DEPARTMENT OF ENERGY

10 CFR Part 625

RIN Number 1901–AA81

Price Competitive Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Department of Energy.

ACTION: Proposed rule and request for comments.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the **Federal Register** a final rule governing the price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program. The final rule provided for the publication and periodic update in the **Federal Register**, as an appendix thereto, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be applicable to a particular sale of SPR petroleum. First published in interim final form on January 20, 1984, the SSPs have since been updated several times, with the latest version published in the **Federal Register** on December 11, 1992. DOE is now proposing revised SSPs that would supersede the 1992 SSPs, and DOE solicits written comments with respect to these proposed revised SSPs.

DATES: Interested persons are invited to submit written comments at the address below by May 26, 1998.

ADDRESSES: Send comments to: Nancy T. Marland, U.S. Department of Energy, Strategic Petroleum Reserve, FE–43, Room 3G–070, 1000 Independence Ave., SW., Washington, DC 20585–0340.

Comments may also be submitted by use of the Internet by linking to the DOE Fossil Energy web site at: http://www.fe.doe.gov/spr.html

FOR FURTHER INFORMATION CONTACT:

Nancy T. Marland, U.S. Department of Energy, Strategic Petroleum Reserve, FE–43, Room 3G–070, 1000 Independence Ave., SW., Washington, DC 20585–0340, Phone: (202) 586–4691, Fax: (202) 586–7919, Internet: nancy.marland@hq.doe.gov

Gary C. Landry, FE–4451, U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, 900 Commerce Road East, New Orleans, LA 70123, Phone: (504) 734–4660; *Fax:* (504) 734–4947; *Internet:* gary.landry@spr.doe.gov

Lot H. Cooke, U.S. Department of Energy, Office of Assistant General Counsel for Fossil Energy, GC–40, Room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585–0103, Phone: (202) 586–6667; Fax: (202) 586–0971; lot.cooke@hq.doe.gov

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I. Background

A. The Strategic Petroleum Reserve Drawdown Plan and Sales Rule

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA), P.L. 94–163, to store petroleum to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA required the preparation of an ''SPR Plan'' detailing proposals for the development of the SPR. The SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. In 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982, P.L. 97–229, Congress required a new ''Drawdown'' (Distribution) Plan. The new plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and provided that the principal method of distributing SPR oil would be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in SPR Plan Amendment No. 4. The final SPR sales rule (published at 48 FR 56538, December 21, 1983), adopted after consideration of public comments, provides for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions expected to be contained in contracts for the sale of SPR petroleum. The final SPR sales rule is at 10 CFR Part 625. The rule calls for the publication of the SSPs in the **Federal Register** and the Code of Federal Regulations as an appendix to the rule. The rule also provides for the periodic review and republication of the SSPs in the **Federal Register**, including any revisions to such provisions.

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts and types of the SPR petroleum to be sold, the delivery locations and modes, and other pertinent information. The rule provides that the Secretary of Energy or his designee would specify in the Notice of Sale, by referencing the latest version of the SSPs, which of the terms and conditions in the SSPs would or would not apply to a particular sale. In addition, in the Notice of Sale, the Secretary could revise the terms and conditions, or add new ones applicable to that sale. It should be noted that the latest revision of the SSPs, published in the **Federal Register** on December 11, 1992 (57 FR 58872), was never codified as an appendix to the rule in the Code of Federal Regulations. The changes noted in the revisions below are changes to that latest **Federal Register** version and, if promulgated, will supersede the 1992 SSPs.

In the event that an SPR sale does occur before the proposed SSP revisions herein are formally adopted, the Notice of Sale could specify some or all of these revisions for use.

B. General Sales Procedures

Under the current SSPs, the first step in the SPR competitive sales process is the issuance of a Notice of Sale which lists the volume, characteristics, and location of the petroleum for sale, delivery dates and procedures for submitting offers, as well as measures for assuring performance and financial responsibility.

Over the course of a drawdown, several Notices of Sale may be issued, each covering a sales period of one to two months. Offerors may have only seven days from the date of issuance until offers are due, and thirty days or less until purchasers must begin accepting delivery of the oil, although a less compressed schedule may become more feasible after the initial stages of drawdown. Because of the possible short lead time and as provided in the

SSPs, DOE maintains a list of prospective offerors who will receive all Notices of Sale.

The next step in the sales process is for prospective purchasers to submit offers, as specified in the Notice of Sale. Offerors must unconditionally accept all terms and conditions in the Notice of Sale, submit an offer guarantee, and offer at least the minimum price, if any, specified in the Notice of Sale. After submission, the offers are evaluated and ''apparently successful offerors'' are selected. The offer evaluation process is structured so that the offerors bidding the highest prices determine their method of delivery, up to the limits of the distribution system, with specific delivery arrangements negotiated later in the process.

All apparently successful offerors are required, within five business days of being notified, to provide a letter of credit as a guarantee of performance and payment of amounts due under the contract. Upon timely receipt of the letters of credit, and a final determination by the Contracting Officer that offers are responsive and offerors responsible, the DOE issues the Notices of Award. Deliveries then commence to the purchasers, consistent with their arrangements for commercial pipeline or marine vessel transportation. Purchasers are invoiced following crude oil deliveries.

