

NGFA Arbitration Rules

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Preamble

The following Arbitration Rules of the National Grain and Feed Association (NGFA) shall govern the resolution of disputes among its members and those nonmembers subject to these rules. The NGFA Arbitration System provides a fair, cost-effective, and timely way to resolve disputes. These rules are kept current through the review and amendment process specified in the NGFA Bylaws.

Arbitration cases are prepared by the parties involved. Arbitration decisions are based upon evidence and arguments submitted by the parties. Cases are considered by a committee of three arbitrators who have experience in the issues involved and who have no commercial interest in the case.

NGFA Arbitration Rules

Rule 1. Jurisdiction and Scope

(A) NGFA may consider a case involving a dispute between or among the following:

(1) Active members of NGFA (for which arbitration is compulsory under the NGFA Bylaws). For purposes of compulsory arbitration, the term “dispute” shall mean issues involving the storage, processing, manufacturing, merchandising, financing, transportation, or distribution of grain, feed, or feed ingredients within or between the United States, Mexico or Canada; or any issue involving the NGFA Trade Rules.

(2) An Active, Allied, or Transportation member of NGFA and another party, by consent of both parties or by court order. If the contract in dispute provides for arbitration by NGFA or under the NGFA Arbitration Rules, the parties to the contract are deemed to have consented to arbitration under these rules.

(3) Other classes of members accorded arbitration rights under the NGFA Bylaws.

(B) NGFA shall not, except by consent of both parties, assume jurisdiction over (1) transactions between members of the same commodity exchange when such transactions are subject to the terms of such commodity exchange; or (2) transactions subject to the dispute resolution terms in the contracts of the North American Export Grain Association.

(C) 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.

(D) Contract Interpretation: The following general rules of contract interpretation apply in arbitration cases:

(1) Between NGFA Active members, the NGFA Trade Rules apply unless specifically excluded or inconsistent with the express contract terms governing a transaction.

(2) Where the parties have expressly provided for the trade rules of another entity to apply to a transaction in lieu of the NGFA Trade Rules, the other entity’s rules will 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 is deemed to incorporate all rules of NGFA, including the Trade Rules and Arbitration Rules.

(E) The original arbitration complaint must be filed with the NGFA Secretary within 12 months after a claim arises, or within 12 months after the expiration date for performance of the contract(s) involved, whichever occurs last.

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 12 months after a claim arises, or within 12 months after the expiration date for performance of the contract(s), whichever occurs last.

Rule 2. Commencing an Arbitration Case

(A) To commence a case, a complaint must be submitted by the plaintiff to the NGFA 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.

The case shall incorporate the claims in the original complaint as well as any cross-complaint, counterclaim, or offset as set forth by the defendant, provided that any matters submitted by the defendant must be directly related to the claims in the original complaint. Any cross-complaint

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or counterclaim shall be heard as one case with the original complaint. Any cross-complaint or counterclaim must be filed by the defendant at the same time the defendant's answer is due.

(B) The NGFA Secretary will submit to the parties an arbitration services contract, to be signed by an official representative of each party. This contract shall provide that the parties agree to abide by the award of the Arbitration Committee or the Arbitration Appeals Committee; and to release NGFA and the members of said committee(s) from any liability, damage, or loss resulting from their decision or related to the arbitration case.

(C) Upon signing the arbitration services contract, each party must pay an arbitration service fee of 1.5% of the amount of the plaintiff's claims. The NGFA Secretary may assess additional fees later in the case based upon the increased claims (including counterclaims and crossclaims) by the parties. The minimum arbitration service fee is \$1,500. The maximum arbitration service fee is \$25,000.

In the event a case is settled prior to the request to the plaintiff for the rebuttal, the parties may receive a refund of up to 50% of the previously submitted arbitration fees. In all cases, the NGFA Secretary may reduce refunds by direct or indirect costs incurred by NGFA. For cases settled following submission of the rebuttal, fees are non-refundable. In string trades or other multi-party cases treated as a single arbitration, a party is not required to pay more than a maximum of two arbitration service fees.

(D) Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary.

(E) Where a party fails to execute the arbitration services contract or pay the arbitration service fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

A party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment by providing:

- (1) a verified statement explaining the failure to respond to the complaint and the specific grounds for defense that the defaulting party would present to an Arbitration Committee.
- (2) the 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 NGFA. Failure to tender the required fee will result in denial of the relief sought by the defaulting party.

The NGFA Secretary may vacate the default judgment based on the defaulting party's submission within 30 days of receipt. A timely request to vacate a default judgment shall stay the time for appeal under Rule 7 of these rules. A judgment entered by the NGFA Secretary shall have the same effect as a judgment entered by an Arbitration Committee.

