

report a verbal contract to GIPSA within one business day of the contract's availability or change when the available contract or change results in an example contract as determined by the four example-contract criteria.

Comment: If a packer makes a verbal contract available to a producer on Monday, is that available contract reported to GIPSA the same day? Similarly, if negotiations result in an accepted contract on the same day, do the original available contract and subsequent modification both have to be reported?

Response: If both the available contract and the accepted contract occur on Monday and if the original available contract is still available to other producers, then the packer evaluates the differences, based on the four example-contract criteria, to determine if the available contract and the accepted contract are represented by one or two example contracts and if either of those example contracts have been submitted to GIPSA previously and are still included in the swine contract library as example contract(s) for available or existing contracts.

- If there are two example contracts, and if those two example contracts were not represented by a previously submitted example contract, then the packer reports both the available contract and the accepted contract as example contracts; the example contracts would be due on Tuesday (the next business day).

- If there is one example contract, and if the example contract was not a previously submitted example contract, the packer would report the example contract; it would be due on Tuesday (the next business day).

- If the original available contract was not available to any other producers, then only the example contract for the accepted contract, which occurred on the same day as the contract was made available, would be reported; it would be due on Tuesday (the next business day).

Comment: Would the reporting requirement be different if the modification occurred on the Tuesday following the original contract availability on Monday?

Response: If the original contract was made available on Monday and the contract is accepted on Tuesday, the reporting requirement may be different.

- If the contract made available on Monday is an example contract, based on the four example-contract criteria, then that example contract is due on Tuesday (the next business day after it was made available) (for discussion

purpose, we will call this Example contract X).

- If the contract made available on Monday were accepted on Tuesday, the packer would determine if, based on the four example-contract criteria, the accepted contract should be represented by a different example contract (for discussion purpose, we will call this Example contract Y). If Example contract Y had not been submitted previously, the packer would report Example contract Y; it would be due on Wednesday (the next business day after it was accepted).

- When the packer submits Example contract Y, if Example contract X is still available to other producers, then the packer will have submitted two example contracts (Example contract X on Tuesday and Example contract Y on Wednesday).

- When the packer submits Example contract Y, if Example contract X was not available to any other producers (the available contract was withdrawn), then Example contract Y, for the accepted contract, would be due on Wednesday and would be submitted as a replacement example contract to replace Example contract X submitted on Tuesday. In this scenario, if the packer wanted to submit only one example contract, the packer could choose to submit Example contract Y earlier than required, by submitting it on Tuesday. Then only Example contract Y would be submitted instead of submitting Example contract X on Tuesday and replacing it with Example contract Y on Wednesday.

Comment: If a verbal agreement on a 5-year window contract is renegotiated two weeks later to extend to 7 years and renegotiated the following week regarding a “sort loss” provision, are these three reportable events?

Response: No, this example would not result in three reportable events; however, it may be two reportable events. If the verbal agreement on a 5-year window contract was not represented by a previously submitted example contract, then it would be submitted as an example contract (reportable event). The length of contract is a reportable term of the verbal contract, but it is not one of the four example-contract criteria that are used to identify example contracts. Renegotiating the length of the contract from 5 years to 7 years does not change any of the four example-contract criteria. Therefore, in the example, the result of the first renegotiation would not be a second reportable event. Renegotiating the “sort loss” provision

would be a change to one of the four example-contract criteria, the carcass merit premium and discount schedules, therefore, if there was not any other previously submitted example contract that is the same based on the four example-contract criteria, then the renegotiated contract would be reported either (1) as a new example contract if the original verbal agreement was still a valid example contract (available to or existing for another producer) or (2) as a replacement example contract to replace the previously submitted example contract.

Comment: If the verbal agreement is put in writing several days afterward, does that constitute a different or unique reportable event?

Response: If the verbal agreement is put in writing several days afterward, it would not constitute a different or unique reportable event. That is, assuming the written version and the previously submitted example contract that represents the verbal contract are the same with regard to the four example-contract criteria. The reportable event would be the original available contract and the accepted contract, if either is not represented by a previously submitted example contract.

Packer Reporting Clarifications

Comment: How should futures-based contracts be reported?

Response: Packers must report futures-based contracts in the same manner as all other contracts, by identifying example contracts based on the four example-contract criteria and submitting the example contracts to us. For the summarized reports we make available, as specified in the definition of “other market formula purchases,” we will report futures-based contracts as “other market formula purchases.”

In the proposed rule, the packer was responsible for the classification of contracts into categories as part of the packer's preparation for submitting example contracts. To eliminate confusion about how to categorize contracts and to ensure uniformity of the application of categories, we eliminated the requirement that packers categorize contracts, which was specified in the preamble of the proposed rule. Instead, GIPSA will categorize the contract into the “contract type” category. This change will reduce the burden on packers. We will notify the packer of the categories for the example contracts in writing, by phone, or by another method as