II. The Revised Standard Sales Provisions

A. Major Revisions

The SSPs are being revised in accordance with the SPR sales rule. The revisions reflect a number of events, including experience gained through various sales, the relocation of inventory within the SPR, commercialization of SPR distribution facilities, the addition of new distribution points, the growth of electronic communications, and changes to the legal and regulatory framework under which a drawdown would be conducted. Although the revised SSPs do not reflect any major changes to the elemental competitive sales process, a conscious effort to conduct SPR business more closely in alignment with standard commercial terms underpins many of these revisions.

Since the last revision of the SSPs, due to geotechnical problems, crude oil at the SPR's Weeks Island site was relocated to the Bayou Choctaw and Big Hill sites, consequently deleting the crude oil stream known as Weeks Island Sour, Master Line Item 006. The addition of distribution points at UNOCAL Terminal in Nederland, Texas, and at the Texaco Pipeline, Inc. 20-inch pipeline near Winnie, Texas, to serve the Big Hill site enabled the definition of two new streams, Big Hill Sweet and Big Hill Sour, Master Line Items 009 and 010, respectively. These two new streams may also be delivered through the Sun Terminal in Nederland by tanker, barge and pipeline.

In order to reduce operational costs and generate revenues, DOE has initiated a program to lease the use of designated SPR distribution facilities, including the DOE St. James Terminal and approximately 240 miles of off-site crude oil pipelines. While commercialization of these facilities does not affect their availability for drawdown, future commercialization activities may affect the distribution alternatives and capabilities available at any time. The revised SSPs acknowledge and allow for this variability of available crude oil streams and delivery line items.

Experience with recent sales of SPR oil has led to the proposed revision in payment methods and terms. Currently, purchasers of SPR crude have two options: advance payment or payment under a commercial letter of credit payable by draft through the Federal Reserve Bank's FEDWIRE system. Under the revised SSPs, this has been changed to more standard commercial billing and payment terms, requiring purchaser payment of DOE invoices via wire transfer of funds or cash wire deposit to the U.S. Treasury, with a standby letter of credit used to assure payment and performance. Alternative networks for the wire transfer of funds have eliminated the requirement that the participating banks be members of the Federal Reserve Bank's FEDWIRE system. Changes by the International Chamber of Commerce in their 1993 revision of the Uniform Customs and Practice for Documentary Credits (UCP 500), reducing the risk of nonpayment, facilitated this change to more standard commercial practice while maintaining the SPR's objective of assuring purchaser performance.

Recent experience with sales of SPR oil, as well as the conduct of other SPR business, have emphasized the efficiencies achieved through electronic communications. Several SSPs have been revised to allow for electronic communication throughout the sales solicitation, offer, award and delivery processes.

The legal and regulatory framework, particularly concerning export controls and environmental compliance, has been updated since the 1992 version in ways that specifically and generally affect SPR purchasers. In 1990, Congress amended EPCA to give the President discretionary power to waive export control laws with regard to SPR oil in connection with refining or exchange of SPR oil to obtain refined products for the U.S. market. The revised SSPs identify the Department of Commerce revised Short Supply Controls applicable to exports of SPR crude oil in connection with refining or exchange for refined products. In addition, many changes in U.S. environmental legislation and international environmental agreements affect purchaser responsibilities in contracting for transport from the SPR, particularly by vessel. The revised SSPs contain a matrix identifying currently applicable statutes governing environmental and financial responsibility requirements for tankships transporting oil in the United States.

Several exhibits have also been substantially revised. A form to be included with an offer submission has been simplified. The form for the presentation of the SPR crude oil assays has been modified. The sample letters of credit for the offer guarantee, and payment and performance guarantee have been revised to reflect the use of new electronic funds transfer mechanisms and the new billing and payment procedure. Information for the SPR delivery terminals has been expanded to include the new delivery points.

The following is a provision-by-provision discussion of the significant changes in the revised SSPs.

B. Revised Provisions

SSP No. A.1 List of Abbreviations

The abbreviation ''SOML'' for ''Sales Offerors Mailing List'' was added.

SSP No. A.3 Standard Sales Provisions (SSPs)

The required offeror's agreement to all sales provisions may be submitted on offer forms generated by electronic means as specified by DOE in the Notice of Sale.

SSP No. A.5 Sales Offerors' Mailing List (SOML)

A potential offeror may now be added to the SOML by providing pertinent information by means of electronic mail to the address specified in this provision.

SSP No. A.6 Publicizing the Notice of Sale

The Internet and other media were added to the options for distribution of the Notice of Sale to interested parties.

SSP No. A.7 Penalty for Making False Statements in Offers To Buy SPR Petroleum

This provision has been revised to caution offerors concerning the applicability of the United States Sentencing Guidelines to violations of 18 U.S.C. § 1001.

SSP No. B.1 Requirements for a Valid Offer—Caution to Offerors

This provision now provides that offer forms may be generated by electronic means specified by DOE in the Notice of Sale. In addition, Standard Form 33, previously required to be submitted with an offer, has been replaced by SPRPMO Form 33S, which is provided in a new Exhibit C.

SSP B.6 Export Limitations and Licensing—Caution to Offerors

This provision has been revised to identify the sections of the Department of Commerce Short Supply Controls governing applications to export SPR crude oil in connection with arrangements to obtain refined petroleum for the U.S. market.

SSP B.8 Submission of Offers and Modification of Previously Submitted Offers

1. This provision now provides for the electronic submission or modification of offers, reserving the right of the Contracting Officer to request submission of a complete signed original document.

2. The conditions under which the Government will not be responsible for the unsuccessful electronic transmission of an offer or modification are delineated.

SSP B.9 Acknowledgment of Amendments to a Notice of Sale

The provision provides for acknowledgment of amendments on new Form SPRPMO 33S or electronically, as specified in the NS.

