel the affected portion of the contract at fair market value.

# NGFA Grain Trade Rules

(H) Where rail sales are made “Buyer’s Option,” the Seller shall be entitled to five (5) calendar days after receipt of billing instructions in which to make shipment.

(I) If sales are made on a carrying-charge basis, such charges are to cease on the day the grain is loaded. In no case shall carrying charges be assessed against the Buyer for shipments made more than ten (10) calendar days after the requested shipping date.

(J) The term “notice,” as used in this rule shall mean verbal communication when possible, and followed in all cases by a rapid written communication.

## Rule 18. Time of Shipment or Delivery

Contracts shall state a specific time within which shipment or delivery is to be made.

A specific number of days shall mean calendar days, excluding the date of sale in which to load and ship grain to apply on a contract for shipment, or to deliver at the agreed destination grain to apply on a contract for delivery.

Grain to apply on a contract for shipment must be billed within the shipment or delivery period of the contract, as evidenced by a bill of lading properly executed and signed by an authorized agent of the carrier.

In terminal markets where the loading is made on a railroad line other than the one which will perform the road haul, and the line haul carrier will not sign a bill of lading until the car is received at its rails, a switching order carrying full shipping instructions, given to and duly signed and dated by the authorized agent of the carrier on whose line the car is loaded shall be evidence that the car is billed within the shipment or delivery period of the contract.

When the last day of the contract falls on Saturday, Sunday or a legal holiday, shipment may be made on the next business day.

A certificate of inspection shall not predate the bill of lading date by more than three (3) calendar days. For unit trains, certificates of inspection shall not predate the bill of lading date by more than five (5) calendar days.

When the terms “immediate,” “quick” and “prompt” are used to specify the shipment or de-

livery time, they shall have the following meanings:

“Immediate,” three (3) days;

“Quick,” five (5) days;

“Prompt,” ten (10) days.

Where no specifications for the time of shipment or delivery are enumerated in the contract, “prompt” shipment or delivery shall be implied.

First half of the month shipment shall mean the first fifteen (15) days, including February, and the last half of the month shipment shall mean the remaining days.

First week in . . . . .; second week in . . . . .; etc., shall mean:

First to seventh day inclusive.

Eighth to fourteenth day inclusive.

Fifteenth to twenty-first day inclusive.

Twenty-second to last day of month inclusive.

The fourth week in any month may consist of from seven to ten days.

First calendar week in . . . . .; second calendar week in . . . . .; etc., shall mean the respective weeks as shown on the calendar. A calendar week begins on a Monday. The first calendar week begins on the first Monday of the month, and the last calendar week may consist of from one to seven days.

## Rule 19. Routing of Rail Grain

(A) Grain that is sold delivered shall be deliverable via any railroad at the discretion of the Seller, unless otherwise agreed at the time of sale. If such shipments are routed by the Buyer, the carrier becomes the Buyer’s agent, and the Seller’s liability for routing ceases when he furnishes bill of lading in accordance with the Buyer’s instructions.

(B) Grain that is sold track or f.o.b. the original point of shipment shall be routed in accordance with the billing instructions furnished by the Buyer.

## Rule 20. Bills of Lading – Rail and Barge

The bill of lading shall be an order bill of lading.

(A) Order bills of lading shall be original and negotiable, and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

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The Seller shall be liable for any demurrage and/or additional charges accruing on grain billed to “shipper’s order,” when such charges are attributable to the inability of the Buyer to obtain rightful possession of the bill of lading whenever said bill of lading is necessary to furnish disposition, provided that the Buyer notifies the Seller upon the date of arrival.

(B) Straight bills of lading shall be original and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

(C) Electronic Data Interchange (EDI) bills of lading shall be signed or unsigned and conform to the specifications of the contract on which the shipment is to apply. They shall be issued within shipment or delivery period of the contract. These bills of lading do not waive any of the terms and conditions of the applicable uniform domestic straight bill of lading set forth in the uniform freight classification, including those terms and conditions on the back of the bills of lading.

## Rule 21. Drafts

### (A) Margins

If sales are made on destination terms, the Seller shall leave ample margin in his drafts to provide for possible variations in weights, grades or other quality factors.

### (B) Overdrafts

If an overdraft has been made on a grain shipment, and has been discovered before the draft is paid, the Buyer shall elect either to pay the overdraft for account of the Seller, or to request the Seller to reduce his draft to the proper amount.

If the Buyer elects to pay the overdraft for account of the Seller, or if drafts are paid and an overdraft is not discovered until final accounting is rendered, the Seller shall reimburse the Buyer on demand for the full amount of said overdrafts.

## Rule 22. Payment That Is Conditioned on Presentation of Original Drafts and/or Invoices

If payment is conditioned on presentation of original drafts or invoices, the Seller shall provide

to the Buyer, or other such consignee as may have been previously designated by the Buyer, an invoice giving the conveyance identification, kind and grade of grain, actual or estimated weight (state which applies), price, contract on which shipment is to apply, date of contract, date of shipment, point of origin, amount of invoice, and complete railroad routing, if applicable.

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original bill of lading, and/or delivery order and, if applicable, original weight and inspection certificate(s).

## Rule 23. Overfill and Underfill Grain on Bushel Contracts

### (A) Truck

Any overfill on truck grain shall be priced by the Buyer at the afternoon closing market price at the close of the day that the truck grain is unloaded. An overfill on truck grain shall be the balance of the load that fills the contract.

### (B) Rail

Any underfill or overfill on rail grain shall be settled at the market value at the close of the first business day following the date of load or unload of the last car in fulfillment of the contract, whichever weight is applicable.

(1) Market Value: For rail overfills and underfills, “market value” shall mean the basis at the close of the first business day following date of load or unload, whichever weight is applicable. The flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract.

Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the day after last load or unload shall be used.

(2) Tolerance for Rail Shipments: On bushel contracts, a total tolerance of 5% more or less than the mean quantity up to a maximum of 15,000 bushels shall be permissible in the fulfillment of the contract. An overfill or underfill of 5% or 1,000 bushels, whichever is less, shall apply at contract

# NGFA Grain Trade Rules

price. If the total overfill or underfill is in excess of the lesser of 5% of the mean quantity or 1,000 bushels the entire overfill or underfill shall be settled at the market value.

If bushel contracts are written for more than one multi-car shipment, each multi-car shipment must be within 5% or 1,000 bushels, whichever is less, of a quantity established by dividing the total bushels by the number of shipments. Any resulting overfill or underfill on each multi-car shipment shall be settled in accordance with (B) above.

## Rule 24. Balances

If the Buyer and Seller agree that payment is to be net cash upon unload, any cash balances accruing to the Seller on a shipment shall be remitted on a prompt basis to the Seller after the date of unload. If more than one Seller is involved in a shipment, each must process the papers and make quick remittance.

## Rule 25. Grain In Transit or In Store

Grain that is shipped prior to the date of sale or grain in-store at destination shall not be applicable on contract.

## Rule 26. Contracts Made Subject to "Embargoes," "Strikes" or "Cars"

(A) If a contract is made "subject to no penalty on account of embargoes" and an embargo is placed, the final shipment or delivery date of the contract shall be extended for the duration of the embargo plus the number of days remaining in the contract shipment or delivery period at the commencement of the embargo.

(B) If a contract is made "subject to no penalty on account of strikes" and a strike takes place, the final shipment or delivery date of the contract shall be extended for the duration of the strike plus the number of days remaining in the contract shipment or delivery period at the commencement of the strike.

(C) If a contract is made "subject to no penalty on account of inability to secure cars", the Seller must use due diligence in ordering and obtaining empty cars from the carrier. The Seller must, to the extent possible, ship all contracts in the order in which the sales are made and shipping instructions are received for each shipment or delivery period.

(D) The burden of proof shall be upon the Seller to show that the conditions specified in section (A),

(B), or (C) above prevented shipment or delivery within the contractual specifications.

(E) It shall be the duty of the Seller to advise the Buyer by telephone, and confirmed in writing, on or before the expiration of the contract, of his inability to make the shipment or delivery within the contractual specifications. If the Seller fails to notify the Buyer as above, the embargo, strike and/or car clause shall be void.

## Rule 27. Rail Loss and Damage Claims

If a party in possession of the necessary papers for use in filing a loss or damage claim against the railroad, is unable or refuses to deliver the papers to other interested parties before the time for filing the claim has expired, the party in possession of the papers shall file a preliminary claim for the account of whom it may concern. Failure to file such a claim will leave the party in possession of the papers responsible for any loss.

## Rule 28. Failure to Perform

### (A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing. The Buyer shall then, at once elect either to:

(1) agree with the Seller upon an extension of the contract; or

(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

(1) agree with the Seller upon an extension of the contract; or

(2) buy-in for the account of the Seller,

# NGFA Grain Trade Rules

using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

## **(B) Buyer's Non-Performance**

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone and confirmed in writing. The Seller shall then, at once elect either to:

(1) agree with the Buyer upon an extension of the contract; or

(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

(1) agree with the Buyer upon an extension of the contract; or

(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(C) Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.

(D) This rule does not permit compensation to the defaulting party to a contract.

## **Rule 29. Arbitration**

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

## **Rule 30. Definitions**

### **(A) Business Day**

For the purpose of these rules, a "business day" shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays. Wherever the term "holiday" or "legal holiday" appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

### **(B) Buying-In**

When the phrase "buy-in" is used in these rules they shall mean an actual purchase of grain of like kind and quantity on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

### **(C) Communications**

(1) When a rule refers to written communication, confirmation or notification, it shall include those communications sent/received by postal mail, courier, or rapid electronic means, e.g. telex, facsimile, EDI, email, or communications generated by an electronic trading platform. The sender shall be responsible for the correct transmission of the message.

(2) When a rule refers to rapid written communication, confirmation or notification, it shall include telex, facsimile, EDI or email. The sender shall be responsible for the correct transmission of the message.

# NGFA Grain Trade Rules

(3) When a rule refers to telephone or voice communication, confirmation, or notification, such communication must be confirmed in writing.

## (D) Delivery

### (1) Rail and Barge

The term “delivery” when used in these rules shall mean that the conveyance has been actually or constructively placed to the Buyer.

### (2) Truck

Truck grain shall be considered to have been delivered at the time and date of unloading as evidenced by a scale ticket or dock receipt issued by the receiving facility.

## (E) Electronic Trading Platform

The term “Electronic Trading Platform” shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

## (F) Futures

All references in these rules or contractual documents to futures markets, close of market, futures spread, futures or futures-related pricing, and similar terms shall mean the day session of the Chicago Board of Trade or, when so designated, the day session of other futures exchanges in North America.

## (G) Mean Quantity

On bushel contracts, the bushel reference, whether preceded by the term “about” or not, shall be the mean quantity of the contract.

## (H) Mechanical Seals

For the purposes of these rules, a “mechanical seal” shall be defined as a locking mechanical device, readily identifiable by unique markings or numbers, whose primary purpose is to provide evidence of tampering with the conveyance, and whose type and/or usage may be mutually agreed upon between the Buyer and Seller as part of the contract terms.

## (I) Notice

The term “notice,” when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

## (J) Rail Arrival

Arrival of a rail car of grain shall be:

(1) The time of actual physical placement at the billed destination; or

(2) If not physically placed, then 48 hours after the car is constructively placed or reported to the Buyer as available for Buyer’s instructions. This period shall exclude Saturdays, Sundays, or legal holidays.

## (K) Shipment – Rail and Barge

The term “shipment” when used in these rules shall mean that the shipper has filed shipping instructions with the authorized agent of the carrier.

## (L) Selling-Out

Where the phrase “sell-out” is used in these rules, it shall mean an actual sale of grain of like kind and quantity on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

## (M) Time

When these rules require that an action be taken at or by a specified time of day, then “time” shall mean the official time for the United States provided by the U.S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

## (N) Truckload

If no truck size is specified in the contract, a truckload shall be 50,000 pounds net weight.

## (O) Unit Train

For the purposes of these rules, a unit train is 25 or more cars for movement as a unit under one bill of lading.

# Feed Trade Rules of the National Grain and Feed Association

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**Preamble:** The following rules shall govern all transactions of a financial, mercantile or commercial character connected with feed, including feed ingredients, as defined by the Association of American Feed Control Officials (AAFCO) as now existing or hereinafter amended, arising between Active members of the National Grain and Feed Association (NGFA) and other parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

# NGFA Feed Trade Rules

## Rule 1. Trade

Both the Buyer and Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract and trade date
- (B) Quantity
- (C) Kind and description  
(including quality) of feed
- (D) Type of weights
- (E) Price
- (F) Terms of payment
- (G) Transportation specifications:
  - (1) Type of conveyance
  - (2) Applicable Freight Terms
  - (3) Type of billing
    - Transit (storage or milling)
    - Non-transit
    - Export
    - Multi-car specifications
  - (4) Point of origin and/or delivery and/or rate-basing point
  - (5) Loading weight requirements
  - (6) Time of shipment or delivery
  - (7) Route
  - (8) Responsibility for freight changes
  - (9) Buyer's or Seller's conveyance
  - (10) Private or rail system equipment
  - (11) Freight prepaid or collect
  - (12) Mechanical seals
- (H) Production origin of feed
- (I) Responsibility for import/export duties
- (J) Applicable Trade Rules to apply
- (K) Usual Terms: The specifications above shall apply except in cases where the Buyer and the Seller have been trading on agreed terms and conditions, in which event it shall be sufficient for the words "usual terms" to be used in confirmation, and the use of said words shall imply that such terms and conditions as governed previous trades of like character shall apply.
- (L) Other Terms

## Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged for others, at least partially on a commission basis, in negotiating, or facilitating the execution of, contracts relative to property of which he has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

(1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom feed is consigned for sale is not a broker.)

(2) who receives a salary instead of a commission or brokerage.

(3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the execution of, a contract in accordance with instructions from both principals; that, at the time of negotiations, or the facilitation, advises each principal the name of the other; and that completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

(F) Brokerage shall be credited when shipments are invoiced or when contract is otherwise consummated or terminated.

## Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.

# NGFA Feed Trade Rules

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

## Rule 4. Alteration of Contract

The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be confirmed by both in writing by the end of the next business day.

## Rule 5. Electronic Data Interchange and Email

(A) These rules may be applied to trades that include electronic transmission and receipt of data in agreed formats, e.g., Electronic Data Interchange (EDI), in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an electronic transmission in agreed formats to which the parties have given their prior written consent.

(B) These rules may be applied to trades that occur by email in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an email, and such email shall substitute for a written document provided that the parties have previously so agreed.

## Rule 6. Passing of Title as Well as Risk of Loss and/or Damage

Title, as well as risk of loss and/or damage, passes to the Buyer as follows:

(A) On f.o.b. origin or f.o.b. basing point contracts, at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.

