

Agricultural Marketing Service

Swine Production Contracts

What is a swine production contract?

A swine production contract is an arrangement establishing that a swine production contract grower will raise and care for swine in accordance with the instructions of another person.

Who is a swine production contract grower?

A swine production contract grower (grower) is someone who raises and cares for swine in accordance with the instructions of another person.

Who is a swine contractor?

A swine contractor (contractor) is someone who obtains swine under a swine production contract (contract) for the purpose of slaughtering the swine or selling the swine to another person for slaughter

Does a grower have the right to cancel?

A grower has the right to cancel a contract within three (3) business days after the contract is first signed. The contract may give the producer even more time to cancel. The contract must disclose the grower's right to cancel. In addition, it must specify how and by when the grower must act to cancel the contract.

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 costs to build a structure. Nor does it include the costs of maintenance and repair. Additional capital investments include the total cost of modifications to a structure; modification or replacement of equipment located in and around each structure; and the professional services that are directly attributable to the modifications. Large capital investments total \$12,500 or more per structure over the term of the contract.



Must contracts disclose that additional capital investments may be required?

The contract must disclose that 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 must be identified as the "Additional Capital Investments Disclosure Statement." This language must clearly state that the contractor may require the grower to invest additional amounts of money in the facility 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 to decline 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 in respect to the 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 and still functioning equipment?

Resolving Disputes

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

Disputes are resolved in the Federal judicial district that the principal part of the performance of the contract takes place. The principal part of the performance of the contract is considered the raising and caring for the swine. 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 of the contract 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 that the grower has the right to decline the mandatory arbitration provision prior to signing the contract. If a grower declines the mandatory arbitration provision, the parties to the contract can still agree in writing to use arbitration to settle a dispute under the contract, but at a later time. Any action by a contractor done with the intent or effect of limiting the grower's ability to choose whether to be bound by arbitration is unlawful.

When does the arbitration process specified in a contract provide a meaningful opportunity for the grower to participate fully in the process?

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 process provide a written opinion must be provided to all parties?

Breach of Contract

What is a reasonable period of time in which to remedy breach of contract?

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

- Was written notice of the breach given to the grower?
- Does the notice contain the date and description of the breach, and the 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 or rebut the breach?

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

Please direct comments or questions about this publication to

United States Department of Agriculture

Agricultural Marketing Service

Fair Trade Practices Program

Packers and Stockyards Division

1400 Independence Avenue S.W., Room 2507

Washington DC 20250-3601

Phone: 202-720-7051

Fax: 202-690-3207

Email: PSDWashingtonDC@usda.gov

AMS Website: www.ams.usda.gov

Toll-Free HOTLINE

1-833-DIAL-PSD (1-833-342-5773)

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