

Breach of Contract

What is a reasonable period to remedy breach of contract?

The Secretary will consider criteria including, but not limited to, the following:

- Was written notice given to the grower?
- Does the notice contain the date and description of the breach, and relevant contract section?
- Does the notice specify how the grower can remedy the breach, if possible, and the date by which the breach must be remedied?
- Was reasonable time allowed to remedy the breach?

Note: These criteria do not limit contractor's rights under the contract where food safety or animal welfare is a concern.

GIPSA, P&SP
Eastern Regional Office
75 Spring Street, Suite 230
Atlanta, GA 30303

Phone: 404-562-5840
Fax: 404-562-5848

Jurisdiction: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, and the Territories of the U.S., including Puerto Rico.

GIPSA, P&SP
Midwestern Regional Office
Federal Building
210 Walnut Street, Suite 317
Des Moines, IA 50309

Phone: 515-323-2579
Fax: 515-323-2590

Jurisdiction: Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

GIPSA P&SP
Western Regional Office
3950 Lewiston, Suite 200
Aurora, CO 80011

Phone: 303-375-4240
Fax: 303-371-4609

Jurisdiction: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.

Please direct comments or questions about this publication to the following:

United States Department of Agriculture

Grain Inspection,
Packers and Stockyards Administration
Packers and Stockyards Program
1400 Independence Avenue S.W.
Washington DC 20250-3601
(202) 720-0219

www.gipsa.usda.gov

GIPSA Toll-Free HOTLINE
1-800-998-3447

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**Grain Inspection,
Packers and Stockyards
Administration**

Swine Production Contracts

What is a swine production contract?

A swine production contract is a growout contract or other arrangement. It includes instructions on how to raise swine for slaughter. A swine production contract grower raises and cares for swine according to these instructions.

Who is a swine production contract grower?

A swine production contract grower (grower) is someone who raises and cares for swine. The grower prepares the swine for slaughter by another person.

Who is a swine contractor?

A swine contractor (contractor) is someone who obtains swine under a swine production contract (contract) for slaughter. A contractor may also obtain swine under a contract for sale to another person for slaughter.

Right to Cancel

Does a grower have the right to cancel?

A grower has the right to cancel a contract. The grower does this by mailing a cancellation notice to the contractor. The notice is due three (3) business days after contract execution, unless the contract specifies a later time. The contract must disclose the grower's right to cancel. In addition, it must specify how and when the grower has to act to cancel the contract.

Additional Capital Investments

What is an additional capital investment?

An additional capital investment is the cost of changing one or more structures for use in growing, raising, and caring for swine. It does not include the grower's initial investment to build a structure. Nor does it include the costs of maintenance and repair. It does include the total cost of upgrades to a structure; upgrades of equipment located in and around each structure; and goods and professional services that are directly attributable to the investment. Large investments are those totaling \$12,500 or more per structure over the life of the contract.

Must contracts disclose whether additional capital investments may be required?

The contract must disclose whether additional large capital investments may be required during the term of the contract. This disclosure must be on the first page of the contract. It will be identified as the "Additional Capital Investments Disclosure Statement." This language clearly states that the contractor may require the grower to invest large amounts of money during the term of the contract.

When would required additional capital investments be considered a violation of the Act?

The Secretary will consider criteria including, but not limited to, the following:

- Did the contractor give the grower discretion in deciding whether to make the investment?

- Is the investment the result of coercion, retaliation or threats by the contractor?
- Are all similar growers being treated the same with request for the investments?
- Can the grower reasonably recoup the cost of the investment?
- Was the grower given a reasonable amount of time to implement?
- Did the contractor offer compensation incentives for replacement of previously approved equipment?

Resolving Disputes

Is there a required forum for resolving disputes under a contract?

Disputes must be resolved in the Federal judicial district in which the principal part of the performance takes place. The principal part of performance is the raising and caring for swine under the contract. This generally occurs at the grower's farm.

Can the contract specify which State's law will apply to disputes?

The contract may specify which State's law will apply to issues governed by State law. The specified law then applies, except when the law of the State in which the principal part of the performance takes place prohibits it.

Arbitration

Does a grower have to accept a mandatory arbitration provision in a contract?

A grower has the right to decline a mandatory arbitration provision. A contract must disclose the grower's right to decline that provision, prior to signing the contract. If a grower declines the provision, the parties to the contract can later agree in writing to use arbitration to settle a dispute under the contract. Any action by a contractor with the intent or effect of limiting the grower's ability to choose whether to be bound by arbitration is unlawful.

When is an arbitration process adequately defined?

The Secretary will consider criteria including, but not limited to, the following:

- Is the arbitration opt-out portion of the contract contained on the signature page?
- Does the contract disclose provisions and costs involved in arbitration?
- Are cost and time limits reasonable?
- Is the grower allowed the opportunity for reasonable information discovery?
- Does the mediator provide a written opinion to all parties?