(F) If all parties to a string trade (a trade in which the same shipment is applied sequentially to multiple contracts by different parties) 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 the case.

Rule 3. Preparing an Arbitration Case

(A) In preparing a case for submission to an Arbitration Committee a party is to submit:

- (1) A concise and clear statement of all claims. The parties are responsible for clearly presenting all aspects of their case. The NGFA Secretary and the Arbitration Committee are not responsible for undertaking fact-finding searches or discovery.
- (2) The contract(s), if any, including all written evidence, letters, communications, and other supporting documents (including but not limited to shipping directions, bills of lading, affidavits, etc.) relied upon by a party to establish the terms and conditions related to the dispute. If the grade or quality of commodities is in dispute, inspection certificates or other documentary evidence must be submitted (physical samples should not be submitted as evidence).

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(3) Proof of market difference when there is probability of the market difference affecting the parties' claims, for example, because of discounts for grade, delay in shipment, or non-fulfillment of contract. Proof of market difference may be the price bulletin of the market in question for the date on which the price is to be established. If it is necessary to establish such difference in a market where no price bulletin is regularly issued, other forms of proof should be furnished such as affidavits by disinterested persons.

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

(C) Six copies of the parties' arguments must be filed with the NGFA Secretary. All papers should be fastened together securely to avoid loss.

Rule 4. Timelines Governing the Filing of Arbitration Arguments

(A) The plaintiff shall have 20 days from the date it receives notification from the NGFA Secretary to file its first argument.

(B) Upon receipt of the first argument from the plaintiff, the NGFA Secretary shall have 10 days to forward to the defendant a copy of plaintiff's first argument.

(C) The defendant shall have 20 days to file its answer (and any cross-complaint or counterclaim) from the date it receives the plaintiff's first argument from the NGFA Secretary.

(D) Upon receipt of such answer (and any cross-complaint or counterclaim) from the defendant, the NGFA Secretary shall have 5 days to forward a copy of same to the plaintiff, who has 10 days from receipt to file a rebuttal to the defendant's answer (and any cross-complaint or counterclaim). The plaintiff is not obligated to file a rebuttal.

(E) Upon receipt of any rebuttal, the NGFA Secretary shall have 5 days to forward a copy to the defendant, who has 10 days from date of receipt to file a surrebuttal. The defendant is not obligated to file a surrebuttal.

(F) Upon receipt of any surrebuttal, the NGFA Secretary shall have 5 days to forward a copy to the plaintiff. There shall be no additional arguments filed by the parties related to the claims between the plaintiff and defendant.

(G) In cases involving more than two parties, the NGFA Secretary may adjust the procedure and time periods for filing written pleadings. The NGFA Secretary may, for good cause shown, extend the time limits specified herein for a period no longer than 20 days. 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.

(H) For cases involving a string trade, the time limits established in these rules may be amended by the NGFA Secretary to permit the exchange of arguments between original plaintiff and ultimate defendant.

(I) In addition to default judgments issued pursuant to Rule 2(E), where a plaintiff fails to file its first argument or a defendant fails to file its answer in accordance with the time limits specified in this rule or by the NGFA Secretary, the delinquent party shall be deemed to be in default.

Rule 5. Formation of Arbitration Committees

(A) Each Arbitration Committee shall consist of three arbitrators selected by the NGFA Secretary.

(B) Each Arbitration Appeals Committee shall consist of five persons selected by the NGFA Secretary from the Arbitration Appeals Panel, which is appointed pursuant to the NGFA Bylaws.

(C) To qualify as an arbitrator, an individual must be:

(1) an employee, or active partner, principal, officer or director of a NGFA member eligible to arbitrate disputes under these rules. If an arbitrator ceases to be employed by or affiliated with a

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member prior to the decision, the arbitrator would be disqualified. In the event of the absence, resignation, refusal to act or disqualification of an arbitrator, the NGFA Secretary shall fill the vacancy with an eligible member; and

(2) commercially disinterested with respect to the particular dispute. If an arbitrator changes employment or affiliation from one member to another member, the arbitrator must continue to be commercially disinterested or be replaced.

(D) Arbitrators also shall be selected with a view to forming arbitration committees experienced in the type of trade or transaction involved in the case.

Rule 6. Arbitration Committee Procedures

(A) Upon assigning a case to an Arbitration Committee, the NGFA Secretary shall notify each party of the chair and members of the committee. Either party may challenge the appointment of a member of the committee for prejudicial or other causes within 5 days of receipt of this notice. Upon determination that such challenge is valid, the NGFA Secretary will replace such member.

