



# National Grain and Feed Association

---

## Minutes

### NGFA BOARD OF DIRECTORS

*The Broadmoor  
Colorado Springs, Colorado*

*September 9, 2024*

Presiding: Chris Boerm NGFA Chairman
---

Chairman Chris Boerm called the meeting to order at 8:30 a.m. Directors attending were Augusto Bassanini, Jeff Bechard, Greg Beck, Terry Bline, JoAnn Brouillette, Wyatt Brummer, James Burgum, Kayla Burkhardt, Jim Dell, Bo DeLong, Scott Docherty, Allen Douglass, Tom Fernandes, John Fletcher, Gary Gantz, Robert Geers, Matt Gibson, Kevin Gray, Kim Hawks, Mark Heil, Jefferson Hillman, Corey Jorgenson, Joe Kapraun, Paul Katovich, Jason Klootwyk, Alan Koenig, Brian Kubik, Chuck Kunisch, Stu Letcher, Michelle Mapes, Dian McGuire, Kellie Melton, Michael Miller, Brad Morrison, Randal Olstad, Scot Ortman, Shay Rambur, Brian Schouvieller, Ron Seeber, Mike Seyfert, Benjamin Smith, Curt Strubhar, Dan Suarez, Mike Tate, Andrew Utterback, Jeff Van Pevenage, Eric Wilkey, Tom Wapp, and Jeff Wilson.

Non-director committee chairs attending were Kelly Buchanan (Communications, Marketing and Membership Committee); Grayson Daniels (Business, Merchandising and Operations Committee); and Cory Winstead (Sustainability Committee).

NGFA staff attending were Charlie Delacruz, Dave Fairfield, Max Fisher, Amelia Fitzgerald, Sarah Gonzalez, Rebecca Grubbs, Mary Hitchcock, Jess McCluer, and Stephanie See.

### **Antitrust**

Charlie Delacruz reminded the Board of the antitrust policy that applies to NGFA meetings.

### **Minutes**

*A motion passed unanimously to approve minutes of the Board meeting on March 19, 2024.*

### **Recognitions**

Chairman Boerm recognized the directors and committee chairs for which this was their first meeting.

## **Financials**

Mike Seyfert and Max Fisher reported on NGFA's finances for the first four months of the current fiscal year, including that NGFA's net operating income of \$767,178 is running ahead of full projected net income of \$194,914 due to front loading of membership dues collections and arbitration income; membership dues are in line with the full-year budget estimate; arbitration income already exceeds the annual budgeted income; salaries and payroll expenses are under budget; and professional services are over budget. Mr. Seyfert also stated NGFA has changed accounting firms, and NGFA's office lease runs through April 30, 2028, and NGFA has begun to evaluate options for its next lease.

## **Management Update**

Mr. Seyfert provided an update on management and administrative activities, including near completion of an audit for FY 2023/24; new and updated IT functionality and a database; resolution of issues involving a fraudulently misdirected payment to the Omaha Hilton for the 2023 CONVEY conference; execution of corrective measures for the NGFA 401k-plan; planned recommendations for the Executive Committee on a potential dues increase; anticipated CEC registration with various speakers already lined up; and retention of the Russell Group for legislative affairs services.

## **Foundation**

Brian Schouvieller, National Grain and Feed Foundation Chair, discussed Foundation initiatives underway, including funding of scholarships for university students in the field of agriculture through MANRRS; promotion of ag messaging and information about the Foundation and industry; health and safety; employee development; and allowing for donors to include endowments for the Foundation in their estate planning. The Board was encouraged to recommend other projects for the Foundation and to make individual and corporate donations. Mr. Schouvieller also presented a recommendation of the Executive Committee that NGFA match contributions to the Foundation up to \$25,000 on a one-time basis.

*A motion passed unanimously to adopt the proposal that NGFA match contributions to the Foundation up to \$25,000.*

## **Arbitration**

Charlie Delacruz and Mary Hitchcock presented various amendments recommended by Arbitration Appeals Panel for the Arbitration Rules, which relate to parties and claims added to a case after it is filed: awarding of interest in arbitration decisions; and cancelling by NGFA of an oral hearing. The text of the proposed amendments is as follows [*additions underlined; omissions stricken-through*]:

### **Rule 2. Commencing an Arbitration Case**

(A) ...

The case shall incorporate the claims in the original complaint as well as any ~~cross-complaint;~~ crossclaim, counterclaim, third-party claim, or offset ~~as set forth by the defendant~~, provided that any matters submitted by crossclaim, counterclaim, or third-party claim ~~the defendant~~ must be directly related

to the claims in the original complaint. Any ~~such cross-complaint~~ crossclaim, or counterclaim, or third-party claim shall be heard as one case with the original complaint. Any crossclaim, or ~~cross-complaint, or~~ counterclaim, or third-party claim must be filed by the defendant at the same time the defendant's answer is due.

(B) 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 crossclaims, counterclaims, and third-party claims and ~~crossclaims~~) by the parties. The minimum arbitration service fee is \$1,500. The maximum arbitration service fee is \$25,000. ...

#### **Rule 4. Timelines Governing the Filing of Arbitration Argument ...**

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

(D) Upon receipt of such answer (and any ~~cross-complaint~~ crossclaim, or counterclaim, or third-party claim) 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~~ crossclaim or counterclaim). The plaintiff is not obligated to file a rebuttal. ...

#### **Rule 6. Arbitration Committee Procedures ...**

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

#### **Rule 8. Oral Hearings ...**

(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. In special circumstances when the party or parties requesting an oral hearing fail to respond or cooperate in the planning of the hearing, the chair of the committee and the NGFA Secretary have discretion to cancel the hearing.