SSP B.10 Late Offers, Modification of Offers and Withdrawal of Offers

This provision identifies the conditions under which late offers which had been submitted via a commercial express service will be considered. A late offer which is the only offer received will also be considered.

SSP B.11 Offer Guarantee

1. A certified check is no longer acceptable as an offer guarantee.

2. Offer guarantees submitted by cash wire deposit or electronic funds transfer must follow new submission instructions detailed in SSP No. C.23.

3. The requirement that a standby letter of credit submitted as an offer guarantee conform without exception to the sample form provided in Exhibit F has been changed to require substantive compliance with Exhibit F. The requirement that the issuing bank maintain an account with the Federal Reserve Bank has been eliminated.

4. In line with the revised procedures for invoicing and payment (see SSP C.22), a successful offeror's cash wire deposit offer guarantee may be applied toward the first delivery invoice under the resultant contract.

SSP B.16 SPR Crude Oil Streams and Delivery Points

The UNOCAL terminal at Nederland, Texas, and a meter station on the Texaco Pipeline Inc. 20-inch pipeline in Jefferson County, Texas have been added as delivery points for the new SPR Big Hill Sweet and SPR Big Hill Sour crude oil streams.

SSP B.17 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality and Delivery Method

Due to the addition of the two new streams at the Big Hill site and the deletion of the stream from the Weeks Island site, and the attendant changes in feasible delivery points, this provision has been changed in various places to accommodate the expansion and variability of possible line item offerings.

SSP C.4 Environmental Compliance

This provision has been updated to reflect the current applicable regulations with which vessels used to transport SPR oil must comply, as well as the financial responsibility requirements for vessel owners or operators.

SSP C.5 Delivery and Transportation Scheduling

This provision has been revised to require that purchasers scheduling deliveries by pipeline initially specify five-day shipment ranges for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date range.

SSP C.6 Application Procedures for ''Jones Act'' and Construction Differential Subsidy Waivers

This provision has been restructured by revising and regrouping the order in which the addressees for original Jones Act and Construction Differential Subsidy waiver requests, and copies thereof, are presented.

SSP C.12 Pipeline Delivery Procedures

In consonance with the requirement established in SSP NO. 5, the purchaser will establish five-day shipment ranges with pipeline carrier. Three days prior to the beginning of the specified range, the purchaser will provide DOE the firm date within the range on which delivery is to begin.

SSP C.17 Determination of Quality

This provision reflects the latest SPR and industry preferred tests for the determination of sediment and water, sulfur and API gravity. One new primary test for API gravity has been added and several formerly acceptable alternate tests for all three categories have been deleted.

SSP C. 21–23 Payment Procedures

1. These provisions replace former SSPs C.21–26, under which the buyer had two options: advance payment or payment under a commercial letter of credit payable through the Federal Reserve Banks's FEDWIRE system. The new provisions delete the advance payment option and implement a procedure for billing and payment following standard industry practice, using a standby letter of credit to assure payment and performance.

2. SSP C.21 requires the purchaser to provide an irrevocable standby letter of credit for 100 percent of the contract award value before DOE will execute a contract award. The letter of credit must be in substantive compliance with the example provided in Exhibit G. DOE will authorize cancellation of the letter of credit within 30 days after receipt of final payment under the contract.

3. SSP C.22 provides for the purchaser to be invoiced after each delivery under the contract , with payment due in full on the 20th day of the month after the month of delivery. Options available to the Government if payment is not received include drawing against the letter of credit, withholding future deliveries or contract termination.

4. SSP C.23 provides for payment by either a deposit to the account of the U.S. Treasury by wire transfer of funds over the Fedwire Deposit System Network or electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program.

5. DOE may draw against the standby letter of credit at any time for other monies due under the contract and remaining unpaid in violation of the terms of the contract.

Exhibit A SPR Sales Offer Form

This form, provided as an alternative to any other electronic means that may

be provided by DOE for preparation and submission of offers, has been expanded to include the Big Hill Sweet and Big Hill Sour crude oil streams.

Exhibit B Sample Notice of Sale

This exhibit has been slightly revised to be more illustrative of the SSPs as now written.

Exhibit C SPRPMO Form 33S

This form, replacing Standard Form 33, has been streamlined to include only those elements pertinent to the SPR sales contracting process.

Exhibit D SPR Crude Oil Stream Characteristics

This exhibit contains an example of the assay format used for SPR crude oil stream characteristics. Updated assay data for all nine SPR crude oil streams will be included in any future Notice of Sale.

Exhibit E SPR Delivery Point Data

This exhibit contains the information for the UNOCAL Terminal at Nederland, Texas, and the Texaco Pipeline, Inc. 20-inch pipeline meter station in Jefferson County, Texas, for delivery of Big Hill Sweet and Big Hill Sour streams.

Exhibit F Offer Standby Letter of Credit

The letter of credit has been revised to specify payment through the Federal Deposit Network System, or the Automated Clearing House Network using the Federal Remittance Express Program.