(B) A member of the Arbitration Committee shall disclose to the NGFA Secretary any circumstances that subsequently arise or become known affecting the arbitrator's impartiality, including any bias or financial or personal interest in the case. Upon receipt of any such information from a committee member, the NGFA Secretary shall transmit such information to both parties and replace said member if either party requests such action within 5 days from receipt of such information or after the voluntary withdrawal of such committee member.

(C) The chair of the Arbitration Committee may choose for the Committee to proceed with the case by such means as the chair deems necessary.

(D) A decision of the Arbitration Committee shall be by majority vote.

(E) The Arbitration Committee shall act promptly on all cases submitted. The NGFA Secretary shall transmit the decision of the Arbitration Committee to the parties promptly. Each decision shall contain a concise statement of the pertinent facts and the conclusions of the Arbitration Committee, including the names of the parties involved, the nature of the case, the claims involved, the names of the arbitrators and their reasoning, the award (if any), and such other information as may be of interest.

(F) The 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.

(G) The parties to the arbitration shall file a notice of appeal or comply with the terms of the Arbitration Committee's decision within 15 days from the receipt of said decision.

(H) NGFA shall publish all decisions of Arbitration Committees and/or Arbitration Appeals Committees, as well as default judgments, following conclusion of the appeal process (if applicable). Copies of all NGFA Arbitration decisions are transmitted to the NGFA membership and are accessible to the public through the NGFA website.

Rule 7. Appealing an Arbitration Decision

(A) A decision of the Arbitration Committee or a judgment of default or dismissal issued by the NGFA Secretary shall be final unless appealed by either party. If timely and properly appealed, the case shall be reviewed by an Arbitration Appeals Committee, which may then affirm, modify, or reverse the decision or remand the decision for reconsideration back to the original Arbitration Committee or the NGFA Secretary.

(B) Notice of appeal of a decision of an Arbitration Committee or the NGFA Secretary shall be filed with the NGFA Secretary within 15 days from the date of receipt of the decision. Such notice must be accompanied by:

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- (1) a statement of reasons for the appeal (6 copies);
- (2) a non-refundable appeal fee, payable only by the appellant, that shall be double the amount of the arbitration service fee assessed under Rule 2(C) for the filing of the original case. Unless said fee is deposited, the award of the Arbitration Committee shall be affirmed or the appeal dismissed.
- (3) when appealing an award of damages, the appellant shall also include full payment of the award by certified, cashier's check, or by wire transfer or other comparable payment mechanism payable to the NGFA.

(C) NGFA shall deposit the appellant's payment of the award received pursuant to Rule 7(B)(3) in an interest-bearing account 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 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. NGFA shall not have any obligation to the parties regarding the rate of interest earned on any such deposits.

(D) Briefs filed in appeal cases shall be confined only to the facts, documents and evidence contained in the record of the case. Any new documents, testimony or other form of evidence submitted in violation of this rule may be removed from the brief by the NGFA Secretary upon request by a party, and the chairman of the Arbitration Appeals Committee shall instruct the committee to disregard any newly asserted facts, documents or evidence.

(E) The following timeline applies to Arbitration Appeals:

- (1) Within 10 days from the receipt of a notice of appeal, the NGFA Secretary shall forward to the appellee, by registered or certified mail, a copy of the appellant's statement of reasons.
- (2) Within 20 days from the receipt of said statement of reasons, the appellee shall file a response with the NGFA Secretary.
- (3) Upon receipt of the appellee's response, the NGFA 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 deemed pertinent to the case. The NGFA Secretary subsequently shall submit the record of the case to the parties.
- (4) Within 10 days of receipt of the record of the case, the appellant shall file 10 copies of a brief of its case with the NGFA Secretary, each argument keyed to facts contained in the record of the case.
- (5) Within 7 days of receipt of the appellant's brief from the NGFA Secretary, the appellee shall file its brief, in the same form and number as the appellant's brief.
- (6) Upon receipt of the appellee's brief, the NGFA Secretary shall send a copy to the appellant. There shall be no additional briefs or arguments filed by the parties.
- (7) The NGFA Secretary may, for good cause shown, extend the time limits specified for the filing of the appellant's and appellee's briefs for a period of no longer than 20 days. Requests for extension of these time limits 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 the parties.

(F) When a case is assigned to an Arbitration Appeals Committee, the NGFA Secretary shall inform the parties of the names of the appeal arbitrators and give notice that a challenge for prejudicial or other causes would be entertained for 5 days from receipt of such notice. Upon a valid challenge being made, the NGFA Secretary must immediately name a replacement to the committee.