(B) On delivered contracts:

(1) By rail, when the conveyance is constructively placed or otherwise made available at the Buyer's original destination.

(2) By truck, upon arrival at the Buyer's final destination.

(C) On in-store contracts, at the time of contract, transfer, or sending of documents, unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

## Rule 7. Rail Loading Weight Requirements

(A) **FOB Contracts**

If feed is sold other than loaded, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity without exceeding a maximum of 263,000 pounds gross weight. This provision shall not require the Seller to load more or less feed than set forth in the contract.

(B) **Delivered Contracts**

(1) For feed that is sold basis delivered to a specific destination, the Seller shall load cars in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver feed in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

# NGFA Feed Trade Rules

(2) For feed that is sold delivered to a price basing point, the Seller shall request loading weight instructions from the Buyer prior to the loading of cars. If the Buyer fails to give such instructions in a timely manner, the Seller shall load the cars to their full visible capacity in accordance with the applicable carrier(s) rule(s) and/or federal law in effect on the date of shipment to that price basing point, and shall assume any loss resulting from noncompliance with such rules. In the event the weight prescribed by the applicable carrier(s) rule(s) and/or federal law is changed between the date of sale and date of shipment, the Seller shall deliver feed in accordance with the weight requirements in effect on date of shipment. Any resulting variance from the original contract shall be settled at the market price on the date of shipment.

(C) Open top rail cars (covered or not) and boxcars are not applicable to feed contracts.

## Rule 8. Rail and Barge Bills of Lading

The bill of lading shall be an order bill of lading.

(A) Order bills of lading shall be original and negotiable, and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

The Seller shall be liable for any demurrage and/or additional charges accruing on feed billed to "shipper's order," when such charges are attributable to the inability of the Buyer to obtain rightful possession of the bill of lading whenever said bill of lading is necessary to furnish disposition, provided that the Buyer notifies the Seller upon the date of arrival.

(B) Straight bills of lading shall be original and conform to the specifications of the contract on which the shipment is to apply. They must be properly executed and signed by an authorized agent of the carrier within the shipment or delivery period of the contract. The Seller shall pay any loss that is caused by irregular or incorrect bills of lading.

(C) Electronic Data Interchange (EDI) bills of lading shall be signed or unsigned and conform to the specifications of the contract on which the shipment is to apply. They shall be issued within

shipment or delivery period of the contract. These bills of lading do not waive any of the terms and conditions of the applicable uniform domestic straight bill of lading set forth in the uniform freight classification, including those terms and conditions on the back of the bills of lading.

## Rule 9. Routing of Rail Feed

(A) Feed that is sold delivered shall be deliverable via any railroad at the discretion of the Seller. If such shipments are routed by the Buyer, the carrier becomes the Buyer's agent, and the Seller's liability for routing ceases when he furnishes bill of lading in accordance with the Buyer's instructions.

(B) Feed that is sold track or f.o.b. the original point of shipment shall be routed in accordance with the billing instructions furnished by the Buyer. If the Buyer fails to furnish routing instructions to the Seller along with the billing instructions, unless previously furnished, then the Seller has the discretion to route the shipment via any reasonable route. If available railroad equipment, or other reason, precludes routing as requested, then the Seller has the responsibility of so advising the Buyer.

## Rule 10. Rail Privileges

In all delivered sales to any terminal market or rate-basing point, the point specified shall be considered as a rate basis only and not necessarily final destination of goods, and shipment shall be made to any point and via any line open for business designated by the Buyer which is reached by lake, or lake- and rail-lines during the season of navigation, or by all-rail trunk lines at other times, provided shipment is made within contract time, and provided further that such routing is in accord with transit arrangements of the shipper.

## Rule 11. Time of Shipment

On the date of contract, the shipping schedule shall be determined by specifying: (1) requested date(s); or (2) frequency of shipment [in days, weeks, or month(s)]; or (3) one of the shipment terms defined below. Also, the contract shipping period shall be specified.

(A) "**Immediate**" means shipment within three (3) calendar days from the date of the trade.

(B) "**Quick**" means shipment within five (5) calendar days from the date of the trade.

# NGFA Feed Trade Rules

(C) **“Prompt”** means shipment within ten (10) calendar days from the date of the trade. When no shipping period is specified, “Prompt” shipment shall apply.

(D) **“Loaded,” “spot,” or “on-track”** means that the goods are actually loaded and ready for billing, and must be billed on the date of the trade.

(E) **“In transit”** means that the car must have been billed at least one day prior to the date of the trade.

(F) **“Weekly”** means shipment during each calendar week that begins on a Monday and the schedule shall specify the requested Monday date(s).

(G) **“First Half”** of the month means that shipment shall occur during the first fifteen (15) days of the month (including February) and shipment “Last Half” means shipment shall occur in the remaining days of the month.

(H) **“Monthly”** means that shipment shall occur during the period beginning with the first day and ending with the last day of the month.

(I) **“Buyer’s Option”** means that the Seller shall have five (5) calendar days after receipt of shipping instructions in which to make shipment.

The contract shipping period is that period of time during which shipment must be made.

When a scheduled ship date or shipping period begins or ends on a Saturday, Sunday, or Legal holiday, shipment shall be made on the next business day.

## Rule 12. Evidence of Shipping Date

(A) On carload shipments, the date shown on the railroad expense bill shall be the governing factor as to date of shipments, unless conclusive evidence to the contrary can be shown.

(B) On truckloads, dray tickets or properly signed receipts by the truck transportation company shall be accepted as evidence of the date of shipment.

(C) Dray tickets or shipping receipts when dated and signed by railroads in terminal markets shall also be accepted as evidence of shipment.

(D) In terminal markets, where the loading is made on a railroad line other than the one which will perform the road haul, and line haul carrier

will not sign lading until the car is received at its rails, a switching order carrying full shipping instructions, given to and duly signed and dated by the authorized agent of the carrier on whose line the car is loaded, shall be evidence that the car is loaded within the life of the contract.

(E) On the last day of shipment under the contract, Seller shall provide car numbers on Buyer’s request by 4 p.m., Central Time.

## Rule 13. Rail Notice and Billing Instructions

The words, “notice,” “notify,” and “notification” mean verbal communication and/or communication by facsimile or wire regarding applicable loaded car numbers and billing instructions. Cars shall be billed to a named destination and ordering cars to lines for billing purposes does not constitute billing to a named destination.

Notification(s) and billing instruction(s) shall be provided during the Contract Shipping Period. A change in specifications previously filed with the Seller does not extend any contract except upon mutual agreement at the time such change is requested.

To comply with the “Time of Shipment” (Rule 11) schedule, the Buyer shall notify the Seller and furnish billing instructions as follows:

(A) **Requested Date(s):** On the date of trade.

(B) **Frequency of shipment [in days, weeks, or month(s)]:** On the date of trade.

(C) **Shipment Terms:** If any one of the following shipment terms is specified on the date of trade, the Buyer shall notify the Seller and furnish billing instructions as follows:

(1) **Immediate, Quick, Loaded, Spot, On-Track, and/or In Transit:** On the date of trade.

(2) **Weekly:** By Wednesday of the shipping week.

(3) **First or Last Half:** By the seventh business day of the shipping period.

(4) **Monthly:** By the fifteenth day of the month.

(5) **Prompt:** Within seven (7) calendar days of the date of trade.

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(6) **Buyer's Option:** By the fifth business date before expiration of the contract shipping period.

During the Contract Shipping Period (excluding Buyer's Option), if the Buyer has not yet provided billing instructions, the Seller may notify the Buyer regarding applicable car number(s) and request suitable billing instructions. The Buyer shall be responsible for all charges that accrue after 4:00 p.m. that day. The Seller's liability for deterioration of quality, due to delay in shipment, ceases 72 hours after notification, if the cars have not yet been billed.

Any time during the contract shipping period, the Seller may demand billing instructions (excluding Buyer's Option) and the Buyer shall provide them by the third business day after such demand. Failure, by the Buyer, to provide billing instructions shall constitute "Default on Shipping Period" (Rule 14).

If the Seller fails to demand billing instructions and the Buyer fails to provide billing instructions, the contract shall remain in force until such time that either the Seller does demand billing instructions or the Buyer does provide billing instructions.

If the Buyer is late in providing billing instructions, the Seller may extend the time of shipment by an equivalent amount of time. The Seller shall have the same amount of time to make shipment, after late receipt of the billing instructions, as was originally specified in the contract.

## **Rule 14. Rail Demurrage and/or Additional Charges**

The Seller shall be liable for any demurrage and/or additional charges accruing on feed billed to "shipper's order" or "delivery order" when such charges can be shown to have accrued by reason of the inability of the Buyer, through act of the Seller or his agent, to get possession of the bill of lading and/or other documents necessary to furnish disposition and also providing Buyer notifies Seller on date of arrival that such documents are unavailable to Buyer.

## **Rule 15. Shortage and/or Damage**

All claims for shortage and/or damage shall be made by the receiver within thirty (30) days after arrival, and must be accompanied by paid expense bill together with railroad agent's written report as to condition of car, contents, damages and/or shortages as well as listing of seal numbers with a

copy of bill of lading and invoice, or in case of truck shipment, driver's or receiver's agent's notation on delivery and/or truck bill of lading.

## **Rule 16. Default on Quality**

It is the responsibility of both Seller and Buyer to verify that the feedstuff complies with an Association of American Feed Control Officials (AAFCO) definition, a mutually acceptable industry standard, or a specific quality description.

(A) If the Seller, by exercise of due diligence, verifies that the shipment does not comply with contract terms, he shall notify the Buyer by telephone, facsimile or wire not later than 12 noon Central Time the next business day. Upon receipt of such notice, the Buyer shall, within one (1) business day thereafter, advise the Seller by telephone, facsimile or wire, which of the following options he elects to exercise:

(1) Reject the shipment and (a) cancel the rejected portion of the contract at fair market value of the contracted feedstuff as of the date of the rejection or (b) schedule a replacement shipment;

(2) Accept the shipment under mutually acceptable conditions.

(B) If the Buyer, by exercise of due diligence, verifies that the shipment does not comply with contract terms, he shall notify the Seller by telephone, facsimile or wire not later than 12 noon Central Time the next business day. After serving such notice, the Buyer shall, within one (1) business day thereafter, advise the Seller by telephone, facsimile or wire, which of the following options he elects to exercise:

(1) Reject the shipment and (a) cancel the rejected portion of the contract at fair market value of the contracted feedstuff as of the date of the rejection or (b) schedule a replacement shipment;

(2) Accept the shipment under mutually acceptable conditions.

## **Rule 17. Refusal of Shipment**

Failure to make any shipment in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment or shipments, and not for the rescission of the entire contract or any other contract between the Buyer and Seller.

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## Rule 18. Condition Guaranteed Upon Arrival

(A) Shipment on contracts shall be guaranteed by the Seller to arrive at final destination, cool, sound and sweet, free of objectionable extraneous material and shipment must discharge from conveyance without excessive or unsafe action, with the following exception: When shipments are ordered to a reconsignment point, the Seller shall not be responsible for condition at final destination unless shipments are ordered forward from such reconsignment points within 48 hours after arrival, and the Seller shall not be responsible for condition at final destination if a second reconsignment or diversion is made.

(B) It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the shipment not later than 12 noon of the second business day after arrival at final destination, otherwise the Seller's liability ceases at the expiration of such time. (See Rule 28 (J) for "Definition of Rail and Truck Arrival.")

(C) A Buyer receiving a shipment that is out of condition on arrival, and handled as outlined in preceding paragraphs, shall upon Seller's request, unload, recondition, and salvage to best advantage of the Seller whenever practical to do so.

If the Buyer is unable to handle as requested, it shall be his duty to notify the Seller of this fact at the time he notifies the Seller of car's condition and the Seller shall dispose of the shipment and shall, at the Buyer's option, either cancel the affected portion of the contract or make a replacement shipment.

(1) In the event the Buyer elects to cancel the affected portion of the contract, then the contract shall be cancelled at the fair market price on the date the car is rejected and the Buyer shall reimburse the Seller for any market loss suffered through cancellation and the Seller shall pay to the Buyer any market gain received through cancellation.

(2) In the event the Buyer requests replacement, then the Seller shall be obligated to make replacement, and the Buyer shall be obligated to accept such replacement, which must be made by a new shipment within four (4) calendar days (excluding Saturday, Sunday, and legal holidays) from the date of refusal by the Buyer.

## Rule 19. Default on the Shipping Schedule and/or the Contract Shipping Period

(A) **Default by the Seller:** When the Seller finds that he is in default on the shipping schedule, and/or the contract shipping period, he shall notify the Buyer at once by telephone, facsimile, or wire.

Upon receipt of such notice, the Buyer shall, within twenty-four (24) hours thereafter, advise the Seller by telephone, facsimile, or wire, which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or
- (2) buy-in, for the Seller's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments at fair market value based on the day this option is exercised.

If the Seller fails to notify the Buyer of his default, the liability remains in force until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. The Buyer shall notify the Seller at once by telephone, facsimile, or wire and within twenty-four (24) hours thereafter, advise the Seller by telephone, facsimile, or wire which of the options (1) or (2) or (3) above he elects to exercise.

If the Seller defaults on the contract, he is liable for all reasonable costs and expenses as shall have been incurred to and including the day the Buyer elects one of the three options.

(B) **Default by the Buyer:** When the Buyer finds that he is in default on the shipping schedule and/or the contract shipping period, he shall notify the Seller at once by telephone, facsimile, or wire.

Upon receipt of such notice, the Seller shall, within twenty-four (24) hours thereafter, advise the Buyer by telephone, facsimile, or wire, which of the following options he elects to exercise:

- (1) agree to extend the shipping period; or
- (2) sell-out, for the Buyer's account, the defaulted portion of the shipments; or
- (3) cancel the defaulted portion of the shipments at fair market value based on the day this option is exercised.

If the Buyer fails to notify the Seller of his default, the liability remains in force until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. The Seller shall notify the Buyer at once by telephone, facsimile, or wire and within twenty-four (24) hours thereafter, advise the Buyer by telephone, facsimile, or

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wire which of the options (1) or (2) or (3) above he elects to exercise.

If the Buyer defaults on the contract he shall be liable for all the reasonable costs and expenses as shall have been incurred to and including the day the Seller elects one of the three options.

(C) This rule does not permit compensation to the defaulting party to a contract.

## Rule 20. Production Origin of Feed

A sale of feedstuffs must be for a product of United States origin unless otherwise specified at time of sale. If the contracting parties designate a specific non-U.S. origin as the shipment point, then it shall be presumed that the feedstuff was produced in that country unless otherwise specified at the time of sale.