Exhibit G Payment and Performance Letter of Credit

The letter of credit has been changed from a commercial letter of credit to an irrevocable standby letter. Drawings against the letter of credit will only be made due to purchaser's failure to pay or perform. Payments will be made through the same means specified in Exhibit F.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's action does not constitute a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the National Environmental Policy Act

In today's notice DOE proposes revisions to the SSPs that may be incorporated into sales contracts following a Presidential decision to draw down the Strategic Petroleum Reserve. The SSPs are not binding upon DOE or bidders until they are included in particular Notices of Sale. The proposed amendments are procedural in nature and will not result in environmental impacts. The Department, therefore, has determined that the proposed revisions are covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to such procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because DOE is not required by the Administrative Procedure Act (APA) or other law to publish proposed revisions to the Standard Sales Provisions for public comment. The Standard Sales Provisions, which are included as Appendix to 10 CFR Part 625, are not binding upon DOE unless they are incorporated into a Notice of Sale, and DOE may revise or supplement the Standard Sales Provisions in a Notice of Sale. 10 CFR 625.3. Thus, the Standard Sales Provisions, and revisions thereof, are non-binding provisions that are covered under the APA's exemption from notice and comment rulemaking requirements at 5 U.S.C. 553(b)(B).

D. Review Under the Paperwork Reduction Act of 1995

The proposed revisions of Standard Sales Provisions would impose no new collection of information requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and the procedures implementing that Act, 5 CFR Part 1320.

E. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), requires the review of regulations, rules, legislation, and any other policy actions for any substantial direct effects on States, on the relationship among the federal government and the states, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federal assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has analyzed this proposed rule in accordance with the principles and criteria in Executive Order 12612, and has determined that the rule would not have a substantial direct effect on the institutional interests or traditional functions of states.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, tribal governments, in the aggregate or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The revisions of Standard Sales Provisions today would not impose a federal mandate on state, local, and tribal governments or on the private sector. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Review Under Executive Order 12988

Section 3 of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements when promulgating new regulations and reviewing existing regulations. These requirements, set forth in paragraphs 3(a) and (b)(2) of the Executive Order, include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, describes any administrative proceedings, and defines key terms. The Department has determined that the proposed rule meets the requirements of paragraphs 3(a) and (b) of Executive Order 12988.

List of Subjects in 10 CFR Part 625

Government contracts, Oil and gas reserves, Strategic and critical materials.

Issued in Washington, D.C. on March 27, 1998.

R.D. Furiga,

Deputy Assistant Secretary, Strategic Petroleum Reserve.

For the reasons set forth in the preamble, 10 CFR part 625 is proposed to be amended as follows:

PART 625—PRICE COMPETITIVE SALE OF STRATEGIC PETROLEUM RESERVE PETROLEUM

1. The authority citation for part 625 continues to read as follows:

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

2. Appendix A to part 625 is revised to read as follows:

Appendix A to Part 625—Standard Sales Provisions Index

Section A—General Pre-Sale Information

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A.4 Periodic revisions of the Standard Sales Provisions
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Exhibits:

A—SPR Sales Offer Form
B—Sample Notice of Sale
C—SPRPMO Form 33S
D—SPR Crude Oil Comprehensive Analysis
E—SPR Delivery Point Data
F—Offer Standby Letter of Credit
G—Payment and Performance Letter of Credit
H—SPR Crude Oil Delivery Report—SPRPMO–F–6110.2–14b/REV.8/91
I—Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check
J—Offer Guarantee Calculation Worksheet

Section A—General Pre-Sale Information

A.1 List of abbreviations

(a) ASO: Apparently Successful Offeror
(b) DLI: Delivery Line Item
(c) DOE: U.S. Department of Energy
(d) MLI: Master Line Item
(e) NA: Notice of Acceptance
(f) NS: Notice of Sale
(g) SOML: Sales Offerors Mailing List
(h) SSPs: Standard Sales Provisions
(i) SPR: Strategic Petroleum Reserve
(j) SPRCODR: SPR Crude Oil Delivery Report (Exhibit H)
(k) SPR/PMO: Strategic Petroleum Reserve Project Management Office

A.2 Definitions

(a) *Affiliate.* The term ''affiliate'' means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

(b) *Business Day.* The term ''business day'' means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term ''contract'' means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term ''Contracting Officer'' means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his or her authority.

(e) *Government.* The term ''Government'', unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term ''Head of the Contracting Activity'' means Project Manager, Strategic Petroleum Reserve Project Management Office.

(g) *Notice of Acceptance (NA).* The term ''Notice of Acceptance'' means the document that is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term ''notification of apparently successful offeror'' means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term ''Notice of Sale'' means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (See Exhibit B, Sample Notice of Sale)

(j) *Offeror.* The term ''offeror'' means any person or entity (including a government agency) who submits an offer in response to a NS.

(k) *Petroleum.* The term ''petroleum'' means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term ''Project Management Office''

means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

(m) *Purchaser.* The term ''purchaser'' means any person or entity (including a government agency) who enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term ''Standard Sales Provisions'' means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the ''standard sales agreement'' referenced in the Strategic Petroleum Reserve ''Drawdown'' (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term ''Strategic Petroleum Reserve'' means that DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. Section 6201, *et seq.*

(p) *Vessel.* The term ''vessel'' means a tankship, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions (SSPs)

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (See Exhibit B, Sample Notice of Sale)

(b) All offerors must, as part of their offers for SPR petroleum in response to a NS, agree without exception to all sales provisions of that NS. Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A) or other form generated from electronic media used for submitting offers as specified by DOE in the NS. The Government will not award a contract to an offeror who has failed to so agree.

A.4 Periodic Revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When an NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register**. Interested persons may obtain a copy of the current SSPs by contacting the SPR/PMO at the address set forth in Provision No. A.5.