*A motion passed unanimously to adopt the amendments as recommended.*

Mr. Delacruz and Ms. Hitchcock then informed of current arbitration case activity. Thus far in 2024: 11 new cases were filed, representing a tapering off of filings (compared to historic-peak recent years); total dollars claimed in these cases is \$8.9 million; decisions were issued in 16 cases; and many of the pending cases are now at critical stages (23 involve hearings, 5 involve appeals, 42 are with arbitration committees, and 12 are to go to committees shortly).

### **FGIS**

Jess McCluer advised of a recent increase by FGIS of official inspection and weighing service fees. NGFA is concerned about the potential impact on marketing of high-quality grain to both domestic and foreign buyers based on the agency's current financial status. Mr. McCluer also discussed grain grading technology. NGFA is forming a task force to develop the technological needs of the industry with a primary long-term goal of fully automated testing, sampling and grading processes. Mr. McCluer also discussed NGFA's priorities related to USGSA Reauthorization.

## **Trade**

On trade-related topics, Mr. Seyfert and Mr. McCluer advised of challenge areas ahead, including China's most-favored nation trade status; lack of WTO enforcement of agreements; prospects for ag-specific trade agreements under either a Republican or Democrat administration; 2026 USMCA review and potential renegotiation; and EU deforestation and sustainability issues.

## **Chevron Decision**

Mr. McCluer led a discussion on the recent decision by the U.S. Supreme Court in Loper Bright Enterprises, which overturns the court's 1984 Chevron decision and returns decision-making authority to the courts in reviewing whether administrative agency decisions are in compliance with the law.

## **Communications**

Communications, Marketing and Membership Committee Chair Kelly Buchanan and Sarah Gonzalez described the committee's roles, plans and goals. Also discussed was completion of a major survey of the NGFA membership with key takeaways, including that NGFA's primary communication methods are on target; customization and more NGFA-specific analysis would present opportunities; and members value connection through networking. NGFA is already working toward personalized email communications for members; increased video and testimonials to promote member benefits; and review of the website and social media channels to improve user experience.

## **Membership**

Rebecca Grubbs and Amelia Fitzgerald advised of the membership analytics initiative to categorize NGFA members, including by membership type, company type, and location. This initiative is designed to achieve better understanding of the membership base and distribution; advocacy and policy impact on specific industry groups; targeting of prospective members; and concise marketing and communications. Ms. Grubbs also informed of dues collection.

## **Tax Legislation**

Sustainability Committee Chair Cory Winstead and Dave Fairfield discussed the Inflation Reduction Act and some of its key provisions ostensibly designed to lower the carbon intensity of biofuels, deliver savings, provide greater long-term energy security, and more economic activity in rural communities. SECTION 45Z (Clean Fuel Production Credit) provides a brand-new tax credit for fuels relative to how low their carbon intensity. The discussion with the Board included the challenges, potential opportunities and the unknowns such as what will be the guidance and execution by the IRS. Mr. Winstead and Mr. Fairfield stated that they would be looking to the Board for input on expectations and roles for the Sustainability Committee in these areas.

## **FDA-AAFCO MOU**

Dave Fairfield stated that FDA had announced on August 2, that the agency would no longer be participating in the AAFCO approval process for feed ingredients after the current MOU between

FDA and AAFCO expires on October 1 of this year. It is believed that the MOU is not being continued because FDA is under significant scrutiny from special interest groups seeking additional oversight over the agency, and it would not likely prevail in a challenge of the MOU.

### **CFTC**

Mr. Fisher advised of the House Agriculture Committee hearing on July 23, 2024, stating that NGFA as a whole was satisfied with the current regulatory environment. He then discussed the current composition of the CFTC and enforcement actions by the agency for Fiscal Year 2023 that include 96 actions worth \$4.3 billion. Mr. Fisher also referred to proposed rules to revise capital requirements for large banks and major contract changes by the CME Group.

### **Rail**

Mr. Fisher reported on various rail-related matters, including the recent changes to the structure of NGFA's Transportation Committee; STB activities under newly appointed Chairman Primus (correspondence to carriers on service, hearing on growth in freight rail industry, meetings on Mexican freight rail delays); and rail safety (derailments, NTSB report, and the status of legislation in the House and Senate).

### **Policy Issues**

Ag Policy & Legislative Affairs Committee Chair Joe Kapraun and Stephanie See provided an update on numerous topics involving NGFA's legislative activities, including changes to the structure of NGFA's committee; the status of the Farm Bill in the House and Senate; NGFA's Farm Bill-related priorities (CRP reform tying payment rates to land quality; no changes to CRP cap; increased funding for MAP and FMD; small increases in loan rates that will not distort the market; decoupled commodity title with a limited base acre update); reinstatement of NASS Reports; and WRDA and funding of inland waterways projects.

### **Elections Update**

Stephanie See and Mike Seyfert presented views on the upcoming presidential and congressional elections.

### **PAC**

Ms. See provided an update on the nonconnected Grain & Feed PAC.

### **Future Meetings**

Rebecca Grubbs referred to the materials provided to the Board in advance of this meeting, which provide details on numerous scheduled events, including meetings of the Executive Committee and Board, annual conventions and country elevator conferences with some scheduled as far out as 2028. In particular, Ms. Grubbs noted the next September meeting of the Board, which is scheduled to occur in Arlington, VA, on Sept. 8-10, 2025.

### **Other Business**

Chairman Boerm opened the floor to questions and comments. None were forthcoming.

### **Recognition**

The Board recognized the upcoming retirement of Dave Fairfield from NGFA's staff and thanked him for his years of outstanding service.

### **Adjournment**

*No other business was brought before the Board, and a motion passed unanimously to adjourn the meeting at 5:00PM.*

Respectfully submitted:

Charlie Delacruz  
NGFA Secretary

Approved:

Chris Boerm  
NGFA Chairman