## Rule 21. Labeling

Bagged feed must bear a complete label, either stenciled upon the bag or on a tag attached thereto, indicating the net weight, name brand or trademark, minimum percent of protein and fat, and maximum percent of crude fiber, the specific name of each ingredient, expressed in its common or usual term, together with name and address of the manufacturer. On bulk shipments, either the analysis tag is to be attached to invoice or analysis is to be stamped or typed on all invoice papers. Labels, where used, must be clear and distinct, in type of sufficient size to be easily read, and must conform to applicable state law or the uniform label adopted by the Association of American Feed Control Officials where a specific state law is not applicable.

## Rule 22. Weights

On the date of trade, the Seller and Buyer shall agree on the market where the weights will be obtained and the rules governing that market shall apply. When feed is shipped in bulk, the following type weights may be specified:

### (A) Official Weights

#### (1) U.S. Official

(a) U.S. Class X Weights: An official Class X weight shall be any weight that meets the re-

quirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) U.S. Class Y Weights: An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

#### (2) Canadian Official

Canadian Official Weights: An official weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada, and the weighing is 100% supervised by a licensed Canadian Grain Commission Weigher.

#### (B) Other Weights

(1) U.S. Certified Weights: A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) Canadian Certified Weights: A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights

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and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

(3) **Affidavit Weights:** Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

(4) **Railroad Weights:** Railroad weights shall be weights obtained by a rail carrier using track scales to obtain a gross weight less rail car marked tare weight to determine a net weight.

## (C) Weight Settlements

(1) If weight terms have not been specified in the contract, then the Seller's weight shall govern if it is a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined in this rule.

(2) If weight terms have not been specified in the contract and the Seller cannot furnish a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined in this rule, then the Buyer's U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight shall govern.

(3) If weight terms have not been specified in the contract, and neither Buyer nor Seller can furnish a U.S. or Canadian Official, Canadian Certified, or U.S. Certified Class I or II weight as defined by this rule, then the first weight supplied by either the Seller or Buyer which meets the requirements of this rule for a U.S. Certified Class III weight shall govern. If neither the Buyer nor Seller can furnish a U.S. Certified Class III weight, then the first Affidavit weight supplied by either Buyer or Seller shall govern. If neither the Buyer nor Seller can furnish any weight meeting any of the foregoing requirements, then the first Railroad weight supplied by either Buyer or Seller shall govern.

## Rule 23. Uniform Certificate for Affidavit Weights

When a shipper or receiver furnishes an affidavit weight, the certificate shall show the following information:

1. Car number and date of loading . . . . .
2. Seal numbers . . . . .

## 3. Type of scale used:

- Hopper Scale . . . . .
- Track Scale . . . . .

## If Hopper Scale:

- (a) Size of dump . . . . .
- (b) Number of dumps . . . . .
- (c) Partial dump . . . . .
- (d) Total Weight . . . . .
- This Hopper Scale was last tested by . .

## If Track Scale:

- (a) Private or Railroad (state which) . . .
- (b) Gross Weight . . . . .
- (c) Marked Tare (whether or not used) . .
- (d) Net Weight . . . . .
- (e) Actual Tare (unless railroad scale) . .

## If private Track Scale:

- This Track Scale was last tested . . . . .
- by . . . . .
- Signature . . . . .

## Rule 24. Registration

On sales of feedstuffs, the Seller guarantees that the feedstuffs shall comply with the laws of the state into which it is sold, including registration and tax, if any.

## Rule 25. Drafts

### (A) Margins

If sales are made on destination terms, the Seller shall leave ample margin in his drafts to provide for possible variations in weights, grades or other quality factors.

### (B) Overdrafts

If an overdraft has been made on a feed shipment, and has been discovered before the draft is paid, the Buyer shall elect either to pay the overdraft for account of the Seller, or to request the Seller to reduce his draft to the proper amount.

If the Buyer elects to pay the overdraft for account of the Seller, or if drafts are paid and an overdraft is not discovered until final accounting is rendered, the Seller shall reimburse the Buyer on demand for the full amount of said overdrafts.

## Rule 26. Payment That Is Conditioned on Presentation of Original Drafts and/or Invoices

If payment is conditioned on presentation of original drafts or invoices, the Seller shall provide to the Buyer, or other such consignee as may have been previously designated by the Buyer, an invoice

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giving the conveyance identification, kind and type of feed, actual or estimated weight (state which applies), price, contract on which shipment is to apply, date of contract, date of shipment, point of origin, amount of invoice, and complete railroad routing, if applicable.

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original bill of lading, and/or delivery order and, if applicable, original weight and inspection certificate(s).

## Rule 27. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

## Rule 28. Definitions

### (A) Business Day

For the purpose of these rules, a "business day" shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays. Wherever the term "holiday" or "legal holiday" appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

### (B) Buying-In

When the phrase "buy-in" is used in these rules it shall mean an actual purchase of feed of like kind and quantity on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

### (C) Communications

(1) When a rule refers to written communication, confirmation or notification, it shall include those communications sent/received by postal mail, courier, or rapid electronic means, e.g., telex,

facsimile, EDI, email, or communications generated by an electronic trading platform. The sender shall be responsible for the correct transmission of the message.

(2) When a rule refers to rapid written communication, confirmation or notification, it shall include telex, facsimile, EDI or email. The sender shall be responsible for the correct transmission of the message.

(3) When a rule refers to telephone or voice communication, confirmation, or notification, such communication must be confirmed in writing.

### (D) Delivery

#### (1) Rail and Barge

The term "delivery" when used in these rules shall mean that the conveyance has been actually or constructively placed to the Buyer.

#### (2) Truck

Truck feed shall be considered to have been delivered at the time and date of unloading as evidenced by a scale ticket or dock receipt issued by the receiving facility.

### (E) Electronic Trading Platform

The term "Electronic Trading Platform" shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

### (F) Feed or Feedstuffs

The definitions of feed or feedstuffs, in the absence of an applicable state law to the contrary, shall be as set forth in the Official Publication of the Association of American Feed Control Officials as now existing or hereinafter amended.

### (G) Futures

All references in these rules or contractual documents to futures markets, close of market, futures spread, futures or futures-related pricing, and similar terms shall mean the day session of the Chicago Board of Trade or, when so designated, the day session of other futures exchanges in North America.

### (H) Mechanical Seals

For the purposes of these rules, a "mechanical seal" shall be defined as a locking mechanical device, readily identifiable by unique markings or numbers, whose primary purpose is to provide evidence of tampering with the conveyance, and

# NGFA Feed Trade Rules

whose type and/or usage may be mutually agreed upon between the Buyer and Seller as part of the contract terms.

## (I) Notice

The term "notice," when used in these rules shall mean verbal communication when possible, and in all cases by rapid written communication.

## (J) Packaging

(a)(1) It shall be understood that all feedstuffs when sold in sacks shall be packed in new bags, unless otherwise agreed at time of trade; and (2) Shipments shall be in even weight packages and the weight of packages shall be net when packed, two thousand (2,000) pounds net shall constitute a ton and two thousand two hundred four and 6/10 (2,204.6) pounds shall constitute a metric tonne.

(b) Shipments in totes, and supersacks may be shipped in clean reusable containers, with net weights per container or by shipment designated.

## (K) Rail and Truck Arrival

(1) Rail. Arrival of a car of feed shall be:

(a) The time of actual physical placement at the billed destination; or

(b) If not physically placed, then 48 hours after the car is constructively placed or reported to the Buyer as available for Buyer's instructions. This period shall exclude Saturdays, Sundays, or legal holidays.

(2) Trucks. Trucks shall be considered to have arrived at the time and date of unloading as evidenced by a scale ticket or dock receipt at the receiving facility. Where such evidence is not available, other routine business records may be used to show arrival time and date.

## (L) Shipment—Rail and Barge

The term "shipment" when used in these rules shall mean that the shipper has filed shipping instructions with the authorized agent of the carrier.

## (M) Selling-Out

Where the phrase "sell-out" is used in these rules, it shall mean an actual sale of feed of like kind and quantity on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

## (N) Time

When these rules require that an action be taken at or by a specified time of day, then "time" shall mean the official time for the United States provided by the U. S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA

## (O) Trains

For the purposes of these rules:

(1) a Multi is any group of cars of less than 25 for movement as one unit and under one bill of lading.

(2) a Unit Train is a group of 25 or more cars for movement as one unit under one bill of lading.

## (P) Truckload

If no truck size is specified in the contract, a truckload shall be 50,000 pounds net weight.

# Barge Trade Rules of the National Grain and Feed Association

Adopted March 6, 1964	Amended March 8, 1979	Amended March 16, 2001
Amended March 19, 1965	Amended March 20, 1980	Amended March 28, 2008
Amended March 30, 1967	Amended March 26, 1981	Amended March 31, 2009
Amended March 27, 1969	Amended March 23, 1982	
Amended March 25, 1971	Amended March 15, 1983	
Amended March 23, 1972	Amended March 13, 1984	
Amended March 1, 1973	Amended September 11, 1985	
Amended March 14, 1974	Amended March 27, 1990	
Amended September 12, 1974	Amended March 12, 1991	
Amended March 25, 1976	Amended March 24, 1992	
Amended March 23, 1977	Amended March 21, 1994	
Amended March 31, 1978	Amended March 31, 2000	

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**Preamble:** The following rules amend and are a supplement to the Grain Trade Rules and Feed Trade Rules so that such rules so amended apply to shipments of grain (as defined by the United States Grain Standards Act, 7 United States Code Sections 71 et. seq., as now existing or hereinafter amended), hay and all feedstuffs, including mill products or byproducts, hereinafter referred to as "feedstuffs" whenever such shipments are designated by contract to be shipped by barge.

Where no distinction is made in the text of a rule among products covered by these rules, the rule applies to all grain and feedstuffs; otherwise the rule or subpart, wherein a distinction is made, covers only the product(s) mentioned.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

# NGFA Barge Trade Rules

## Rule 1. Applicable Equipment/Barge

Only single compartment barges or equipment that can be unloaded by a marine leg and that are 195/200 by 35 feet shall be tendered on contract except by mutual agreement of both the Buyer and Seller.

## Rule 2. Passing of Title as Well as Risk of Loss and/or Damage

Title as well as risk of loss and/or damage, passes to the Buyer as follows:

### (A) Grain:

(1) On f.o.b. origin contracts title and risk of loss shall pass from the Seller to the Buyer at the time and place of shipment. The time is the moment when the Seller notifies the Buyer that the barge is loaded.

(2) On c.i.f. contracts title and risk of loss shall pass from the Seller to the Buyer at the time and place of shipment. The time is the moment of either:

(a) the issuance of a validated bill of lading by the carrier or the carrier's agent in accordance with Seller's instructions; or

(b) transmittal by written communications of shipping instructions by the Seller to the carrier in accordance with Buyer's instructions.

### (B) Feedstuffs:

(1) Title and risk of loss or damage caused by other than by going out of condition shall pass as provided in Rule 2(A), but the original shipper shall be responsible for the condition of the feedstuffs up to (a) five (5) calendar days subsequent to the arrival of the barge at destination; or (b) commencement of unloading of the barge, whichever occurs first.

(2) If the barge is sold after reaching its destination, the first Seller and each subsequent Seller will be responsible for the condition of the feedstuffs for five (5) calendar days following the date of each reconignment.

(3) The Buyer shall have until 4 p.m. on the fifth calendar day following the date of arrival of the barge at destination to notify the Seller of any out of condition cargo. If the fifth (5) calendar day falls on a Saturday, Sunday or holiday, the following business day shall be considered the fifth calendar day.

(4) If the Buyer under the provisions of Rule 2(B) (1), (2) and (3) above declares a barge of feedstuffs to be infested, the Buyer shall notify the Seller of the cost of fumigation. The Buyer will assume the responsibility to fumigate the barge and charge the mutually agreed expense to the Seller. Alternatively, the Seller has the right to fumigate the barge within twenty-four (24) hours at the Seller's expense. If, in the latter case, the Seller has not fumigated the barge within twenty-four (24) hours, the Buyer may arrange for fumigation at the reasonable expense of the Seller. The barge cannot be rejected on account of infestation, and demurrage incurred shall continue for the account of the Buyer.

## Rule 3. Inspection

Inspection as defined in Grain Trade Rule 10.

## Rule 4. Destination Inspections, Quality and Condition Guaranteed on Arrival

### Grain:

If barge grain is sold basis destination inspection, or guaranteed condition on arrival, it shall be the obligation of the Buyer to obtain an inspection or condition check within five (5) calendar days of the date of arrival of the barge. If the barge cannot be opened for inspection or condition check away from the unload berth because of faulty equipment on the barge, it shall be the obligation of the Buyer to notify the Seller within the period specified herein.

## Rule 5. Feedstuffs-Analysis

(A) **Specific Analysis:** If the contract requires a specific analysis on the feedstuffs being shipped, the contract must specify whether a certificate of analysis is required, and if so, the certificate of analysis must specify the name of the laboratory issuing the certificate, the method of sampling used, when and where the sample was taken, and the percentage of each factor for which there is a contractual requirement.

(B) **Origin Analysis:** If feedstuffs are sold basis origin analysis, the last Buyer in the string to whom a barge has been applied may inquire of the original shipper as to its analysis provided at least five (5) business days have elapsed since the origin bill of lading date.

# NGFA Barge Trade Rules

## Rule 6. Weights

(A) **Official Weights:** Official Weights shall be those weights described in Grain Trade Rule 14A(1) or Feed Trade Rule 22 A(1).

(B) **Certified Weights:** Certified Weights shall be those weights described in Grain Trade Rule 14 B(1) or Feed Trade Rule 22 B(1).

(C) If weights other than Official or Certified Weights are provided for in the contract of purchase and sale, the weighing party shall on request of the other party indicate the method of obtaining weights and such other information on the weighing process as the other party may reasonably request, including copies of supporting documentation.

(D) Cargo transferred by truck or rail car to the loading barge after weighing in the elevator, or cargo weighed after the transfer to the elevator by truck or railroad from the barge being unloaded, shall not be considered official or certified weights.

(E) Every official or certified barge unload weight certificate shall include either a statement that no cargo was left in the barge or a statement specifying the estimated quantity of cargo left in the barge.

(F) In the event any portion of the barge cargo is not unloaded at the receiving elevator or at the receiving point, the unloading Buyer must notify his Seller and the shipper within twenty-four (24) hours, or as soon thereafter as practicable.

(G) **Grain:** If the contract is based on destination weights, the unloading Buyer shall notify the original shipper and the barge operator of the final unload weights by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing the original weight certificate to the original shipper and a copy to the Barge Operator within five (5) business days of unload, accompanied by a statement of the cost of weighing charges, if applicable.