A.5 Sales Offerors' Mailing List (SOML)

(a) The SPR/PMO will maintain a Sales Offerors Mailing List (SOML) of those potential offerors who wish to receive an NS whenever one is issued. In order to assure that prospective offerors will receive the NS or offer forms in a timely fashion, all potential offerors are encouraged to submit the information in paragraph (d) of this provision as soon as possible. An NS may be issued with a week or less allowed for the receipt of offers. While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may request to be on the SOML by providing the information in paragraph (d) of this provision by letter, telephone or electronic means to: Sales Offerors Mailing List (SOML), U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123, Telephone Number (504) 734–4249/4201, Facsimile (504) 734–4427, e-mail: soml@spr.doe.gov. Any envelope should be marked ''SPR Sales Offerors' Mailing List.''

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the SOML should include the following information: Name of firm; Mailing address (Street and P.O. Box); City, State, Zip Code; Name of authorized agent and alternate authorized agent; Telephone numbers for agent and alternate including area code; Agent address, if different from firm represented; Internet address; Telephone number for facsimile transmission, including area code Telephone number for verification of message receipt, including area code; Dun's number. As DOE may use express mail, which cannot be delivered to a Post Office box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale

(a) The NS will be sent to names on the SOML referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the SOML, the NS will also be sent to anyone requesting it when a sale is announced.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications or media (including the Internet) likely to reach interested parties. The advertisements will contain the salient features of the NS and a point of contact at the SPR/PMO for further information.

A.7 Penalty for False Statements in Offers To Buy SPR Petroleum

(a) Making false statements in an offer to buy SPR petroleum may expose an offeror to a penalty under the False Statements Act, 18 U.S.C. Section 1001, which provides: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Under 18 U.S.C. § 3571, the maximum fine to which an individual or organization may be sentenced for violations of 18 U.S.C. (including Section 1001) is set at $250,000 and $500,000 respectively, unless there is a greater amount specified in the statute setting out the offense, or the violation is subject to special factors set out in Section 3571. The United States Sentencing Guidelines also apply to violations of Section 1001, and offenders may be subject to a range of fines under the guidelines up to and including the maximum amounts permitted by law.

Section B—Sales Solicitation Provisions

B.1 Requirements for a Valid Offer—Caution to Offerors

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (see Provision No. B.11) must be received no later than the time set for the receipt of offers;

(b) The offer must include a completed Sales Offer Form, i.e., Exhibit A or other form generated by electronic means for submitting offers as specified by DOE in the NS, and signed SPRPMO Form 33S (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS that explicitly require acknowledgment of receipt must be properly acknowledged as provided for on Exhibit C; and

(e) The offeror must agree without exception to all provisions of the SSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Price Indexing

The Government, at its discretion, may make use of a price indexing mechanism to effect contract price adjustments based on petroleum market conditions, e.g., crude oil market price changes between the times of offer price submissions and physical deliveries. The NS will set forth the provisions applicable to any such mechanism.

B.3 Certification of Independent Price Determination

(a) The offeror certifies that:

(l) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other

concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of thIS provision;

(ii) As their agent does hereby so certify; and

(iii) As their agent has not participated, and will not participate, in any action contrary to paragraphs (a)(l) through (a)(3) of this provision

(c) An offer will not be considered for award where paragraphs (a)(l), (a)(3), or (b) of this provision has been deleted or modified. If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B.4 Requirements for Vessels—Caution to Offerors

(a) The ''Jones Act'', 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR Parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (see Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes, all costs for which will be borne by the vessel. The terminals, however, may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals that lack reception facilities for oily ballast.

(c) By submission of an offer, the offeror certifies that it will comply with the ''Jones Act'' and all applicable ballast disposal requirements.

B.5 ''Superfund'' Tax on SPR Petroleum—Caution to Offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code, which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the ''Superfund''), were revised by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499; and the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509; the Steel Trade Liberalization Program Implementation Act, Public Law 101–221; and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund (''Trust Fund'').

(b) Section 4611 imposes taxes on domestic crude oil and on imported crude oil to support the Superfund and the Trust Fund. The taxes are imposed on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use, or warehousing. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by Section 4611 has already been paid with respect to a barrel of oil. Additionally, as determined by the Secretary of Treasury, the Hazardous Substance Superfund tax and the Oil Spill Liability Trust Fund tax may not be imposed during certain periods when the unobligated balances of the funds reach particular statutorily-prescribed levels.

(c) DOE has already paid the Superfund and Trust Fund taxes on some of the oil imported and stored in the SPR.

However, no Superfund or Trust Fund tax has been paid on imported oil stored prior to the effective dates of these Acts or on any domestic oil stored in the SPR. Because domestic and imported crude oil for which no taxes have been paid and crude oils for which Superfund and Trust Fund taxes have been paid have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.6 Export Limitations and Licensing—Caution to Offerors

(a) Offerors for SPR petroleum are put on notice that export of SPR crude oil is subject to U.S. export control laws implemented by the Department of Commerce Short Supply Controls, codified at 15 CFR part 754, § 754.2, Crude oil. Subsections of § 754.2 provide for the approval of applications to export crude oil from the SPR in connection with refining or exchange of SPR oil. Specifically, these subsections are § 754.2(b)(iii), and 754.2(g), Refining or exchange of Strategic Petroleum Reserve Oil. These provisions are issued under 42 U.S.C. 6241(i), and implement the authority given to the President to permit the export of oil in the SPR for the purpose of obtaining refined petroleum for the U.S. market. In addition, the President could waive the requirement for an export license all together. The NS will advise of any waivers under this Presidential authority.

