

Text of the regulation as proposed	Text of the regulation as revised
206.3(g)(3)(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion provisions in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by type of contract.	206.3(g)(3)(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

To provide information on the contract types available, GIPSA considered the information to be provided and the best way to collect that information. GIPSA's interpretation of the requirements is that we should make available information about contract terms (for example, noncarcass merit premiums) that may affect the calculation of the actual price paid to producers. This information is available in the contracts and attached documents that complete the contract. GIPSA considered requiring each packer to submit all of its contracts, but determined that would be unnecessarily burdensome and would not be feasible to publish information in a timely manner. Therefore, to collect the information, GIPSA proposed to require packers to submit example contracts.

"Example contracts" are contracts that a packer submits to GIPSA to represent the contracts that the packer has with or makes available to producers. The packer must review its contracts and select an example contract to represent those contracts that are identical based on the following criteria (referred to as the "four example-contract criteria"):

- (1) Base price or determination of base price;
- (2) Application of a ledger or accrual account;

(3) Carcass merit premium and discount schedules; and

(4) Use and amount of noncarcass merit premiums and discounts.

Section 206.2, paragraphs (b) and (c), requires packers to submit an example of each contract; paragraph (d) specifies the four criteria the packer must use to identify example contracts.

Comment: What contracts need to be reported?

Response: Each packer must submit as many example contracts as are required to represent all of the contracts that it currently has with or makes available to a producer or producers. For the initial submission, the packer will submit example contracts that represent all of the existing and available contracts. For subsequent submissions, the packer will submit example contracts when a change to a previously submitted example contract occurs or a new contract is made available that results in a new example contract based on the four example-contract criteria listed above.

Comment: The use of the terms "available," "existing," and "offered" to describe contracts needs clarification. Specifically, the reporting of "offered" contracts includes contracts that have expired. Packers should submit only available and existing contracts.

Response: We will require packers to submit example contracts for available and existing contracts. The words

"offered," "available," and "existing" were all used in the legislation. In the proposed rule we addressed the use of the three terms and explained our interpretation of the use of the words. All three of the words were used with reference to information to be submitted by packers. As stated in the proposed rule, "Types of contracts offered" includes both "types of contracts available" and "types of existing contracts" (65 FR 53655).

We eliminated the use of the term "offered contracts" and replaced it with "available and existing contracts," as appropriate. In addition, to further eliminate confusion, we eliminated the use of the word "offer" as in "new offers" and replaced it with the term "contracts made available" as appropriate. The words "offers," "offered," and "offering" were all used in the rule language in the proposed rule; to eliminate confusion, we revised the rule language to use the words "available" and "existing" in their place. These changes appear in the definition of the term "noncarcass merit premium or discount," paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii). (Paragraphs 206.2(c) and (h) were also revised in response to another comment; the changes to the proposed text for these paragraphs of the regulations are shown below in response to that other comment.)

Text of the regulation as proposed	Text of the regulation as revised
<i>Noncarcass merit premium or discount.</i> An increase or decrease in the price for the purchase of swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.	<i>Noncarcass merit premium or discount.</i> An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.
206.3(c)(1) <i>Existing contracts.</i> The types of contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must report types of contracts in use even if those types are not currently being offered for renewal or to additional producers. Existing contracts will be shown on the report by providing monthly estimates of the number of swine committed to be delivered under the contracts in each category of the types of contracts as defined in § 206.1.	206.3(c)(1) <i>Number of swine to be delivered under existing contracts.</i> Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.
206.3(c)(2) <i>Available contracts.</i> The types of contracts the packer is currently offering to producers, or is making available for renewal to currently contracted producers, for purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each type of contract, as defined in § 206.1, that the packer is currently offering.	206.3(c)(2) <i>Available contracts.</i> Available contracts are contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.