## Rule 7. Weight Settlements

(A) **Grain:** The original shipper shall issue an invoice and initiate final settlement with the attached original weight certificate, or a duplicate copy thereof. If the Buyer and Seller agree that payment is to be net cash upon receipt of invoice, the invoice shall be due and payable within five (5) business days, which is considered to be the normal time to clear the paperwork involved.

(B) **Feedstuffs:** The ultimate Buyer shall make final settlements of weight and quality with the original weight certificates, or duplicate copy thereof within five (5) business days of unload. If the Buyer and Seller agree that payment is to be net cash, all intermediate parties shall make final settlement with the original weight certificate, or a duplicate copy thereof, within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

## Rule 8. Time of Shipment

The date of the original validated barge bill of lading consigning the shipment to the destination specified by the contract shall be evidence of shipment and the determining date for establishing time of shipment on contract. The time of shipment must always fall within the contract period unless otherwise mutually agreed upon by Buyer and Seller.

## Rule 9. Applicability/Application

(A) Application of a barge is the exchange from Seller to Buyer of the following information:

- (1) Barge number,
- (2) Barge operator;
- (3) Loading elevator,
- (4) Original shipper;
- (5) Bill of lading date;
- (6) Quantity in barge (bushels, tons);
- (7) In the case of grain, the type of inspection (e.g., state or federal), numerical grade, and all factors.

(B) The bill of lading shall not predate notification of application by more than seven (7) calendar days. (Example: Bill of Lading Date 4-3-00 —last applicable date 4-10-00 at 11:00 a.m. except for corn, which must be applied by 10:50 a.m.)

(C) Certificate(s) of inspection for grain barges shall not predate their corresponding bill of lading date(s) by more than three (3) calendar days.

(D) If grain transactions are made on the basis of origin official weights, the weight certificate shall not predate the bill of lading date by more than three (3) calendar days.

(E) Barges must be applied on contract verbally by telephone (written confirmation per Grain Trade Rule 30(C)(3) does not apply) Monday through Friday, holidays excepted, between the hours of 8 a.m. and 4 p.m. Last day application barges must

# NGFA Barge Trade Rules

be applied by 11 a.m. except for corn, which must be applied by 10:50 a.m. When the CBOT Open Auction Trading (pit) has a scheduled shortened session, applications must be made between the hours of 8 a.m. and 1 p.m.

(F) Application of grain barges may be made with the type of inspection certificate stipulated in the contract. If a subsequent federal appeal inspection does not meet contract requirements, the Buyer may reject application.

## Rule 10. Billing Instructions

The Buyer shall furnish billing instructions to the Seller not later than 4:30 p.m. on the day of application. When the CBOT Open Auction Trading (pit) has a scheduled shortened session, the Buyer shall furnish billing instructions to the Seller not later than 1:30 p.m. on the day of application.

## Rule 11. Reconsignment/Diversion

The Seller's only obligation with respect to destination on a c.i.f. or delivered sale in the Seller's barges is to furnish the Buyer a validated bill of lading ordering the barge to the rate point specified in the contract. Nothing in this rule shall be construed as preventing the Buyer from seeking to divert the barge to other than the specified destination.

## Rule 12. Payment of Original Drafts and/or Invoices

Sight drafts or invoices are subject to payment on presentation to the Buyer or his designated agent, when properly documented and substantiated by the original validated bill of lading, a certificate of cargo insurance where applicable, and any other loading documents required by the contract.

Drafting or invoicing may be made with the type of inspection certificate stipulated in the contract. If a federal appeal inspection was requested and the federal appeal inspection does not meet the requirements of the contract, the Buyer may reject the application. If the Buyer has not paid the draft or invoice, he may reject it. If the Buyer has paid the draft or invoice, the Seller shall reimburse the Buyer on demand for the full amount paid on the draft or invoice.

## Rule 13. Demurrage

For barges applied before or after arrival at the destination specified by the contract, the buyer is entitled to such free time and demurrage terms as specified by the contract. Free time shall commence the first 7 a.m. following: (A) arrival of the barge at the destination specified by the contract; or (B) following notification of application if application is made after arrival of the barge.

## Rule 14. Overfill and Underfill on Bushel/Tons Contracts

(A) **Grain:** Any underfill or overfill on barge grain shall be settled at the market value at the close of the first business day following the date of load or unload of the last barge in fulfillment of the contract, whichever weight is applicable.

(1) **Market Value:** "Market value" shall mean the basis at the close of the first business day following date of load or unload, whichever weight is applicable. The flat price shall be established at the time the overfill or underfill becomes known by both parties to the contract.

Overfills and underfills shall be settled on a basis over or under the futures month currently used for the majority of cash trades. To convert the basis the day after the last load or unload to a basis relative to the futures month currently used for the majority of cash trades, the futures spread of the day after last load or unload shall be used.

(2) **Tolerance:** On bushel contracts, a total tolerance of 10% more or less than the mean quantity up to a maximum of 30,000 bushels shall be permissible in the fulfillment of the contract. An overfill or underfill of 10% or 1,000 bushels, whichever is less, shall apply at contract price. If the total overfill or underfill is in excess of the lesser of 10% of the mean quantity or 1,000 bushels the entire overfill or underfill shall be settled at the market value.

## (B) Settlements: Overfills and Underfills — Feedstuffs

Overfills and underfills within 5% of contract quantity shall be settled at the contract price. If the overfill or underfill is in excess of 5% of the contract quantity, the entire overfill or underfill shall be settled basis the fair market value at the

# NGFA Barge Trade Rules

close of the first business day following the date of load or unload of the last barge in fulfillment of the contract. If the contract calls for specific barge quantities, each barge shall be settled individually.

## Rule 15. Definitions

(A) **Barge:** The word “barge” shall mean a covered barge commonly used for carrying bulk grain or feedstuffs. Weight or quantity requirements should be specified in contracts.

(B) **Cargo Insurance or Cargo Insured Bill of Lading:** The terms “Cargo Insurance” or “Cargo Insured” bill of lading as used in these rules shall mean protection afforded to the holder of title of not less than that described as follows: For all physical loss and/or damage to the cargo for any and all risks or perils (including but not limited to all Acts of God); provided that, there need not be protection for 1) shrinkage, expansion or other change to sound grain due to natural causes on sound grain; 2) loss, damage or deterioration resulting from delay in the delivery of the shipment and/or moisture content of the cargo itself; 3) any inherent vice or defect in the cargo; 4) improper stowage, or the physical act of loading or unloading, when not performed by carrier; 5) the authority

of law, including without limitation, quarantine and embargo; or 6) the acts of the public enemy, hostilities, or war-like operations, whether or not there be a declaration of war.

It shall be the obligation of the Seller to furnish cargo insurance or a cargo insured bill of lading with respect to barges furnished by the seller involving CIF or delivered contracts. It shall be the obligation of Buyer to furnish cargo insurance with respect to barges furnished by the Buyer involving FOB contracts.

(C) **c.i.f.:** For purposes of barge contracts, the term c.i.f. or “delivered,” followed by a destination point shall mean f.o.b. origin, but the price includes the cost of the cargo f.o.b. origin point, plus cargo insurance, plus barge freight to the destination rate point.

(D) **f.o.b.:** For purposes of barge contracts, the term f.o.b. means free of charge on board barge at point of origin.

(E) **Validated bill of lading:** The term “validated” when used in relation to bills of lading shall mean such a document that is original, complete and, if a negotiated order bill of lading, properly endorsed.

# Barge Freight Trading Rules (Affreightment) of the National Grain and Feed Association

Adopted March 26, 1981  
Amended March 23, 1982  
Amended September 11, 1985  
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Amended March 14, 1989  
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Amended March 28, 2003  
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Amended March 31, 2009  
Amended March 5, 2010  
Amended March 15, 2011

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**Preamble:** The following rules shall govern all transactions of a financial, mercantile or commercial character connected with the purchase and/or sale of barge transportation and in the carriage of bulk commodities by barge, arising between Active members of the National Grain and Feed Association and other parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

# NGFA Barge Freight Trading Rules (Affreightment)

## Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Number of barges
- (C) Type(s) of commodities to be carried
- (D) Rate(s)
- (E) Governing weights
- (F) Applicable Trade Rules
- (G) Contract placement period(s)
- (H) Placement point(s) or area(s)
- (I) For Other than Weekly Contracts: Advice on placement schedules and origin point declarations
- (J) Destination point(s) or area(s)
- (K) Minimum loading requirements
- (L) Free Time (which commences at 0700 hours)
- (M) Origin/destination demurrage terms (which commences 0700 hours after Free Time)
- (N) Cargo insurance coverage
- (O) Terms of payment

## Rule 2. Applicable Equipment/Barge

Only single compartment barges or equipment that can be unloaded by a marine leg and that are 195/200 by 35 feet shall be tendered on contract except by mutual agreement of both the Buyer and Seller.

## Rule 3. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged for others, at least partially on a commission basis, in negotiating, or facilitating the execution of, contracts relative to property of which he has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

(1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom freight is consigned for sale is not a broker.)

(2) who receives a salary instead of a commission or brokerage.

(3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the execution of, a contract in accordance with instructions from both principals; that, at the time of negotiations, or the facilitation, advises each principal the name of the other; and that completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

## Rule 4. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 4(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the

# NGFA Barge Freight Trading Rules (Affreightment)

broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

(D) A document otherwise complying with this rule shall be effective even though it fails to use the term "confirmation."

## Rule 5. Alteration of Contract

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.

## Rule 6. Electronic Data Interchange and Email

(A) These rules may be applied to trades that include electronic transmission and receipt of data in agreed formats, e.g., Electronic Data Interchange (EDI), in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an electronic transmission in agreed formats to which the parties have given their prior written consent.

(B) These rules may be applied to trades that occur by email in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an email, and such email shall substitute for a written document provided that the parties have previously so agreed.

## Rule 7. Weights

### (A) Official Weights

#### (1) U.S. Official

(a) U.S. Class X Weights: An official Class X weight shall be any weight that meets the requirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

(b) U.S. Class Y Weights: An official Class Y weight shall be a partially supervised weight that meets the requirements specified by the U. S. Department of Agriculture in its regulations implementing the U.S. Grain Standards Act.

### (2) Canadian Official

Canadian Official Weights: An official weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada, and the weighing is 100% supervised by a licensed Canadian Grain Commission Weigher.

### (B) Other Weights

(1) U.S. Certified Weights: A certified weight shall be any weight that is obtained by a licensed weigher, using a certified scale. A scale shall be considered certified when it meets the requirements specified in the current edition of Handbook 44 (published by the National Institute of Standards and Technology) and has successfully passed inspection, at least annually, by the U.S. Department of Agriculture or its approved agent, a State Board of Weights and Measures, or its approved agent. A scale, to remain certified, must be tested and pass inspection a minimum of once every twelve months or more frequently when required by the governing regulatory authority.

(a) Class I: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under 100% supervision of a disinterested third party.

(b) Class II: A weight documented by a weight certificate obtained by a licensed weigher using a certified scale under a minimum of 25% supervision of a disinterested third party.

(c) Class III (or Certified House Weights): A weight documented by a weight certificate obtained by an unsupervised licensed weigher using a certified scale.

(2) Canadian Certified Weights: A certified weight shall be any weight on an approved scale meeting the requirements specified by the Weights and Measures Act and Regulations of Canada. A qualified representative of the company (in-house weight) issuing a certified weight certificate shall supervise weighing.

(3) Affidavit Weights: Affidavit weights are those obtained by a weigher on any scale not inspected for certification within the past twelve months.

# NGFA Barge Freight Trading Rules (Affreightment)

## Rule 8. Advice of Schedules

### (A) Placement of Barge Freight for Weekly Contracts:

(1) The Buyer shall furnish the Seller a specific river on multi-river contracts by 1600 hours two (2) business days preceding the contract placement period.

(2) The Seller can provide the Buyer a boat schedule no sooner than during the last business day preceding the contract period. The Buyer shall furnish the Seller a named origin point(s) based on the timing of said schedule.

(3) When a boat schedule has not been provided by the Seller to the Buyer, the Buyer shall furnish the Seller named origin point(s) no later than the second business day of the contract period.

### (B) Schedules Arriving before Contract Period:

(1) Should a barge arrive at origin point prior to commencement of the contract period, constructive placement will be effective the first 0700 hours of the contract period.

(2) Should the Buyer commence loading the barge prior to the contract period, placement will be effective the day loading commences.

### (C) Substitution of Schedule(s):

The Seller may substitute a barge or schedule provided placement is no later than the timing of the original schedule. If substitute placement is earlier than the original schedule, constructive placement will occur no earlier than the timing of the original schedule

## Rule 9. Placement of Barges (Origin and Destination)

(A) (1) Actual placement is made when a barge is placed in accordance with instructions of the Buyer or the Consignee at the facility in the port specified by the contract or bill of lading destination.

(2) Constructive placement may be made when actual placement is not possible by placing or holding a barge at a point of the Barge Operator's choice near the actual delivery point. In making any subsequent placement of the barge, no ad-

ditional free time will be allowed. **Exception:** If a Barge Operator is initially prevented from actual placement or constructive placement because of a condition of the navigation channel, the provision for placement will not be applicable until the condition has been alleviated.

(3) Placement for loading is effective the first 0700 hours after a barge is actually or constructively placed provided the Seller has notified the Buyer of such placement by 1100 hours that day by telephone, confirmed in writing by the end of the next business day. Confirmation is to include the name of the Barge Operator.

(4) Placement at the unloading port is effective the first 0700 hours after a barge is actually or constructively placed, provided the Barge Operator has notified Consignee or Consignee's designated agent of such placement by 1100 hours that day by telephone, confirmed in writing by the end of the next business day.

**(B) Bad Order or Dirty Equipment/Barge:** (1) Placement is voided when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday or legal holiday of the barge's condition by 1600 hours of the day immediately following the effective placement date. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday, or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

(2) Placement is interrupted when a barge is found to be unfit ("bad order," "dirty") for loading if the Buyer/Shipper notifies the Seller on a business day or the Barge Operator on a Saturday, Sunday, or legal holiday of the barge's condition after 1600 hours of the day immediately following the effective placement date. Placement resumes the following 0700 hours after the barge is made ready for loading. The Seller shall have a barge ready for loading no later than 0700 hours of the third business day following Buyer's notification. If notice is given on a Thursday, Friday or Saturday the barge operator shall have a barge ready for loading no later than the close of the first business day of the following week.

# NGFA Barge Freight Trading Rules (Affreightment)

## Rule 10. Release Instructions

(A) Notice of Release after Loading: (1) The Buyer shall give the Seller notice of release by telephone, confirmed in writing by the end of the next business day, when a barge is loaded and ready to be picked up. In order to release a barge as of 0700 hours the barge must be loaded prior to 0700 hours and notice of release be given by 1100 hours that day.