(b) By submission of an offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.7 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all the pertinent information necessary for the offeror to prepare a priced offer. A NS may be issued with a week or less allowed for the receipt of offers. Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.8 Submission of Offers and Modification of Previously Submitted Offers

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail, hand-delivery, or electronic means as specified in the NS. Any direct cash deposits as offer guarantees shall be sent by wire or electronic funds transfer in accordance with Provision No. C.23.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or electronic means specified in the NS, provided that the hand delivery, mail, telegram, or electronic submission is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside; ''RE: NS #_____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE.'' Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: ''RE: NS #_____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE.''

(d) All envelopes shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by hand delivery, mail, telegram, or electronic means must be received at the address specified in the NS. Offers or modifications submitted by electronic means must contain the required signatures. If requested by the contracting officer, the offeror agrees to promptly submit the complete original signed offer/modification.

(f) If the offeror chooses to transmit an offer/modification by electronic means, the Government will not be responsible for any failure attributable to the transmission or receipt of the offer/modification, including, but not limited to, the following:

(1) Receipt of garbled or incomplete offer/modification,

(2) Availability or condition of the receiving equipment,

(3) Incompatibility between the sending and receiving equipment,

(4) Delay in transmission or receipt of the offer/modification,

(5) Failure of the offeror to properly identify the offer/modification,

(6) Illegibility of offer/modification

(7) Security of the data contained in the offer/modification.

(g) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service.

(h) Public opening of offers is not anticipated unless otherwise indicated in the NS. DOE will not release to the general public the identities of the offerors, or their offer quantities and prices, until the Apparently Successful Offerors have been determined. DOE will inform simultaneously all offerors and other interested parties of the successful and unsuccessful offerors and their offer data by means of a public ''offer posting.'' The offer posting will normally occur within a week of receipt of offers and will provide all interested parties access to offer data as well as any DOE changes in the petroleum quantities or quality to be sold. DOE will announce the date, time, and location of the offer posting as soon as practicable.

B.9 Acknowledgment of Amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of receipt by an offeror, it must be acknowledged either by (a) signing and returning the amendment; (b) identifying the amendment number and date in the space provided for this purpose on SPRPMO Form 33S (Exhibit C); or (c) letter, telegram, or electronic means as specified in the NS, sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.10 Late Offers, Modifications of Offers, and Withdrawal of Offers

(a) Any offer received at the office designated in the NS after the date and time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, or established commercial express service, not later than the close of business at the place of mailing 2 working days prior to the date specified for receipt of offers. The working days excludes weekends and U.S. Federal holidays; or,

(3) It was sent by mail, express mail, telegram or electronic means as specified in the NS, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS; or

(4) It is the only offer received.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in paragraph (a) of this provision, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Postmark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

(2) The date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee or established commercial service is the date entered by the receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' or other comparable service label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service or commercial service.

(3) The time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding paragraphs (a) and (b) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

B.11 Offer Guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A cash wire deposit or electronic funds transfer to the account of the U.S. Treasury in accordance with Provision No. C.23, all attendant costs to be borne by the offeror; or

(2) A irrevocable standby letter of credit from a U.S. depository institution containing the substantive provisions set out in Exhibit F, Offer Standby Letter of Credit, all letter of credit costs to be borne by the offeror. If the letter or credit contains any provisions at variance with Exhibit F or fails to include any provisions contained in Exhibit F, nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The depository institution must be located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The original of the letter of credit must be sent to the Contracting Officer. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(e) If the offeror elects to make an offer guarantee by cash wire deposit or electronic funds transfer, the Sales Offer Form shall be annotated with the statement ''Offer guarantee made by cash wire deposit (or electronic funds transfer.)'' The amount transferred shall be annotated on the bottom of the first page of the offer form. In addition, the information identified in Exhibit I, Instruction Guide for Return of Offer Guarantees by Electronic Transfer or Treasury Check, shall be provided with the offer.

(f) If the offeror or bank forwards the letter of credit separately from the offer, the envelope shall clearly be marked ''Offer Standby Letter of Credit (Name of Company)'' and also marked in accordance with Provision No. B.8(c). Offerors are cautioned that if they provide more than one Offer Standby Letter of Credit for multiple offers and, due to the absence of clear information

from the offeror, the Government is unable to identify which Letter of Credit applies to which offer, the Contracting Officer in his sole discretion may assign the Letters of Credit to specific offers.

(g) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) Withdraws its offer within l0 days following the time set for receipt of offers;

(2) Withdraws its offer after having agreed to extend its acceptance period; or

(3) Having received a notification of ASO, fails to furnish an acceptable payment and performance letter of credit (see Provision C.21) within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(h) Letters of credit furnished as offer guarantees must be valid for at least 60 calendar days after the date set for the receipt of offers.

(i) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period, and, except as provided in paragraph (k) of this provision, to a successful offeror upon receipt of a satisfactory payment and performance letter of credit. Cash offer guarantees will be subsequently returned to unsuccessful offerors via Treasury check or electronic transfer in accordance with the information delineated in Exhibit I. Letters of credit will be returned only upon request.

(j) Where the offer guarantee was a cash wire deposit or electronic funds transfer, a successful offeror may apply it toward the first invoice for delivery under the resultant contract.