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(G) The Arbitration Appeals Committee chair shall proceed with the case by such means as the chair deems necessary. On request of either party, the Arbitration Appeals Committee shall hear oral argument but no new evidence shall be heard in the appeal of any case.

(H) There shall be no appeal under these rules from the decision of an Arbitration Appeals Committee. The party or parties to the appeal shall comply with the terms of the Arbitration Appeals Committee decision within 15 days from the receipt of said decision.

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

Rule 8. Oral Hearings

(A) Either party may request an oral hearing by written request to the NGFA Secretary within 10 days after receipt by plaintiff of the defendant's surrebuttal in a non-appeal case, and within 10 days after receipt by the appellant of the appellee's brief in an appeal case.

(B) In addition to the standard service fee paid at the outset of the case under Rule 2(C), a party requesting an oral hearing must pay a non-refundable fee in the amount of \$2,500. This fee shall be paid by each requesting party no later than 10 days after the notification from the NGFA Secretary. Failure to do so may be grounds for denying a request for an oral hearing.

(C) The party or parties requesting an oral hearing also must pay the expenses of the Committee and NGFA for the hearing.

(1) The NGFA Secretary shall estimate the amount of such expenses (including a stenographic record and travel and hotel expenses of the arbitrators, NGFA staff, and NGFA's legal counsel) and notify the requesting party in a timely manner.

(2) The party or parties requesting an oral hearing shall advance the amount estimated to cover the hearing expenses. If multiple parties request an oral hearing in the same case, the amount to be paid by each in advance for the estimated expenses shall be split equally among them, but if any of them withdraws its request before paying its share of the estimated expenses, the other(s) shall be responsible for advancing payment of the full amount.

(3) The amount specified shall be advanced by the requesting party or parties no later than 10 days after notification from the NGFA Secretary. Failure to advance expenses may be grounds for denying a request for an oral hearing.

(4) After the committee establishes the actual amount of expenses incurred, the party or parties shall be refunded or billed by the NGFA Secretary for the difference between the amount advanced and actual costs.

(D) The NGFA Secretary shall make the necessary arrangements for the taking of the official stenographic record of the hearing. The stenographic record shall be made a part of the official transcript of the case.

(E) The chair of the committee shall determine a time and a place for the hearing, and the NGFA Secretary shall notify the parties of the date and place selected. Neither party shall seek to postpone the hearing 10 days after such date has been set, unless good cause, satisfactory to the committee, can be shown.

(F) For appeal hearings, the appellant shall have one hour for opening statement; appellee shall have one hour and 15 minutes for argument; and the appellant shall have 15 minutes confined to rebuttal argument.

(G) For non-appeal hearings, the chair of the committee shall determine timing of the proceedings.

(H) The introduction of new documents or written evidence at an oral hearing is not permitted.

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Rule. 9 Exclusion of Liability; Judicial Proceedings

The parties to an arbitration under these rules release from liability and waive any right to pursue any action or claim against NGFA, NGFA arbitrators, the NGFA Secretary and NGFA's employees and non-employee directors and officers for any act or omission related to any proceeding, conduct or activity in connection with these rules, the arbitration, administration of the arbitration process or the arbitration award. The parties also agree that no party shall seek to make the NGFA Secretary, NGFA arbitrators or NGFA's employees or non-employee directors or officers a party or witness in any judicial or other proceeding related to any arbitration under these rules.

Rule 10. General Provisions

(A) The NGFA Secretary is authorized to make such decisions as are necessary to execute these rules.

(B) Whenever any papers, documents, or pleadings are required to be filed, there should be filed with the NGFA Secretary 6 copies thereof. One copy shall be mailed by the NGFA Secretary to the adverse party. In cases involving more than two parties, the NGFA 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.

(C) 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.

(D) 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 these 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 NGFA Secretary shall begin on the date the NGFA Secretary receives the document or request which triggers the obligation.

NGFA Rail Arbitration Rules

These Rail Arbitration Rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association (NGFA) in 1998. Rail Arbitration is not intended to replace 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.

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Amended March 23, 1999
Amended July 13, 1999
Amended March 28, 2003

Amended April 01, 2005
Amended March 20, 2007
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Amended March 15, 2011
Amended March 19, 2013

Amended April 01, 2014
Amended March 21, 2017
Amended March 19, 2019

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Rule 1. Description and Purpose

These Rail Arbitration Rules amend and supplement the NGFA Arbitration Rules, which along with these supplementary rules, shall constitute the rules applicable to arbitration of disputes involving the transportation of grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated in Rule 2(D) 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.