(2) For Saturday, Sunday and legal holiday loading, barges shall not be considered to be released unless:

(a) The Buyer gives the Seller pre-advance no later than the preceding business day. If the Seller is unavailable, the Buyer will notify the Barge Operator. The Buyer shall confirm said release to the Seller in writing by the end of the next business day, or

(b) The Buyer contacts the Seller or Barge Operator (if the seller is unavailable) by telephone on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours. The Buyer shall confirm said release to the Seller in writing by the end of the next business day.

(B) Notice of Release after Unloading: (1) The Consignee or his agent shall give the Barge Operator or his agent notice of release by telephone, confirmed to the Barge Operator in writing by the end of the next business day, when a barge is unloaded and ready to be picked up. In order to release a barge as of 0700 hours the barge must be unloaded prior to 0700 hours and notice of release be given by 1100 hours

(2) For Saturday, Sunday and legal holiday unloading, barges shall not be considered to be released unless:

(a) the Consignee or his agent gives the Barge Operator or his agent pre-advance on the preceding business day, or

(b) the Consignee or his agent contacts the Barge Operator or his agent by telephone on a Saturday, Sunday or legal holiday and releases the barge(s) by 1100 hours that day, confirmed to the Barge Operator in writing by the end of the next business day.

## Rule 11. Billing Instructions

(A) The Buyer shall give the Seller billing instructions by the close of the third business day

following the release date. These instructions shall be confirmed in writing. Billing instructions shall include:

- (1) Barge number
- (2) Commodity
- (3) Loading port, facility and shipper
- (4) Tonnage
- (5) Consignee
- (6) Notify party
- (7) Bill of lading date
- (8) Destination
- (9) Applicable weights

(B) Barges that are not billed prior to arrival at contract destination are subject to Barge Operator's reconsignment charges.

## Rule 12. Issuance of Bill of Lading

The barge operator shall cause an appropriate bill of lading to be issued on the same date as billing instructions are given provided those instructions are received before 1500 hours. Any billing instructions given to the barge operator after 1500 hours or on weekends or legal holidays may be issued on a bill of lading no later than the next business day.

## Rule 13. Weight Settlements

(A) If the contract is based on destination weights, the unload Buyer shall notify the Original Shipper and the Barge Operator of the final unload weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing the original weight certificate to the Original Shipper and a copy to the Barge Operator within five (5) business days.

(B) If the contract is based on origin weights, the Consignor shall notify the Barge Operator of the loading weight(s) by telephone or rapid written communication within two (2) business days of unload, confirmed by mailing a copy of the original weight certificate to the Barge Operator within five (5) business days.

## Rule 14. Failure to Perform

### (A) Seller's Non-Performance:

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirm in writing. The Buyer shall then at once elect to:

# NGFA Barge Freight Trading Rules (Affreightment)

(1) agree with the Seller upon an extension of the contract

(a) at contract price, or

(b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or

(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

If the Seller fails to tender an applicable schedule or placement by 1400 hours on the last business day of the contract placement period, the Buyer after giving notice to the Seller to complete the contract, shall then elect to:

(1) agree with the Seller upon an extension of the contract

(a) at contract price or

(b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or

(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

## **(B) Buyer's Non-Performance:**

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone and confirm in writing. The Seller shall then at once elect to:

(1) agree with the Buyer upon an extension of the contract

(a) at contract price, or

(b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or

(2) sell-out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

(1) agree with the Seller upon an extension of the contract,

(a) at contract price or

(b) at fair market value for adjustment of a previously priced contract or to determine the spread from the contract period to another period of time; or

(2) sell-out for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market that day.

(C) This rule does not permit compensation to the defaulting party to a contract.

## **Rule 15. Reconsignment**

**(A) Reconsignment for Gulf (Baton Rouge/ Myrtle Grove) Destinations:** A barge may only be reconsigned by mutual agreement of the Cargo Owner and Barge Operator. The terms and conditions of the reconsignment must be confirmed in writing by both parties the next business day.

**(B) Reconsignment other than Gulf (Baton Rouge/Myrtle Grove) Destinations:** A barge may only be reconsigned by mutual agreement of all parties involved in the freight chain. A reconsignment request shall be made verbally by telephone by the owner of the cargo to the Seller who in turn, if applicable, continues such requests through the freight chain until the Barge Operator is finally contacted. If all parties in the freight chain agree to the reconsignment and the Cargo Owner elects to reassign, then the Cargo Owner shall confirm the reconsignment verbally by telephone to the Barge Operator. The terms and conditions of the reconsignment must then be confirmed in writing between each contracting party within two (2) business days of the day of reconsignment.

# NGFA Barge Freight Trading Rules (Affreightment)

## Rule 16. Payment of Invoice

If the Buyer and Seller agree that payment is to be net cash upon receipt, the invoice shall be due and payable within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

## Rule 17. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

## Rule 18. Definitions

### (A) Barge

The word “barge” shall mean a covered barge commonly used for carrying bulk grain or feedstuffs, which without any weight or quantity reference shall have no quantitative meaning insofar as these rules apply.

### (B) Bulk Commodity

A commodity which, in accordance with the existing custom of the trade, is loose and is received and delivered by the Barge Operator without transportation mark or count.

### (C) Business Day:

For the purpose of these rules, a “business day” shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA, excluding Saturday, Sunday and legal holidays.

### (D) Buying-In

When the phrase “buy-in” is used in these rules it shall mean an actual purchase of freight of like kind on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

## (E) Commencement of Contract Placement Periods

(1) **Weekly Contracts:** The contract placement/delivery period commences at 0001 hours on Sunday.

(2) **Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first day of the month.

(3) **Semi-Monthly Contracts:** The contract placement/delivery period commences at 0001 hours on the first and sixteenth days of the month.

## (F) Communications

(1) When a rule refers to written communication, confirmation or notification, it shall include those communications sent/received by postal mail, courier, or rapid electronic means, e.g. telex, facsimile, EDI, email, or communications generated by an electronic trading platform. The sender shall be responsible for the correct transmission of the message.

(2) When a rule refers to rapid written communication, confirmation or notification, it shall include telex, facsimile, EDI or email. The sender shall be responsible for the correct transmission of the message.

(3) When a rule refers to telephone or voice communication, confirmation, or notification, such communication must be confirmed in writing.

## (G) Electronic Trading Platform

The term “Electronic Trading Platform” shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

## (H) Legal Holidays or Holidays

Wherever the term “holiday” or “legal holiday” appears in these rules, it shall mean any one of the following days: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When such holidays fall on Sunday, the following Monday will be considered the holiday.

## **NGFA Barge Freight Trading Rules (Affreightment)**

### **(I) Opening of the Mid-Mississippi**

The Dubuque and South (Mid-Mississippi) opening commences the first 07:00 hours of the first business day after the first tow originating at or below Winfield, MO, reaches Dubuque, Iowa. Said tow shall include at least one empty dry cargo covered barge suitable for loading.

The Mid-Miss opening shall be determined by a majority vote of a three person committee appointed by the NGFA Chairman and shall be announced by publishing the committee's confirmation of the opening on the NGFA web site.

### **(J) Selling-Out**

Where the phrase "sell-out" is used in these rules, it shall mean an actual sale of freight of like kind on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

### **(K) Time**

When these rules require that an action be taken at or by a specified time of day, then time shall mean the official time for the United States provided by the U. S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

# Secondary Rail Freight Trading Rules (Affreightment) of the National Grain and Feed Association

Adopted March 20, 2007  
Amended March 31, 2009  
Amended March 5, 2010  
Amended March 15, 2011

## Table of Rules

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• Rule 3. Confirmation of Contracts	• Rule 10. Payment of Invoice
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• Rule 6. Advice of Schedules	

**Preamble:** The following rules shall govern all transactions of a financial, mercantile or commercial character connected with the purchase and/or sale of secondary rail freight transportation (any subsequent transfer of freight ownership and obligations as defined by each individual rail carrier), arising between Active members of the National Grain and Feed Association and other non-railroad parties using these rules, unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto.

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

# NGFA Secondary Rail Freight Trading Rules (Affreightment)

## Rule 1. Trade

Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing the following specifications, if applicable:

- (A) Date of contract
- (B) Number of rail cars, units, shuttles
- (C) Type(s) of equipment
- (D) Price to be paid
- (E) Applicable Trade Rules
- (F) Contract placement period(s)
- (G) Destination restriction(s)
- (H) Terms of payment
- (I) Other terms

If the Buyer and Seller have been trading on agreed terms and conditions, the use of the phrase "usual terms" in the confirmation shall mean that such terms and conditions that governed previous trades of a like character shall apply instead of the specifications required above.

## Rule 2. Brokers

(A) A broker is a person, firm or electronic trading platform that is engaged for others, at least partially on a commission basis, in negotiating, or facilitating the execution of, contracts relative to property of which he has no actual or constructive custody.

(B) A person, firm, or electronic trading platform is not a broker:

(1) who has possession and absolute control of merchandise shipped to him to sell and collect the price. (Therefore, a commission merchant to whom freight is consigned for sale is not a broker.)

(2) who receives a salary instead of a commission or brokerage.

(3) who acts for one principal to the exclusion of all others.

(C) A broker has the power to bind his principals only to the extent of his instructions. The principals are not liable for any acts of the broker in excess of such instructions.

(D) A broker who, in good faith or otherwise, exceeds his authority is liable for any resulting damages.

(E) A broker that, in good faith, negotiates, or facilitates the execution of, a contract in accordance with instructions from both principals; that, at the time of negotiations, or the facilitation, advises each principal the name of the other; and that completes such negotiations or facilitation in accordance with the rules and customs governing such transaction, thereby fulfills all obligations and has no further liability to either principal. The contract so negotiated or facilitated is valid and binding between the Buyer and Seller as if it had been negotiated or facilitated directly between them.

## Rule 3. Confirmation of Contracts

(A) Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade or an agreed amendment, setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any material differences, shall immediately notify the other party to the contract, by telephone and confirm by written communication. In the case of minor differences, notification may be by either telephone or written communication.

(B) If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

(C) When a trade is made through a broker, it shall be the duty of the broker to send a written confirmation not later than the close of the business day following the date of trade to each of the principals setting forth the specifications of the trade. Upon receipt of said confirmation, the parties shall carefully check all specifications therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker. If either party fails to give such notice, the terms and specifications contained in the confirmation issued by the broker shall govern the contract.

# NGFA Secondary Rail Freight Trading Rules (Affreightment)

(D) A document otherwise complying with this rule shall be effective even though it fails to use the term “confirmation.”

## **Rule 4. Alteration of Contract**

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.

## **Rule 5. Electronic Data Interchange and Email**

(A) These rules may be applied to trades that include electronic transmission and receipt of data in agreed formats, e.g., Electronic Data Interchange (EDI), in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an electronic transmission in agreed formats to which the parties have given their prior written consent.

(B) These rules may be applied to trades that occur by email in substitution for conventional paper-based documents. A party to a trade may, in lieu of written documents, transmit or receive from the other party an email, and such email shall substitute for a written document provided that the parties have previously so agreed.

## **Rule 6. Advice of Schedules**

### **(A) Application of Shuttle Freight:**

(1) The Seller shall furnish the identifying number(s) and identity of the shuttle trip owner to the Buyer for the unit/freight by 12 noon, Central Time. Application including all pertinent shuttle information is defined as a phone call from the Seller to the Buyer. The Buyer shall notify the Seller of acceptance or rejection of application by 2 p.m., Central Time. In the case of rejection, the last Buyer shall also notify the shuttle trip owner by 2 p.m., Central Time. Acceptance shall be defined as transfer of shuttle trip ownership or naming of a loading origin. Application may not be given on Saturdays, Sundays and legal holidays.

(2) First day of pre-advice is defined as day of accepted application. For pre-advice, a day is defined as a calendar day, including weekends and holidays.

### **(B) Application Process for Non-Shuttle Freight:**

(1) The Buyer, by verbal communication, shall furnish car placement order information to the Seller no later than:

- (a) 2:00 p.m. on normal business days.
- (b) 12:00 (noon) on partial business days.
- (c) 2:00 p.m. on order deadline day.

(2) For applicable freight types (e.g. pool) controlled by the seller, it is the responsibility of seller to provide the buyer in a “timely manner” the railroad permit number corresponding with the order or notification that the order has been rejected by the railroad.

(3) For applicable freight types (e.g. cot/voucher), if specific railroad rules assign responsibility to order transfers of freight ownership to the seller, the seller’s responsibility ceases at the time of verbal acceptance by the buyer of the specific freight’s railroad identification number.

## **Rule 7. Placement**

### **(A) Shuttles**

(1) Actual placement is made when a unit is placed at the facility in accordance with instructions of the Buyer.

(2) When actual placement is not possible due to the loading facility’s inability to accept the shuttle upon arrival, the Seller’s obligation is met.

(3) In the event of equipment substitution by the rail carrier, any new placement times shall be by agreement of the shuttle loader, shuttle trip owner, rail carrier, and primary shuttle owner.

### **(B) Non-Shuttle Freight**

The seller is not responsible for actual placement of non-shuttle equipment in the contracted time of shipment. (See failure to perform)

## **Rule 8. Issuance of Bill of Lading**

The shuttle trip owner shall provide a copy of the bill of lading to the Seller and primary shuttle owner within two business days of date of bill of lading.

# NGFA Secondary Rail Freight Trading Rules (Affreightment)

## Rule 9. Failure to Perform

### (A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing. The Buyer shall then, at once elect either to:

(1) agree with the Seller upon an extension of the contract; or

(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

(1) agree with the Seller upon an extension of the contract; or

(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

### (B) Buyer's Non-Performance

If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone and confirmed in writing. The Seller shall then, at once elect either to:

(1) agree with the Buyer upon an extension of the contract; or

(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Buyer fails to notify the Seller of his inability to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

(1) agree with the Buyer upon an extension of the contract; or

(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

(C) Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.

### (D) Railroad Non-Performance for Non Shuttle Freight

For non-shuttle freight failure by the railroad to perform does not constitute a breach of the secondary market contract. In this instance the buyer may seek restitution from the seller through the specific carrier rules addressing non-performance penalties.

(E) This rule does not permit compensation to the defaulting party to a contract.

## Rule 10. Payment of Invoice

(A) If the Buyer and Seller agree that payment is to be net cash upon receipt, the invoice shall be due and payable within five (5) business days of receipt, which is considered to be the normal time to clear the paperwork involved.

(B) For shuttle freight, a copy of the bill of lading must accompany the invoice. Payment will be based on the number of cars on the bill of lading.

(C) For non-shuttle freight, payment will be based on the number of cars contracted.