(k) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.12 Explanation Requests From Offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.13 Currency for Offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.14 Language of Offers and Contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.15 Proprietary Data

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.16 SPR Crude Oil Streams and Delivery Points

(a) The geographical locations of the terminals, pipelines, and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (See also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil stream
Freeport, Texas	Seaway Terminal or Seaway Pipeline Jones Creek.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour, SPR Bryan Mound Maya.
Texas City, Texas	Seaway Terminal or Seaway Local Pipelines.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour, SPR Bryan Mound Maya.
Nederland, Texas	Sun Pipe Line Company, Nederland Terminal.	SPR West Hackberry Sweet, SPR West Hackberry Sour, SPR Big Hill Sweet, SPR Big Hill Sour.
Lake Charles, Louisiana	Texaco 22-Inch/DOE Lake Charles Pipeline Connection.	SPR West Hackberry Sweet, SPR West Hackberry Sour.
St. James, Louisiana	DOE St. James Terminal connected to LOCAP and Capline.	SPR Bayou Choctaw Sweet, SPR Bayou Choctaw Sour.
Beaumont, Texas	Unocal Terminal	SPR Big Hill Sweet, SPR Big Hill Sour.
Winnie, Texas	TPLI 20-Inch Meter Station	SPR Big Hill Sweet, SPR Big Hill Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE may provide for transportation to the purchaser's facility, for example, when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Data.

B.17 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method

(a) Unless the NS provides otherwise, the possible master line items (MLI) that may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are nine MLIs in Exhibit A, one for each of the nine crude oil streams that the SPR has in storage. The NS may not offer all the possible MLIs.

(b) Each MLI contains several delivery line items (DLIs), each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. This is most likely to occur in the first sales period of a drawdown if the period of sale does not correspond to a calendar month. The NS will specify which DLIs are offered for each MLI.

(1) DLI–A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI–B, DLI–C and DLI–D cover petroleum to be transported by tankships: DLI–B, covering tankships to be loaded from the 1st through the 10th of the month; DLI–C, tankships to be loaded from the 11th through the 20th; and DLI–D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI–E, DLI–F and DLI–G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry and Big Hill Sweet and Sour crude oil streams from Sun Docks); DLI–E, covering barges to be loaded from the 1st through the 10th of the month; DLI–F, barges to be loaded from the 11th through the 20th; and DLI–G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline, additional DLIs will be offered. The additional DLIs will include DLI–H, covering petroleum to be transported by pipeline over the period of a month; DLI–I thru DLI–K, covering tankships, etc. The Notice of Sale

will specify any additional DLIs which may be applicable.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may sell a quantity of petroleum in excess of the quantity offered for sale on a particular MLI in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable, or that, in light of market conditions after offers are received, a lesser quantity than that offered should be sold.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity that could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale.

(f) The NS will not specify what portion of the petroleum that DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.16, which shall be made in accordance with Provision No. C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristics, provides an example of the assay format used for the SPR crude oil streams. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.18 Line Item Information To Be Provided in the Offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract under the terms of its offer for the purchase of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.20) in accordance with the terms of that contract.

(b) An offeror may submit an offer which is for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit multiple offers. However, separate offer forms and offer guarantees must be submitted and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. (''MAXQ'' on the Exhibit A offer form) The offer shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. (''DESQ'') The offer shall state the number of barrels that the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the MAXQ for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price (''UP$$'') and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times unit price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. (''MINQ'') The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the ''N'' and ''Y'' blocks respectively under ''MINQ'' on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.19 Mistake in Offer

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI must contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, if a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity is the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in paragraph (a) of this provision may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by electronic means. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in paragraphs (c)(1) and (2) of this provision if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be

permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.20 Evaluation of Offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.21 Procedures for Evaluation of Offers

(a) Award on each DLI will be made to the responsible offerors that submit the highest priced offers responsive to the SSPs and the NS and that have provided the required payment and performance guarantee as required by Provision No. C.21.

(b) DOE will array all offers on an MLI from highest price to lowest price for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offers involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest priced offers will be reviewed for responsiveness to the NS.

(4) In the event the highest priced offer does not take all the petroleum available on the MLI, sequentially, the next highest priced offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest priced offer.

(5) In the event of tied offers and an insufficient remaining quantity available on the MLI or insufficient remaining capacity on the DLI to fully award all tied offers, the Contracting Officer shall apply an objective random methodology for allocating the remaining MLI quantity or DLI capacity among the tied offers, taking into consideration the quantity the offeror is willing to accept as indicated in its offer. When making this allocation, the Contracting Officer in his sole discretion may do one or more of the following:

(i) Make an additional quantity or capacity available;

(ii) Contact an offeror to determine whether alternative delivery arrangements can be made; or

(iii) Not award all or part of the remaining quantity of petroleum.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable; or if the Government determines, in light of market conditions after offers are received, to sell less than the overall quantity of SPR petroleum offered for sale.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (See Exhibit G, Payment and Performance Letter of Credit) as specified in Provision No. C.21, all letter of credit costs to be borne by the purchaser.

(8) Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) an offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.22 Financial Statements and Other Information

(a) As indicated in Provision No. B.21(b)(8) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require the submission of information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, and any other information relevant to the performance of the contract. The Contracting Officer shall set a deadline for receipt of this information.

B.23 Resolicitation Procedures on Unsold Petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum that has been awarded or allotted for award becomes available to DOE for resale, the following procedures will apply:

(1) If priced offers remain valid in accordance with Provision No. B.24, the petroleum may go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.24, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price it originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror. This process may continue until all the remaining petroleum has been allotted for award.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.24 Offeror's Certification of Acceptance Period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.25 Notification of Apparently Successful Offeror

The following information concerning its offer will be provided to the apparently successful offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.26 Contract Documents

If an offeror is successful, DOE will make award using an NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the current SSPs as published in the **Federal Register**. DOE may accept the offeror's offer by an electronic notice and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described above.

