

## NAEGA CLAUSE 20 PROCESS

Users of the NAEGA FOB No. 2 Contract should note that Clause 20 may be invoked whenever delivery of a commodity, or any part thereof, is prevented at an elevator or port, or the forwarding of the commodity to the elevator or port is prevented by:

1. Riots, strikes, lockouts, interruptions in or stoppages of the normal course of labor;
2. Embargoes or exceptional impediments to transportation; or
3. Action by Federal, State or Local government or authority

A NAEGA certification may be requested by completing the attached "Application to the North American Export Grain Association for a Clause 20 Certificate" (Page 4).

Such certificates are issued by NAEGA at the recommendation of a Panel appointed by the Association's President. The Panel's duty, with support from NAEGA staff, is to investigate the merits of any application made to the Association for the issuance of any certificate or for the furnishing of any information relating to numbers 1, 2, 3 above, or other conditions affecting their contract, and to approve, if merited, the issuance of certificates under the following procedures.

### *Procedure for Requesting a NAEGA Clause 20 Certificate*

Clause 20 Certificate requests shall be made to NAEGA staff. Following a preliminary request from an applicant, staff will work closely with the requesting party to complete the "Application to the North American Export Grain Association for a Clause 20 Certificate" (attached), which will include a description of the Clause 20 request, supporting documentation (as attached) and a timeline.

A separate application is required for each port range or elevator for which Clause 20 has been invoked.

The applicant for a NAEGA certificate is solely responsible for furnishing the appropriate documentation and an explanation to support their claim.

Once an application and supporting documentation is submitted, NAEGA staff and the panel will proceed as follows for consideration of a Clause 20 certificate:

1. The President of the association is responsible for forming a Panel of three qualified persons consisting of members from the Committee on Contracts and/or the list of NAEGA appointed Grain Arbitrators and/or others, in consultation with members of the Board of Directors.
2. Staff will submit to the Panel the "Application to the North American Export Grain Association for a Clause 20 Certificate" and supporting documentation. In addition, staff will inform the Panel of relevant past determinations and provide the Panel with assistance to arrive at its determination.

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3. The Panel will consider the application, supporting documentation and the staff recommendation to determine if under a NAEGA contract: the “cause” is valid under Clause 20 (b) and delivery was prevented or delayed; or that the forwarding of the commodity was prevented by reason of the "cause".

The determination should consider:

- The evidence provided in the Application to the North American Export Grain Association for a Clause 20 Certificate;
- Consistency with the NAEGA 2 and applicable contracts;
- Relevant customs of trade; and
- Prevention or reversal of the resulting NAEGA certification by arbitration or courts;

The determination shall be limited to:

- The validity of the cause by verifying or denying that a Clause 20 condition exists.
- The beginning and end of the Cause that has been determined to be valid.

4. The staff will ensure during all proceedings that the panel abides by the “Clause 20 Conflict of Interest Disclosure.”
5. The Panel will report back to the President of its determination.
6. If the Panel determines that a Clause 20 certificate is warranted, NAEGA staff will issue the certificate on NAEGA letterhead affixed with NAEGA’s Seal.

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## **NAEGA CLAUSE 20 PANELIST CONFLICT OF INTEREST DISCLOSURE**

NAEGA Clause 20 Panels shall strive to ensure integrity and transparency throughout the Clause 20 process. This includes avoiding or disclosing any conflicts of interest that might arise between a company applicant and Clause 20 panelists.

Prior to the beginning of Clause 20 Panel proceedings, selected panelists shall disclose to the President of the Association the existence of any interests or relationships that are likely to affect impartiality or that might reasonably create an appearance that the panelist is biased against one party or favorable to another.

A panelist's disclosure obligations continue throughout the course of the panel proceedings and require the panelist to disclose, at any stage of the panel proceedings, any such interest or relationship that may arise, or that is recalled or discovered. Disclosure should be made to the President of the Association.

All disclosures are to be made in writing using the Clause 20 Panelist Disclosure form. The existence of any conflicts of interest does not automatically disqualify a potential panelist from participating in a panel. However, the President of the Association reserves the right to limit, to the best of his or her ability, any conflicts that might bring into question the impartiality of the panel.

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## Application to the North American Export Grain Association for a Clause 20 Certificate

**Please complete the following:**

**Date:**

***Requesting Company***

**Company Name:**

**Address:**

**City:**

**State or Province:**

**Country:**

**Telephone:**

**Fax:**

**Point of Contact:**

**Title:**

**Email:**

**Applicable Port or Elevator:**

**Description of Cause (please attach in your own format):**

- Explanation of the Cause;
- Describe a connection to a NAEGA contract;
- Provide proof that a valid notice was sent;
- How the Cause impacted contract performance; and
- The beginning and end of the Cause.

**Attached Supporting Documentation may include:**

- List of documents;
- Timeline of events;
- Copies of relevant contract(s) (at least one);
- Communications (email etc.) which establish the parties involved in and the proper invoking of Clause 20;
- Documentation from neutral third parties (e.g., port authorities) which clearly establishes the Cause and the beginning and end of the Cause; and
- Record of impacted inventory, position, delivery obligations, etc., if applicable.