



NAEGA

North American Export Grain Association

NAEGA FOB No. 2 Export Contract
Clause 20, Prevention or Delay of Delivery
Process and Procedures Guidance Document
Approved by the NAEGA Board of Directors on March 18, 2024

Note: To best understand the information in this Guidance Document, Buyers and Sellers should reference the provisions of the NAEGA FOB No. 2 Export Contract (April 15, 2024) (“NAEGA 2”), the NAEGA Addendum No. 1 (April 15, 2024), NAEGA’s Terms of Use, and NAEGA’s Glossary of Terms.

Pursuant to the provisions of Clause 20 of the NAEGA FOB No. 2 Contract (April 15, 2024) a **Seller may invoke** said Clause where it determines the existence of conditions and circumstances causing a Prevention or Delay of Delivery.

Separately, the NAEGA President* may, at any time, provide public notice identifying conditions or circumstances that may be valid Clause 20 causes.

Where a Seller requests NAEGA certification, as provided for in Clause 20 (d), the following guidance applies:

1. A Seller who has invoked Clause 20 may request a NAEGA certification within one year of the date they first invoke the Clause for the underlying cause(s).
2. The Seller applying for certificate must provide an application that is substantially complete before it can be considered. Determination of whether an application is substantially complete lies solely with the NAEGA President, whose determination is final. A substantially complete application includes all necessary and appropriate information and documentation as determined by the NAEGA President and consistent with the attached "Application to the North

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA

North American Export Grain Association

American Export Grain Association for a Clause 20 Certificate".

3. Seller may apply for a Clause 20 certificate for a port range or an elevator where Clause 20 has been invoked. Where the duration of underlying cause(s) differs by Port Range and/or Elevator, Seller should submit separate applications for each Port Range and/or Elevator. Applications are not required for each contract for which Clause 20 may have been invoked.
4. A substantially complete application requires no fee from NAEGA members in good standing. A substantially complete application requires a payment of not less than \$6,000 and not more than \$50,000 to NAEGA (as determined by the NAEGA President) from applicants who are either not members or not members in good standing.
5. Upon acceptance of a substantially complete application, there shall be a consideration period of not more than 90 consecutive days. Upon reaching a conclusion, the President (or a designee, hereinafter identified as the "Administrator"**) will issue either:
 - a. a certificate(s) certifying the existence and validity of the causes(s) and certifying the duration of said cause(s) promptly, or
 - b. a letter to the Seller applicant declining certification.
6. Consideration of any substantially complete application will be conducted by a Panel of no fewer than three persons and no more than five persons appointed by the President and/or an Administrator. The Panel shall include the President or Administrator as chairperson. 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 and reach a decision on the

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA

North American Export Grain Association

merits. Decisions shall be made by consensus as recognized by the President and/or Administrator who shall issue notification pursuant to Paragraph 5 above.

7. The Panel may:
 - a. request Seller applicant to authorize the collection and review of information provided by parties other than the Seller applicant to complete consideration of the application;
 - b. request interviews with persons employed by or representatives of the Seller applicant (except their legal counsel); and/or
 - c. consider a request from Seller applicant for an opportunity to be interviewed.

Interviews conducted pursuant to this paragraph will be undertaken in a manner that protects the confidentiality of the Panelists identities (other than the President and/or Administrator) and must not be disclosed to the interviewee or any other party.

8. The President and/or Administrator may at any time, and in their sole discretion, suspend the running of time during the 90-day consideration period.
9. The President and/or Administrator may choose to have one Panel consider a single application, or multiple applications related to the same cause.
10. The President and/or Administrator will conduct all proceedings in a manner consistent with terms of the NAEGA 2, the obligations of NAEGA personnel and the “Clause 20 Conflict of Interest Disclosure” for Panelists.
11. Any certification or communication to the Seller applicant will be held confidential by all NAEGA staff and Panelists.

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA

North American Export Grain Association

12. The President shall sign and seal any certification or letter declining certification.
13. All aspects of a Clause 20 Application and the certification review process such as details and information collected are confidential and may be privileged. The Application, records of consideration, identity of Panelists and communications with Seller applicant and any third parties, shall not be revealed to anyone other than the Staff of NAEGA and Administrator where appointed, or where required by law or a court of competent jurisdiction. NAEGA will not provide anyone other than the Seller applicant with a certification or letter declining said certification.
14. There is no restriction on Seller applicant's right to further distribute the certificate or letter to the applicant declining certification it receives from NAEGA.
15. NAEGA will maintain a file of the proceedings for each substantially complete application received. NAEGA will hold these files as confidential information and may be privileged.
16. Notwithstanding anything in the paragraphs above, NAEGA may report on actions related to clause 20. Such reporting will be in general, or summary form only, and may not include confidential information.

*For purposes of this document, "President" shall include a person(s) identified by the NAEGA President or Board of Directors to perform the specific responsibilities for and on behalf of the association described in this Guidance Document.

**For purposes of this document, "Administrator" is an individual authorized by the President to perform all aspects of managing the panel processes of this Guidance Document.

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA

North American Export Grain Association

NAEGA CLAUSE 20 PANELIST CONFLICT OF INTEREST DISCLOSURE

NAEGA Clause 20 Panels strive to bring knowledge, expertise and experience to the Clause 20 certification process established in the “NAEGA FOB No. 2 Export Contract Clause 20, Prevention or Delay of Delivery Process and Procedures Guidance Document”. Integrity and transparency of internal processes is essential to maintaining confidence in the Clause 20 process. This includes avoiding or disclosing any conflicts of interest that might arise between a Seller applicant and Clause 20 panelists.

Prior to the beginning of Clause 20 Panel proceedings, selected panelists shall disclose to the NAEGA President* 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 NAEGA President.

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 NAEGA President 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.

*For purposes of this document, "President" shall include a person(s) identified by the NAEGA President or Board of Directors to perform the specific responsibilities for and on behalf of the association described in this Guidance Document.

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA
North American Export Grain Association

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:

Telephone:

Email:

Applicable Port or Elevator:

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

- Explanation of the Cause;
- Identification of a connection to a NAEGA II FOB Model contract, including at least one applicable contract;
- Proof that a valid notice was sent;
- Statement of how the Cause impacted contract performance; and
- Identification of the beginning and end of the Cause.

Attached Supporting Documentation shall include (where available and otherwise necessary to support a conclusion that an Application is substantially complete):

- List of documents;
- Timeline of events;
- Copies of any other relevant contracts;

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.



NAEGA

North American Export Grain Association

- Verifiable communications (email, text messages, contemporaneous notes, or other communications channels recognized by the parties) identifying the parties involved in and the proper invocation of Clause 20;
- Documentation from internal sources and from external third parties (e.g., port authorities, government agencies) supporting the finding of the Cause(s) and the beginning and end dates of said Cause(s); and
- Record of impacted inventory, position, delivery obligations, etc., if applicable.

All users of NAEGA Information and Services Expressly Understand and Agree to indemnify and hold harmless, NAEGA, their officers, employees and agents from any and all liability including claims, demands, losses, costs damages, and expenses of every kind and description, or damages to persons or property arising out of or in connections with or occurring during the course of interaction with NAEGA.