# NGFA Secondary Rail Freight Trading Rules (Affreightment)

## Rule 11. Arbitration

Where a transaction is made subject to these rules in whole or in part, whether by express contractual reference or by reason of membership in this Association, then the sole remedy for resolution of any and all disagreements or disputes arising under or related to the transaction shall be through arbitration proceedings before the National Grain and Feed Association pursuant to the NGFA® Arbitration Rules; provided, however, that at least one party to the transaction must be a NGFA member entitled to arbitrate disputes under the NGFA Arbitration Rules.

## Rule 12. Definitions

### (A) Business Day

(1) For the purpose of these rules, a “normal business day” shall be defined as the hours from 0800 to 1700 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays when the Chicago Board of Trade open outcry has a full session.

(2) A “partial business day” shall be defined as the hours from 0800 to 1200 hours in Chicago, Illinois, USA excluding Saturday, Sunday and legal holidays when the Chicago Board of Trade open outcry has a partial session.

(3) Wherever the term “holiday” or “legal holiday” appears in these rules, or in a contract, it shall mean those scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.

### (B) Buying-In

When the phrase “buy-in” is used in these rules it shall mean an actual purchase of freight of like kind on the open market; provided, that when this is not feasible or would result in undue penalty to the Seller, the Buyer shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Seller.

### (C) Communications

(1) When a rule refers to written communication, confirmation or notification, it shall include those communications sent/received by postal mail, courier, or rapid electronic means, e.g. telex, facsimile, EDI, email, or communications generated by an electronic trading platform. The sender shall be responsible for the correct transmission of the message.

(2) When a rule refers to rapid written communication, confirmation or notification, it shall include telex, facsimile, EDI or email. The sender shall be responsible for the correct transmission of the message.

### (D) Electronic Trading Platform

The term “Electronic Trading Platform” shall include all systems designed for execution of trades in cash markets on an open, or Internet-based, electronic network.

### (E) Selling-Out

Where the phrase “sell-out” is used in these rules, it shall mean an actual sale of freight of like kind on the open market, provided that when this is not feasible or would result in undue penalty to the Buyer, the Seller shall have the privilege of establishing a fair market value for the purpose of determining any loss properly chargeable to the Buyer.

### (F) Time

When these rules require that an action be taken at or by a specified time of day, then time shall mean the official time for the United States provided by the U. S. Naval Observatory converted to Central Standard Time or Central Daylight Savings Time, whichever is applicable in Chicago, Illinois, USA.

### (G) Primary Shuttle Owner

The owner of the original freight obligation with the rail carrier.

# **NGFA Secondary Rail Freight Trading Rules (Affreightment)**

**(H) Shuttle Trip Owner**

The owner of the current shuttle trip.

**(I) Shuttle Loader**

The rail carrier-approved party and/or facility loading the current shuttle trip.

**(J) Railroad Rules**

(1) Shuttle: rules established in tariff form by a specific carrier governing its shuttle freight program.

(2) Non-shuttle: rules established in tariff form by a specific carrier governing its non-shuttle freight program.

# Arbitration Rules of the National Grain and Feed Association

Adopted October 3, 1901  
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Amended March 19, 2002  
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Amended April 1, 2005  
Amended March 7, 2006  
Amended March 20, 2007  
Amended March 28, 2008  
Amended March 31, 2009

## The Arbitration System Description and Purpose

**Section 1.** The arbitration system of this Association shall comprise as many National Arbitration Committees, consisting of three members, as may be required by the nature and variety of disputes arising, and an Arbitration Appeals Committee. These committees will be formed as provided in Section 4.

The National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules.

The purpose of arbitration in this Association is to settle disputes, adjust unsatisfactory conditions, and avoid litigation among its members and nonmembers subject to these rules.

All terms used in these rules are intended to be gender neutral (i.e., references to "him" include "her" and "it"; references to chairman are without regard to gender).

## Matters to be Arbitrated

**Section 2.** The term dispute as used, herein, shall be deemed to cover the original complaint as filed, and also any cross complaint, counterclaim, or offset as set forth by the defendant, but in no case shall the matters submitted by the defendant be any other than those directly related to the transaction on which the original complaint is made.

## Jurisdiction

### Section 3.

(a) The National Grain and Feed Association (NGFA) may properly consider a case involving a dispute between or among any of the following:

(1) Active members of the National Association (among whom arbitration by the National Association is made compulsory by the Association Bylaws). For purposes of compulsory arbitration, the term "dispute" shall mean issues involving the warehousing, processing, manufacturing, merchandising, financing, transportation, or distribution of grain or feed, or feed ingredients within or between the United States, Mexico or Canada; or any issue involving the NGFA Trade Rules;

# NGFA Arbitration Rules

(2) Active members of the National and nonmembers, by consent of both parties or by court order. In the absence of a court order a case between a member and a nonmember may not be properly considered by the National Arbitration Committee without the consent of both parties. If the contract in dispute between a member and nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules;

(3) Disputes involving those subclasses of Associate members accorded arbitration rights by the NGFA Board of Directors, and/or disputes involving Associate/Trading members and nonmembers or other classes of members, by consent of both parties or by court order.

(b) The NGFA shall not, except by consent of both parties, assume jurisdiction over transactions between members of the same regularly organized Board of Trade or Grain Exchange when such transactions are subject to the terms of such Board of Trade or Grain Exchange; or between members of the North American Export Grain Association when a vessel shipment is made subject to the arbitration rules of that association by a contract executed by both parties.

(c) **Rules of Contract Interpretation:** The following general rules of contract interpretation shall apply in NGFA arbitration cases:

(1) In cases between NGFA Active members, the NGFA Trade Rules shall be deemed to apply unless expressly excluded or inconsistent with the express contractual terms governing a transaction;

(2) Where the parties to a transaction have expressly provided for the trade rules of another association or group to apply to a transaction in lieu of the NGFA Trade Rules, then such terms shall be used to decide the case;

(3) If a contract between a member and nonmember references NGFA Arbitration but does not also reference the NGFA Trade Rules, the NGFA Trade Rules do not expressly govern the transaction but they may reflect general customs and practices of the trade.

(4) A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the Trade Rules and Arbitration Rules.

(d) The original complaint in connection with any disputed matter proposed for arbitration

must be filed with the National Secretary within twelve (12) months after a claim arises, or within twelve (12) months after the expiration date for performance of the contract or contracts involved, whichever occurs last; except that in cases between a member and nonmember arbitrated pursuant to a court order, the complaint must be filed within 30 days of issuance of the court order, or within twelve (12) months after a claim arises, or within twelve (12) months after the expiration date for performance of the contract or contracts involved, whichever occurs last.

(e) Except where otherwise provided, the term member(s) as used in these Arbitration Rules shall mean Active or Associate/Trading member, and those subclasses of Associate members accorded arbitration rights by the NGFA Board of Directors. The term nonmember(s) shall mean any other individual or firm.

## Formation of Committees

### Section 4.

(a) Each National Arbitration Committee of three arbitrators shall be selected by the National Secretary and approved by the Chairman of the National Grain and Feed Association with respect to each case to be referred to said committee.

(b) These arbitrators shall be selected from the membership with a view to forming each committee of prominent people experienced in the type of trade or transaction involved in cases to be brought before it. To qualify as an arbitrator, an individual:

(1) must be an employee, or active partner, principal, officer or director of a member firm eligible to arbitrate disputes under these rules; and

(2) should be commercially disinterested with respect to the particular dispute intended to be presented to him for judgment. If an individual arbitrator changes employment or affiliation as an active partner, principal, officer or director from one member firm to another member firm, the individual must continue to be commercially disinterested or be replaced.

(c) Each Arbitration Appeals Committee shall consist of five persons selected by the National Secretary from the Arbitration Appeals Panel and approved by the Chairman with respect to each case to be referred to said committee.

(d) If an individual committee member ceases to be employed by or affiliated as an active partner, principal, officer or director of a member firm prior to a decision, the individual committee member

# NGFA Arbitration Rules

would be disqualified. In the event of the absence, resignation, refusal to act or disqualification of a regular member of a National committee, the National Secretary, with the approval of the NGFA Chairman, shall fill the vacancy with any eligible member who will consent to serve, and said appointee shall have the same power and duties as such regular member. The acts of a committee so formed shall be of the same effect as the acts of a regular committee.

## Procedure for Instituting Cases

### Section 5.

(a) To commence a case, a complaint must be submitted to the National Secretary. This complaint should state specifically the nature of the dispute; including the defendant's name and address, applicable contract numbers, date of incident giving rise to the dispute, and the amount of damages claimed.

(b) The National Secretary then will prepare and submit to the disputants a contract for arbitration, to be signed by a responsible officer of each firm which is party to the dispute. This contract shall provide that the disputants will agree to abide by the award of the National Arbitration Committee or of the Arbitration Appeals Committee, if the original verdict is appealed by one or more of them; and to release the Association and the members of said committee(s) from all responsibility for any errors in judgment that may occur in any respect whatsoever, and from any damage or loss resulting from their acts.

(c) Upon signing said arbitration agreement, each disputant must pay an arbitration service fee based on the amount of the Plaintiff's claims as follows:

<u>Amount of Claim</u>	<u>Fee</u>
Up to \$100,000	\$400, plus 1% of the claim
\$100,001 to \$500,000	\$900, plus ½% of the claim
\$500,001 and greater	\$2,150, plus ¼% of the claim

The maximum arbitration service fee shall be \$10,000. In the event a case is settled prior to the request to the plaintiff for rebuttal, parties may receive as refund of arbitration fees, up to fifty percent (50%) of the previously submitted fees. In all cases, the National Secretary may reduce

refunds by direct or indirect costs incurred by the Association in connection with a case. For cases settled following submission of the rebuttal, fees are non-refundable. In string or other multi-party cases treated as a single arbitration by the Association, a party shall not be required to pay more than a maximum of two arbitration service fees.

(d) In the event of a complaint being submitted by an Active member or Allied member against another Active member or Allied member, or non-member by consent of both parties, or by virtue of a court order, it shall be the duty of both parties to complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary.

(e) Where a party fails to pay the arbitration service fee and/or fails to execute the contract for arbitration, the National Secretary may without further submissions by the parties enter a default judgment or such other relief as the National Secretary deems appropriate. Any party against whom a default judgment has been entered under this provision may apply for vacation of the default judgment within fifteen (15) days of entry of the default judgment by submitting a verified statement setting forth its explanation for the failure to respond to the Plaintiff's demand against the defaulting party. Such verified statement shall include the specific factual or other grounds of defense that the party against whom the default has been entered would present to a National Arbitration Committee. In addition, the defaulting party shall tender its arbitration service fee in the form of a certified money order, cashier's check, or by wire transfer or other comparable payment mechanism payable to the National Grain and Feed Association, calculated in accordance with Section 5(c) of these Rules. Failure to tender the required fee shall result in a denial of the relief being sought by the defaulting party. The National Secretary may vacate the default judgment, based solely on the defaulting party's submission, within thirty (30) days of receipt. A timely request for vacation of a default judgment shall stay the time for appeal under Section 9(a) of these Rules. A judgment entered by the National Secretary shall have the same effect as a judgment entered by a National Arbitration Committee.

(f) In the event a party against whom a complaint has been filed desires to file a cross-complaint, counterclaim, or offset, arising out of the same transaction upon which the complaint is based, he shall be permitted to do so, and same shall be passed upon by the National Arbitration Commit-

# NGFA Arbitration Rules

tee, all with the same force and effect as though the cross-complaint was the original complaint. The cross-complaint shall be filed at the same time the answer is due. The complaint and the cross-complaint shall be heard as one case. For cases involving a string trade (a trade with subsequent purchase(s) and sale(s) of the same shipment occurring after formation of the original contract but before shipment is received by the final receiver), the time limits established in Rule 7 may be amended by the National Secretary to permit the exchange of arguments between original plaintiff and ultimate defendant.

(g) If all parties to a string trade agree, and consent to abide by the ultimate decision, the original plaintiff and ultimate defendant will be permitted to release the parties in the middle of the string from participating in the Arbitration.

## Procedure for Preparing a Case

### Section 6.

(a) In preparing either side of a case for submission to a National Arbitration Committee a party will be expected to furnish:

(1) A concise and clear statement of all that is claimed. Parties to the arbitration are responsible for clearly presenting all aspects of their case (the National Secretary and the Arbitration panel are not responsible for undertaking fact-finding searches or discovery);

(2) The contract or contracts, if any, including all written evidence, letters, and telegrams, tending to establish the terms and conditions (or photostatic or verified copies thereof).

The contract is the basis for most of the cases in dispute. Special care should be exercised to establish the terms and conditions of it, in the preparation of a case of arbitration.

(3) Any supporting documents (including but not limited to shipping directions, bills of lading, etc.) relied upon by a party to establish the terms and conditions of a contract or breach thereof.

(4) Proof of market difference when there is any probability of the market difference affecting the rights of the parties to the case, either because of discounts for grade, delay in shipment, or non-fulfillment of contract. The proof of market difference might be the price bulletin of the market to which the grain in question was shipped, or intended to be shipped, of those dates on which

the price is to be established; but in case it is necessary to establish such difference in a market where no price bulletin is regularly issued, affidavits by disinterested persons should be furnished.

(b) All evidence should be arranged in chronological order to present a clear history of the case.

(c) Evidence and argument must be submitted by all parties.

(d) When the original papers concerning the case cannot be supplied and copies are substituted, a statement should be made under oath that the original papers have been lost or are beyond the control of the party offering copies as evidence and that the copies, so offered, are true copies.

(e) All papers should be fastened together securely to avoid loss.

(f) Samples should not be submitted in evidence as the arbitrators will not act as inspectors or compare samples. If the grade or quality of commodities is in dispute, inspection certificates or other documentary evidence must be submitted.

## Procedure for Handling a Case Prior to Committee

### Section 7.

(a) Each case shall be filed in writing with the National Secretary, and shall include all the evidence and a set of pleadings as described above.

(b) The plaintiff shall have twenty (20) days from the date he receives notification from the National Secretary to prepare and file his first argument.

(c) Upon receipt of the first papers from the plaintiff, the National Secretary shall within ten (10) days thereafter forward to the defendant a duplicate copy of all papers filed by the plaintiff.

(d) The defendant shall have twenty (20) days to forward its answer from the date it receives the plaintiff's pleadings and evidence from the National Secretary and to submit a cross complaint or counterclaim.

(e) Upon receipt of such answer and of the cross pleadings, if any, of the defendant, the National Secretary shall forthwith and within five (5) days forward a copy of same to the plaintiff, who shall have ten (10) days after receipt thereof to file a rebuttal.

# NGFA Arbitration Rules

(f) Upon receipt of the rebuttal the National Secretary shall forthwith and within five (5) days forward a copy to the defendant, who shall have ten (10) days from date of receipt to file a surrebuttal to the National Secretary.

(g) Upon receipt of the surrebuttal the National Secretary shall within five (5) days of receipt thereof forward a copy to the plaintiff.

