

# NGFA Arbitration Rules

Adopted Oct. 03, 1901	Amended March 14, 1963	Amended March 19, 2002
Amended Jan. 01, 1906	Amended March 25, 1971	Amended March 16, 2004
Amended Oct. 17, 1908	Amended March 20, 1975	Amended April 01, 2005
Amended Oct. 12, 1910	Amended March 23, 1977	Amended March 07, 2006
Amended Oct. 16, 1913	Amended March 31, 1978	Amended March 20, 2007
Amended Sept. 27, 1916	Amended March 08, 1979	Amended March 28, 2008
Amended Sept. 25, 1918	Amended March 23, 1982	Amended March 31, 2009
Amended Oct. 15, 1919	Amended March 13, 1984	Amended March 17, 2015
Amended Oct. 13, 1920	Amended Sept. 12, 1986	Amended March 15, 2016
Amended Oct. 05, 1921	Amended March 27, 1990	Amended Sept. 11, 2016*
Amended Oct. 03, 1922	Amended March 12, 1991	
Amended Oct. 03, 1923	Amended March 24, 1992	
Amended Oct. 20, 1926	Amended March 23, 1993	
Amended Sept. 26, 1928	Amended March 21, 1994	
Amended Oct. 15, 1940	Amended Sept. 15, 1996	
Amended Sept. 16, 1947	Amended Sept. 08, 1997	
Amended Oct. 11, 1949	Amended Aug. 24, 1998	
Amended Sept. 26, 1950	Amended March 23, 1999	
Amended Sept. 22, 1953	Amended March 31, 2000	

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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.

*\*The italicized rules contained herein include amendments to the NGFA Arbitration Rules approved by the NGFA Board of Directors on September 11, 2016 (effective October 11, 2016). These amendments are subject to NGFA membership ratification at the March 2017 annual business meeting.*

# 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) Active members of NGFA and nonmembers, by consent of both parties or by court order. If the contract in dispute between a member and nonmember 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) Associate members accorded arbitration rights under the NGFA Bylaws; and

(4) Associate/Trading members and nonmembers or other classes of members, by consent of both parties or by court order.

(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 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.

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(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.

(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 minimum arbitration service fee is \$750. The maximum arbitration service fee is \$20,000.

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).
- (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.

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(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 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 of the answer to file a rebuttal. 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.

(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 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.

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## 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:

(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.

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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) 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 by the NGFA Secretary, or if necessary the chairman of the Arbitration Appeals Panel shall instruct the panel to disregard the new 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.

(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.

(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 on or before the deadline for filing of the defendant's surrebuttal in a non-appeal case, and at any time from filing of the notice of appeal until the appellee files its answer in an appeal case.*

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

*(C) The party requesting an oral hearing must pay whatever amounts, in addition to the regular deposits as provided in Rule 2(C), as shall be necessary to cover the approximate additional expenses of the Committee and NGFA for the hearing.*

*(1) The NGFA Secretary shall estimate the amount of such additional hearing 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.*

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*(2) The party requesting an oral hearing shall advance the amount determined necessary to cover the additional estimated hearing expenses. 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.*

*(3) The amount specified shall be advanced by the requesting party 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 determines and fixes the actual amount of additional expense 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.*

### **Rule 9. 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.