Rule 2. Matters to be Arbitrated

(A) A railroad and a rail user may agree to submit any dispute to arbitration before NGFA 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 III, Section D(3) of the NGFA 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 NGFA 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 Rule 4;

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(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 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 paragraph (C) of this rule, 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) 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) Disputes involving the establishment or modification of 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.

(D) The disputes for which a party to the "Agreement on Predispute Consent to NGFA Arbitration" is obligated to arbitrate under paragraph (B) above shall be limited to those involving grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated by the following Standard Transportation Commodity Code (STCC) definitions:

STCC	Description	STCC	Description
01 131	Barley	20 416 10	Oat flour
01 132	Corn	20 418	Grain Mill By-Products
01 133	Oats	20 419	Flour or Other Grain Mill Products, NEC
01 134	Rough Rice	20 421	Prepared Feeds
01 135	Rye	20 442 15	Rice Flour
01 136	Sorghum Grains	20 442 20	Rice Bran
01 137	Wheat	20 449	Milled Rice, Rice By-Products, Etc.
01 139	Grain, NEC	20 461	Corn Syrup
01 141	Cottonseeds	20 462	Corn Starch
01 142	Flaxseeds	20 463	Corn Sugar
01 144	Soybeans	20 464	Dextrine, Corn, Tapioca or Other
01 149	Oil Kernals, Nuts or Seeds	20 465	Corn Oil
01 152	Popcorn	20 466	Other Starch
01 159	Seeds	20 467	Wet Process Corn or Similar Mill By-Products
01 191	Fodder Hay or Roughage	20 469	Wet Process Corn Milling or By-Products
01 341	Beans, Dry Ripe	20 471 10	Bird Food or Seed, Domestic
01 342	Peas, Dry	20 511	Bakery Products/Sweepings
01 343	Cowpeas, Lentils or Lupines	20 616 25	Molasses
01 992	Alfalfa Meal	20 619	Beet Pulp Pellets
20 143	Grease/Inedible Tallow	20 823	Spent Grains
20 144	Animal Protein Products	20 831	Malt
20 411	Wheat Flour	20 832	Malt Flour or Sprouts
20 412	Wheat Bran, Middlings	20 839	Malt Products
20 412 90	Mill Run		
20 413	Corn Meal or Flour		
20 414	Rye flour		

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<u>STCC</u>	<u>Description</u>	<u>STCC</u>	<u>Description</u>
20 859	Distillers By-Products	28 184 19	Ethanol (grain and products derived from grain)
20 911 10	Cottonseed Oil		[also 28 184 45; 28 184 46; 28 184 47]
20 914	Cottonseed Meal or By-Products	28 184 91	Biodiesel (grain and products derived from grain)
20 921	Soybean Oil		[also 28 994 15; 28 994 16; 28 994 25; 28 994 40]
20 923	Soybean Meal and Hulls	28 185	Glycerin
20 923 36	Soapstock (for feed use only)	28 199 10	Dical and Monocal Phosphate
20 933	Nut or Vegetable Oils	28 991 12	Salt (for feed use only)
20 933	Rice Oil	28 994	Distillate (fatty acids)
20 939	Oil Seed Meals and By-Products, NEC	37 422	Freight Cars Moving on Own-Wheels
20 939 17	Peanut Meal		
20 942	Fish Meal		
28 126 30	Limestone (for feed use only)		

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).

(E) 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 paragraph (B). The NGFA Secretary may, upon application of one of the parties, stay an arbitration pending the resolution of non-arbitrable issues if the NGFA 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.

(F) A party shall not be obligated to arbitrate claims seeking more than \$400,000 per occurrence, exclusive of interest and legal costs. A party shall not be obligated to arbitrate personal injury claims.

(G) The original complaint in connection with any disputed matter proposed for arbitration under these Rail Arbitration Rules must be filed with the NGFA Secretary within 12 months after the claim arises, or within 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 15 months after a claim arises.

Rule 3. Substantive Law Unaffected

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.

Rule 4. Real Estate Leases

Real estate leases subject to arbitration under Rule 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 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.

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(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 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 Rule 4(B)(1)(d), the Facility Lessee is in material default under the terms of the lease, and such 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 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 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 paragraph (B) of Rule 4.
- (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.

Rule 5. Amendments

The NGFA chairman shall appoint a Rail Arbitration Rules Committee comprised of up to 18 persons who are officers, partners or employees of NGFA-member railroads and rail users. At least one-half of the 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 NGFA Board of Directors. Changes to these rules shall be approved by the Rail Arbitration Rules Committee before being considered for approval by

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the NGFA Board or the membership. All Transportation 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.

Rule 6. Arbitration Service Fees

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.