(h) In cases involving more than two parties, the National Secretary may adjust the procedure and time periods for filing written pleadings.

(i) In addition to default judgments issued pursuant to Section 5(e), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal. The National Secretary may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Requests for extension of time must be made prior to expiration of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to both parties.

## Procedure in Committee and in Announcing Awards

### Section 8.

(a) When a case is fully prepared and ready to be assigned for hearing, the National Secretary shall assign it to a qualified committee as he may deem advisable for the expeditious handling of the case in the Association. A member of the committee shall disclose to the National Secretary any circumstances likely to affect his impartiality, including any bias or any financial or personal interest in the result of the arbitration. Upon receipt of any such information from a committee member, the National Secretary shall transmit such information to both parties and replace said member if either party requests such action within five (5) days from receipt of such information or after the voluntary withdrawal of such committee member. Upon assigning a case as herein provided, the National Secretary shall notify each party of the names and addresses of the chairman and members of the National Arbitration Committee processing said case. Upon receipt of such notice, either party to the case may challenge the appointment of a member of the National Committee for prejudicial or other causes within five (5) days of receipt of this notice.

Upon determination that such challenge is valid the National Secretary shall replace such member.

(b) The Chairman of a National Arbitration Committee may choose for his committee to determine its awards, or otherwise dispose of the cases submitted to it by one or more of the methods hereinafter set out provided however, that if either disputant requests an oral hearing same must be held:

(1) By passing the papers from one to another by mail;

(2) By calling a meeting of the members of a Committee;

(3) By calling a meeting of members of the Committee to hear oral argument;

(4) By such other means as the Chairman may deem necessary.

(c) A decision of the members of an Arbitration Committee shall be by majority vote.

(d) A Committee cannot be called together more than once each calendar month, except by the consent of every member of a Committee.

(e) A Committee cannot act at a meeting thereof, unless all members are present.

(f) When either party to an arbitration requests an oral hearing, the same must be held. Such written request must be made to the National Secretary on or before the filing of the defendant's surrebuttal. The introduction of new documents or written evidence at an oral hearing is not permitted.

(g) The party requesting such an oral hearing must pay whatever amounts, in addition to the regular deposits as provided in Section 5(c), as shall be necessary to cover the approximate additional expenses of the Committee and the Association for the hearing. The amount of such additional expenses shall be determined and fixed by the National Secretary. The party requesting an oral hearing shall advance the amount determined necessary to cover approximately the additional hearing expenses, including a stenographic record as set forth in subsection (h) and travel expenses as set forth in subsection (j). The National Secretary shall notify the requesting party within ten (10) days after appointment of the National Arbitration Committee what the approximate expenses of the hearing will be. If both parties request an oral hearing, the amount to be paid by each in advance shall not exceed one-half of the estimated amount. The amount specified shall be advanced by the request-

# NGFA Arbitration Rules

ing party no later than ten (10) days after notification from the National Secretary. Failure to advance expenses may be grounds for denying a request for an oral hearing. After the Committee determines and fixes the actual amount of additional expense incurred, the party or parties shall be refunded or billed by the National Secretary for the difference between the amount advanced and actual costs.

(h) In the event of an oral hearing, the National Secretary shall make the necessary arrangements for the taking of an official stenographic record of the hearing. The party or parties requesting the oral hearing shall pay the cost of such record directly to the National Secretary in accordance with the normal procedure for paying the hearing costs. The National Secretary shall pay the reporting agency in accordance with their agreement. The stenographic record shall be made a part of the official transcript of the case.

(i) When a case is to be considered as in (b)(3) above, the Chairman of the Committee shall fix a time and a place for its hearing, and shall give the National Secretary fifteen (15) days notice of the date and the place so fixed, so as to enable the National Secretary to give the parties to the arbitration ten (10) days notification of the date and the place of the hearing. Neither party shall seek to postpone the hearing of a case longer than ten (10) days after such date has been set, unless good cause, satisfactory to the Committee, can be shown therefor. Requests for postponement must be received by the National Secretary at least five (5) days prior to the date set for hearing.

(j) The members of the National Arbitration Committee, the National Secretary, and the Association's legal counsel shall receive the amount of their actual traveling and hotel expenses when attending meetings to consider a case or to hear oral testimony.

(k) The National Arbitration Committee shall act promptly on all cases submitted. The awards of the National Arbitration Committee shall be dated on the day they are received at the office of the National Secretary, and copies of said awards shall be mailed by the National Secretary to the parties to the arbitration within five (5) days after receipt thereof. Each award shall contain a concise statement of the pertinent facts and the conclusions of the National Arbitration Committee and the reasons therefor. The parties to the arbitration shall file a notice of appeal, or comply with the terms of the National Arbitration Committee's Award within fifteen (15) days from the receipt of said award.

(l) A bulletin shall be published as frequently as is necessary to give the details, as hereinafter provided, of all cases arbitrated, awards made, and any other information relative to the subject of arbitration which may be deemed of interest to the members of the Association. Copies of the bulletin shall be mailed to all NGFA members. Said bulletin shall set forth:

(1) The names of the plaintiff and the defendant;

(2) The award(s) of the Committee, giving the names of the plaintiff and the defendant in each case, the nature of the case and the amount involved, the award and such other information as may be of interest to the members;

(3) Notice of failures to comply with the terms of awards, giving a record of each case;

(4) Notice of refusals to arbitrate, giving a record of each case, and any reasons offered for said refusals;

(5) Notice of failures to answer the correspondence of the National Secretary relative to arbitration.

(m) The National Arbitration Committee and/ or the Arbitration Appeals Committee may include an amount of interest in an award. If interest is awarded, unless otherwise provided by agreement between the parties, the applicable rate of interest shall be the Prime Rate as published in the **Wall Street Journal** on the date the case was filed.

## Appeal Procedure

### Section 9.

(a) A decision of the National Arbitration Committee or a judgment of default or dismissal issued by the National Secretary shall be final unless appealed by either party. If timely and properly appealed, the case shall be reviewed by the Arbitration Appeals Committee and affirmed, modified, reversed or it may be remanded for reconsideration by the National Arbitration Committee or the National Secretary. There shall be no appeal under these rules from the decision of the Arbitration Appeals Committee. The party or parties to the appeal shall comply with the terms of the National Arbitration Appeals Committee award within fifteen (15) days from the receipt of said award. Arguments on Appeal shall be confined only to the facts contained in the record of the case. Any new evidence submitted in violation of this rule may be removed from the argument upon request of the National Secretary, or if necessary

## NGFA Arbitration Rules

the chairman of the Arbitration Appeals Panel shall instruct the panel to disregard the new evidence.

(b) Any decision of the Arbitration Appeals Committee must be signed by a majority of the members thereof.

(c) A non-refundable appeal fee, payable only by the appellant, shall be exactly double the arbitration service fee assessed under Section 5(c) of these rules for the filing of the original arbitration case. The fee shall be deposited with the National Secretary by the appellant before the case will be considered. Said appeal fee shall be deposited at the time notice of appeal is given. If not deposited, the award of the National Arbitration Committee shall be affirmed or the appeal dismissed.

(d) Notice of appeal from an award of a National Arbitration Committee or the National Secretary accompanied by a statement in duplicate of the reasons therefore shall be filed with the National Secretary within fifteen (15) days from the date of receipt of the said award. The said notice of appeal shall be accompanied with: 1) the appellant's appeal fee; and 2) the appellant, when appealing from a judgment entered against it, also shall include full payment of the award by certified, cashier's check, or by wire transfer or other comparable payment mechanism payable to the National Grain and Feed Association.

The NGFA shall deposit arbitration award payments in an interest bearing account for the benefit of the adverse party or parties pending the decision of the Arbitration Appeals Committee or other resolution of the case. Interest accrued (less any deposit-related costs or charges incurred by NGFA) on any arbitration award deposits shall be paid to the party entitled to the principal based upon the decision of the Arbitration Appeals Committee or other resolution of the case. The party or parties responsible for payment of an award to an adverse party shall remain responsible for any difference between the rate of interest earned while on deposit with NGFA and the rate of interest set forth in a decision by the Arbitration Appeals Committee or other resolution of the case. For example, if the deposit earns a net interest rate of 4% per annum and the rate awarded by the Arbitration Appeals Committee is 9%, then the responsible party shall remain liable for the difference. The NGFA shall not have any obligation to the parties regarding the rate of interest earned on any such deposits.

(e) Within ten (10) days from the receipt of a notice of appeal at his office and check, if appropriate, the National Secretary shall forward to the

appellee, by registered or certified mail, a copy of the appellant's statement of reasons and the appellee shall have twenty (20) days from the date of receipt of the said statement of reasons in which to file his answer. Upon receipt of the appellee's answer, the National Secretary shall assemble a record of the case, indexed and with pages numbered consecutively, including the aforementioned statements of appeal and answer and any other papers he deems pertinent to the case. Immediately upon the completion of the numbered transcript, the National Secretary shall submit the complete file of papers to the appellant and the appellee.

(f) Within ten (10) days of receipt of the record of the case, the appellant shall file ten (10) copies of a brief of his case with the National Secretary, each argument keyed to facts contained in the record of the case. Appellee shall file his brief, in the same form and number as the appellant's brief, within seven (7) days after date of receipt of appellant's brief from the National Secretary. Upon receipt of the appellee's brief, the National Secretary shall send a copy to the appellant.

When a case is fully prepared and ready to be assigned for hearing, the National Secretary shall inform the parties of the names of the members of the Arbitration Appeals Committee and giving notice that a challenge for prejudicial or other causes would be entertained for five (5) days from receipt of such notice. Upon a valid challenge being made, the National Secretary, with the approval of the NGFA Chairman, must immediately name a replacement or replacements to the Committee.

(g) The Arbitration Appeals Committee shall meet at the call of the chairman, at a place to be designated by him, at which meeting the Committee shall consider and decide such cases as are properly pending before the Committee; provided, however, that the chairman may submit any such cases to members of the Committee by mail, for their decision by mail as he may consider proper. On request of either disputant the Arbitration Appeals Committee shall hear oral argument, but no new evidence shall be heard in the appeal of any case.

(h) Request for oral argument may be made at any time from filing of the notice of appeal until the appellee files his answer. The chairman of the Arbitration Appeals Committee shall set the date for oral argument as soon as practical. Appellant shall have one hour for opening statement; appellee shall have one hour and fifteen minutes for his argument; and the appellant shall have fifteen minutes confined to rebuttal argument.

# NGFA Arbitration Rules

(i) The expenses incurred incident to the meeting of the Arbitration Appeals Committee shall be borne by the Association, unless the Committee meeting is held pursuant to a request for oral argument. All expenses incident to a committee meeting held to hear oral argument shall be met by the party or parties requesting oral argument. A party requesting oral argument shall be required to advance the amount necessary to cover the approximate expenses of the meeting, including a stenographic record as set forth in subsection (j) and the travel expenses set forth in section 8(j). Within ten (10) days after appointment of the Arbitration Appeals Committee, the National Secretary shall notify the requesting party of the approximate expenses thereof. The amount specified shall be advanced by the requesting party no later than ten (10) days after notification from the National Secretary. If both parties request oral argument, the amount paid in advance by one party shall not exceed one-half of the estimated amount. Failure to advance approximate expenses required hereunder may be grounds for deciding the appeal without oral argument. After the Committee determines and fixes the actual amount of additional expense incurred the party or parties advancing expenses hereunder shall be given a refund or billed by the National Secretary for the difference between the approximate amount advanced and actual costs.

(j) In the event of oral argument, the National Secretary shall make the necessary arrangements for the taking of an official stenographic record of the appeal arguments. The party or parties requesting the oral argument shall pay the cost of such record directly to the National Secretary in accordance with the normal procedure for paying the hearing costs. The National Secretary shall pay the reporting agency in accordance with their agreement. The stenographic record shall be made a part of the official transcript of the case.

(k) Where a party has failed to file appeals papers in accordance with the time limits specified in this section that party shall be deemed in default except that the National Secretary may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Requests for

extension of time must be made prior to expiration of the specified time period. No extension of time shall be granted for filing of a notice of appeal. Any extension so granted must be in writing, and a copy thereof sent to both parties.

## Miscellaneous

### Section 10.

(a) Whenever any papers, documents, or pleadings are required to be filed, there should be filed with the National Secretary six (6) copies thereof. One copy shall be mailed by the National Secretary to the adverse party. In cases involving more than two parties, the National Secretary may adjust the number of copies required to be filed. This rule shall apply with equal force and effect to the petition, complaint, exhibits, answers, and cross complaints, and any and all other papers that either party desires to or may be required to file.

(b) In computing time, the first day shall be excluded and the last day included. If, however, the first or last day falls on a Saturday, Sunday, or a national legal holiday, then the next business day shall be considered the first or last day. The final date for filing required documents or papers in any proceedings under these rules shall be midnight of the stated final day.

(c) Registered, certified or express receipts shall be used to determine the timeliness of any filing in accordance with the several periods of time specified in Sections 7, 8 and 9 of these Arbitration Rules. As used throughout these Rules, the term "filing" shall mean the time at which the document is mailed, first class mail, postage prepaid, or by a recognized overnight delivery service. No extension of time shall be granted for filing a notice of appeal. All time limits placed on the National Secretary shall begin on the date the National Secretary receives the document or request which triggers his obligation.

(d) Parties subject to these rules shall be deemed to have consented to confirmation and enforcement of arbitration awards in any federal or state court having jurisdiction thereof. This provision shall not be construed to limit confirmation or enforcement of arbitration awards in foreign jurisdictions also having such jurisdiction.

# **Rail Arbitration Rules of the National Grain and Feed Association**

These Rail Arbitration Rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association in 1998. Rail Arbitration is not intended to replace the private negotiation and resolution of disputes by parties. In all cases, rail users and railroads are encouraged to make reasonable efforts to resolve matters before pursuing formal dispute resolution procedures.

**Adopted: August 24, 1998 (Effective Date: October 1, 1998)**

**Amended March 23, 1999**

**Amended July 13, 1999**

**Amended March 28, 2003**

**Amended April 1, 2005**

**Amended March 20, 2007**

**Amended March 31, 2009**

**Amended March 15, 2011**

## **Description and Purpose**

### **Section 1.**

These Rail Arbitration Rules amend and supplement the Arbitration Rules of the National Grain and Feed Association, which along with these supplementary rules, shall constitute the rules applicable to arbitration of disputes involving the transportation of grain, feedstuffs and/or grain products by a railroad in North America when one or more of the parties to the dispute is a railroad. These Rules and their application shall be enforceable under the provisions of the Federal Arbitration Act at 9 U.S.C. § 2, as now existing or hereinafter amended.

## **Matters to be Arbitrated**

### **Section 2.**

(a) A railroad and a rail user may agree to submit any dispute to arbitration before the National Grain and Feed Association where at least one party to the dispute is a NGFA member.

(b) Unless either NGFA member that is involved in a dispute has elected to withdraw from these Rail Arbitration Rules, as provided for in Article II, Section 3 (f) of the Bylaws, NGFA members shall arbitrate the following disputes arising between railroads and rail users involving rail transportation in the United States upon the filing of a complaint with the National Secretary:

(1) disputes involving the application of a railroad's demurrage rule(s) or term(s);

(2) disputes involving the misrouting of loaded rail cars or locomotives;

(3) disputes arising under receipts and bills of lading governed by 49 U.S.C. § 11706 (e.g., Carmack disputes such as loss and damage claims, etc.);

(4) except as otherwise mutually agreed, disputes arising from a contract between the parties for transportation between one or more rail carriers with one or more purchasers of rail services that has become effective under 49 U.S.C. § 10709;

(5) disputes involving the application of a railroad's special car or equipment program rules (e.g., certificates of transportation, vouchers, pool contracts, etc.);

(6) disputes involving the application of a railroad's general car distribution rules;

(7) disputes involving the mishandling of private cars or locomotives;

(8) disputes involving a lease by a rail user of real property owned by a railroad or railroad affiliate, subject to the limitations set forth in Section 4.

(9) disputes involving property damage claims arising under or related to a rail sidetrack agreement, whether the sidetrack is owned and/or operated by a rail user member of the NGFA, a railroad or third party. The arbitrators shall decide

# NGFA Rail Arbitration Rules

such a case based upon the express terms of such sidetrack agreement between the parties unless the arbitrators find that the relevant liability provision(s) in such agreement is/are commercially unreasonable. In that event, the arbitrators may decide the case based upon what they find to be commercially reasonable under the facts of the particular case.

10(A) Except as provided in (B), specific railroad-rail user disputes involving the reasonableness of a railroad's published rules and practices as applied in the particular circumstances of the dispute on matters related to transportation or service (including demurrage), that otherwise would be subject to the unreasonable practice jurisdiction of the Federal Surface Transportation Board under 49 U.S.C. § 10702(2).

(B) Disputes involving the following are not subject to arbitration hereunder: (i) a railroad's rates or charges, including rate levels and rate

spreads, (ii) whether an industry or station is or should be open or closed to reciprocal switching, (iii) a railroad's credit terms, or (iv) a railroad's car allocation/distribution rules or practices.

(C) In determining whether the application of a particular rule or practice is reasonable, the arbitrators should consider, among other things, (i) the practical effects on the operation of both the railroad and rail user involved, and (ii) whether the rule or practice, or its absence, has a disparate negative impact on either the rail user or the railroad.

(c) The disputes for which a party to the "Agreement on Predispute Consent to NGFA Arbitration" is obligated to arbitrate under subsection (b) above shall be limited to those involving grain, feedstuffs and/or grain products, which shall be deemed to include commodities designated by the following Standard Transportation Commodity Code (STCC) definitions:

<u>STCC</u>	<u>Description</u>	<u>STCC</u>	<u>Description</u>
01-131	Barley	20-465	Corn oil
01-132	Corn	20-466	Other starch
01-133	Oats	20-467	Wet process corn or similar mill by-products
01-135	Rye	20-469	Wet process corn milling or by-products
01-136	Sorghum Grains	20-471	Bird Food or Seed, Domestic
01-137	Wheat	20-511	Bakery Products
01-139	Grain, NEC	20-619	Beet Pulp Pellets
01-141	Cottonseeds	20-823	Spent Grains
01-142	Flaxseeds	20-831	Malt
01-144	Soybeans	20-839	Malt Products
01-149	Oil Kernals, nuts or seeds	20-859	Distillers By-Products
01-152	Popcorn	20-914	Cottonseed Meal or By-Products
01-159	Seeds	20-921	Soybean oil
01-191	Fodder Hay or Roughage	20-923	Soybean meal and hulls
01-341	Beans, Dry Ripe	20-933	Nut or Vegetable Oils
01-342	Peas, Dry	20-939	Oil Seed Meals and By-Products, NEC
01-343	Cowpeas, Lentils or Lupines	20-942	Fish Meal
01-992	Alfalfa Meal	20-144	Animal Protein Products
20-143	Grease/Inedible tallow	01-134	Rough Rice
20-411	Wheat Flour	20-449	Milled Rice, Rice By-Products, etc.
20-412	Wheat bran, middlings	20-442	Rice Flour
20-413	Corn meal or flour	20-933	Rice Oil
20-414	Rye flour	20-442	Rice Bran
20-415	Oat flour	37-422	Freight cars moving on own-wheels
20-418	Grain mill by-products	28-184.45	Ethanol
20-419	Flour or other grain mill products, NEC		
20-421	Prepared Feeds		
20-461	Corn syrup		
20-462	Corn starch		
20-463	Corn sugar		
20-464	Dextrine, corn, tapioca or other		

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The 5-digit STCC categories listed above shall be deemed to include all commodities with codes derived from the 5-digit categories. For example, the STCC 20-939 shall be deemed to include STCC 20-939-39 (Rapeseed or Canola Meal).

(d) A party against whom a complaint has been filed may file a counterclaim or offset, and assert any defense it may have against the plaintiff arising out of the same transaction upon which the complaint is based so long as such claim or defense is one of the issues included in subsection (b). The National Secretary may, upon application of one of the parties, stay an arbitration pending the resolution of non-arbitrable issues if the National Secretary is satisfied that such a stay will not unfairly prejudice the other party and provided that the applicant is not in default in the arbitration proceedings.

(e) A party shall not be obligated to arbitrate claims seeking more than \$200,000 per occurrence, exclusive of interest and legal costs. A party shall not be obligated to arbitrate personal injury claims.

(f) The original complaint in connection with any disputed matter proposed for arbitration under these Rail Arbitration Rules must be filed with the National Secretary within twelve (12) months after the claim arises, or within ninety (90) days after a claim is first rejected by the railroad, whichever occurs last; provided, however, in no event shall arbitration be brought more than fifteen (15) months after a claim arises.

## Substantive Law Unaffected

### Section 3.

These rules do not change substantive law and thus shall not be construed as either creating or limiting the general or specific substantive law applicable to disputes arising between parties to an arbitration case. All decisions rendered pursuant to these rules shall be binding upon the parties as provided for in the NGFA Arbitration Rules, subject to vacation only on such grounds as are set forth in the Federal Arbitration Act at 9 U.S.C. § 10, as now existing or hereinafter amended.

## Real Estate Leases

### Section 4.

Real estate leases subject to arbitration under Section 2(b)(8) of these rules and the standards and limitations applicable to arbitration of such disputes, are as follows:

(a) A dispute involving the application of a lease of real property owned by a railroad or railroad affiliate ("Rail Lessor"), on the one hand, and leased by a rail user member of the NGFA which operates a grain elevator, feed mill, processing plant or other agricultural facility, receiving or entitled to receive rail service as provided herein, on the leased premises ("Facility Lessee"), on the other, except for specific disputes arising under Chapter 109, 111 or 113 of Subtitle IV, Part A, Title 49 U.S.C. The arbitrators shall have no authority to modify or refuse to apply the existing terms of a lease in resolving such disputes. Railroad affiliate means any person which succeeds to the real property interest of a Rail Lessor after this provision takes effect if that person continues to provide rail service to a Facility Lessee which is subject to Subtitle IV, Title 49 U.S.C.

(b) A dispute involving termination, expiration or renewal of a lease of real property owned by a Rail Lessor and leased by a Facility Lessee, except for specific disputes arising under Chapter 109, 111, or 113 of Subtitle IV, Part A, Title 49 U.S.C., subject to the following:

(1) The arbitrators shall have no authority to resolve a dispute concerning such termination, expiration, or renewal where:

(A) The lease covers real property which the Facility Lessee has not used to receive or forward rail shipments for a continuous period of twelve (12) months or more, unless such disuse has been caused by any act of force majeure or unwillingness or inability of the serving railroad to provide rail service when reasonably requested to do so,

(B) Notwithstanding the provisions of Section 4(b)(1)(D), the Facility Lessee is in material default under the terms of the lease, and such

# NGFA Rail Arbitration Rules

default either has not been cured after reasonable notice, or as required by the lease (This, however, does not preclude the arbitration of the question of whether the Facility Lessee is in material default),

(C) The Rail Lessor's title to the leased premises is reversionary and the reversion has occurred,

(D) The dispute involves a matter other than rental or liability terms,

(E) The Rail Lessor provides an affidavit verifying that it intends to use the premises for rail or rail-related operations that justify non-renewal or termination of the lease, or

(F) The Rail Lessor sells the premises on terms that are the same or more favorable to the Rail Lessor than sale terms presented in writing by the Rail Lessor to the Facility Lessee and not accepted in writing by the Facility Lessee within thirty (30) days.

(2) In the event a Rail Lessor and a Facility Lessee are unable to agree on the rental rate for renewal of a lease of real property, the arbitrators may establish the rental rate. However, the arbitrators may not require the Rail Lessor to accept a rental rate which is less than the fair market rental value of the leased premises based on the highest and best use, but not including the separate value of tenant improvements attributable to the current tenant.

(3) In the event the parties fail to agree to the liability terms proposed for renewal of a lease of real property, either party may submit the liability terms proposed for review to NGFA arbitration. The arbitrators may reject and revise the terms proposed to the extent that they are commercially unreasonable (giving consideration, but not limited, to the nature of the Facility Lessee's operations, the rental rate relative to potential liabilities assumed by each of the parties, and customary commercial real estate practices), or unconscionable. The arbitrators shall not require a party to bear any liability for environmental contamination caused by the other party.

(4) The arbitrators may not require renewal or extension of a lease of real property for a term exceeding five (5) years. If, at the expiration of such lease, the Rail Lessor and Facility Lessee are unable to agree on the rental or liability terms for renewal or continuation of the lease, either party may seek prescription of such terms under this subsection (b).

(5) The arbitrators in making a decision on the renewal or extension of a lease of real property shall consider whether the Rail Lessor has demonstrated other uses for the property which justify a refusal by a Rail Lessor to renew or extend a lease.

## Amendments

### Section 5.

The chairman of the National Grain and Feed Association shall appoint a Rail Arbitration Rules Committee comprised of fourteen (14) persons who are officers, partners or employees of NGFA-member railroads and rail users. At least seven (7) members of the committee shall be representatives of railroads. It shall be the duty of the committee to consider amendments to the Rail Arbitration Rules and report its recommendations to the membership at any annual meeting or to the Board. Changes to these rules shall be approved by the Rail Arbitration Rules Committee before being considered for approval by the NGFA Board of Directors or the general membership. All railroad members of the association shall be entitled to vote on changes to the Rail Arbitration Rules at any annual meeting considering the adoption, ratification or amendment of such rules.

## Arbitration Service Fees

### Section 6.

The arbitration service fees paid by a disputant under these Rail Arbitration Rules shall be the same as those set forth in the NGFA Arbitration Rules, except that the fees paid by nonmembers under these rules shall be 150% of the fees paid by NGFA members.

# Rail Mediation Rules of the National Grain and Feed Association Governing Certain Rate Disputes

1. These rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association in August 1998, and first became effective October 1, 1998. Signatory railroads commit to mediation of certain rate issues with NGFA members, unless such commitment is voluntarily withdrawn.
2. Unless the railroad Associate/Trading member has elected to withdraw from these Rail Mediation Rules as provided for in Article II, Section 3 (f) of the Bylaws, NGFA railroad Associate/Trading members consent to confidential mediation with NGFA Active or NGFA Associate/Trading members who are rail users when a dispute arises regarding the following issues involving the rail transportation of agricultural commodities designated by the Standard Transportation Commodity Code (STCC) definitions referenced in Section 2(c) of the Rail Arbitration Rules of the National Grain and Feed Association:
  - a) a dispute involving an allegation of unreasonable discrimination by a rail carrier as to rates charged a rail shipper or receiver for rail transportation;
  - b) a dispute involving an allegation that the switching rates, rules or practices of carriers unreasonably bar access of a rail shipper or receiver to markets.
3. The following shall apply to all mediations conducted pursuant to this agreement:
  - a) The mediation and any statements made in the mediation process shall be treated as confidential;
  - b) All statements made in such a mediation are privileged against use in any other proceeding relating to the dispute, even in cross-examination;
  - c) Notes taken by any person at the mediation must be destroyed at the conclusion of the mediation, except for the notes of any final agreement reached by the parties;
  - d) Any person(s) serving as a mediator will not be called as a witness or be otherwise involved in any ongoing arbitration or litigation, should the mediation not result in a settlement.
4. **Procedure for Initiating Mediation:** A NGFA Active or Associate/Trading member may initiate a request for mediation on one or more of the issues set forth above by filing a request with the National Secretary of the NGFA. Mediation shall mean an informal, nonbinding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the dispute.
5. **Selection of Mediators:** The parties to a mediation may select any mutually agreeable panel member from the list of mediators maintained by the NGFA. If the parties cannot agree or have no particular choice of a mediator, then the names and resumes of three (3) available mediators shall be sent to each of the parties, each of whom may strike up to two (2) names from the list. If more than one (1) name remains after each party acts, then the National Secretary of the NGFA shall select the mediator from the remaining names.
6. **Duration of Mediation:** The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation or either party chooses not to continue further.
7. **Costs of Mediation:** The party requesting mediation shall pay a fee of \$500 to the National Grain and Feed Association, which shall accompany the request to mediate. Thereafter, each party shall pay their own expenses plus one-half (1/2) of the expenses of the mediation including the mediator's fees. The mediator selected for the mediation shall disclose the basis for calculating his/her fees and expenses upon request by the National Secretary or any party to a mediation.
8. **Limitations of Actions:** Except as otherwise agreed by the parties, the commencement of a mediation under these rules shall not be deemed to toll the statute of limitations as to the claims being mediated.
9. **Term of Agreement:** This agreement is effective for all mediation requests filed on or after October 1, 1998, for those carriers who have voluntarily agreed. A current list of railroad signatories (as of November 1, 2002) is shown below. This agreement shall continue in effect until terminated by the voluntary withdrawal of individual carriers. Railroads may withdraw from this agreement by giving ninety (90) days notice of such withdrawal. Such withdrawal shall become effective ninety (90) days after receipt by NGFA. The following railroads are signatory to the agreement as of November 1, 2002.
  - Burlington Northern Santa Fe Railway Co.
  - Canadian National-Illinois Central Railroads
  - Iowa Interstate Ltd.
  - Kansas City Southern Railway
  - Norfolk Southern Corp.
  - Ohio Central Railroad System
  - Red River Valley & Western Railroad
  - Union Pacific Railroad
  - WATCO Transportation Services