B.27 Purchaser's Representative

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.28 Procedures for Selling to Other U.S. Government Agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.21. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must make all necessary arrangements to accept delivery of and transport SPR petroleum as set out in Provision No. C.1. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C—Sales Contract Provisions

C.1 Delivery of SPR Petroleum

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE or its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance With the ''Jones Act'' and the U.S. Export Control Laws

Failure to comply with the ''Jones Act,'' 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision No. C.25. Purchasers who have failed to comply with the ''Jones Act'' or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers in subsequent sales under Provision No. B.21 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with l0 CFR Part 625.

C.3 Storage of SPR Petroleum

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessment of liquidated damages under Provision Nos. C.25 through C.27 unless such failure is excused pursuant to those provisions.

C.4 Environmental Compliance

(a) SPR offerors must ensure that vessels used to transport SPR oil comply with all applicable statutes, including the Ports and Waterways Safety Act of 1972; the Port and Tanker Safety of 1972; the Act to Prevent Pollution from Ships of 1980 (implements Annexes I, II, and V of MARPOL 73/78); and the Oil Pollution Act of 1990. Annex I, II, and V of MARPOL 73/78 prescribe procedures for the prevention of pollution by oil, noxious liquid substances, and garbage, respectively. Offerors must also ensure that vessels used to transport SPR oil comply with all applicable regulations, including the following:

CFR citation	Title	Purpose
33 CFR 151	Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water.	Implements the Act to Prevent Pollution from Ships, as amended and Annexes I, II, and V of the International Convention for the Prevention of Pollution from Ships, as modified by MARPOL 73/78.
33 CFR 153	Control of Pollution by Oil and Hazardous Substances, Discharge Removal.	Prescribes regulations concerning notification of the discharge of oil and hazardous substances, procedures for removing discharges of oil, and the costs associated with removing discharges of oil.
33 CFR 155	Oil or Hazardous Material Pollution Prevention Regulations for Vessels.	Establishes regulations concerning vessel equipment and transfer procedures, including personnel, equipment, and records.
33 CFR 157	Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk.	Establishes regulations governing the design and installation of equipment for vessels and the operation of vessels.

CFR citation	Title	Purpose
33 CFR 159	Marine Sanitation Devices	Prescribes regulations governing the design and construction of marine sanitation devices and procedures for certifying that marine sanitation devices are consistent with EPA regulations promulgated under section 312 of FWPCA, to eliminate the discharge of untreated sewage from vessels.
46 CFR Chapter I, Subchapter D.	Tank Vessels	Sets out design, equipment, and operations requirements relating to pollution prevention from tank vessels.

(b) To transport SPR oil, a purchaser or the purchaser's subcontractors must use only those tankships for which the vessel's owner, operator, or demise charter has made a showing of financial responsibility under 33 CFR part 138, Financial Responsibility for Water Pollution (Vessels).

(c) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable statutes and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.25, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and Transportation Scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO by hand-delivery, express mail, or electronic transfer, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the five day shipment ranges (i.e., day 1–5, 6–10, 11–15, etc.) for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date. In the event conflicting requests are received, preference will be given to such requests in descending order, the highest offered price first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser is deemed to have received a notice by hand delivery, express mail, or electronic transfer on the day after dispatch. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) Electronic transfer information, as well as the address to which express mailed and hand-carried proposed schedules should be delivered, will be provided in the notification of ASO.

(c) In order to expedite the scheduling process, at the time of submission of each vessel lifting program or pipeline delivery schedule, each purchaser shall provide the DOE Contracting Officer's Representative with a written notice of the intended destination for each cargo scheduled, if such destination is known at that time. For pipeline deliveries, the purchaser shall also include, if known, the name of each pipeline in the routing to the final destination.

(d) Notwithstanding paragraph (a) of this provision, ASOs and purchasers may request early deliveries, i.e., deliveries commencing prior to the contractual delivery period. DOE will use its best efforts to honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected or other circumstances make it unreasonable to honor such requests. DOE's decision following any such consideration for a change shall be final and binding. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the delivery date.

(e) Not withstanding paragraphs (a) and (d) of this provision, in no event will schedules be confirmed prior to award of contracts.

C.6 Contract Modification—Alternate Delivery Line Items

(a) A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification shall be permitted by DOE, provided, in the sole judgement of DOE, the change is viewed as reasonable and would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

(b) Changes in delivery method will only be considered after the initial confirmation of schedules described in Provision C.5(a) above.

C.7 Application Procedures for ''Jones Act'' and Construction Differential Subsidy Waivers

(a) Unless otherwise specified in the Notice of Sale, an ASO or purchaser seeking a waiver of the ''Jones Act'' should submit a request by letter, telegram or electronic means to: U.S. Customs Service, Chief, Carrier Rulings Branch 1301 Constitution Avenue, NW, Washington, D.C. 20229, Telephone: (202) 482–6940, Facsimile: (202) 482–6943.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy (and, if applicable, operated with an Operating Differential Subsidy) should have the vessel owner submit a waiver request by letter, telegram, or electronic means to: Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW, 1Washington, D.C. 20590, Fax: (202) 366–7901. For speed and brevity, the request may incorporate by reference appropriate contents of any earlier ''Jones Act'' waiver request by the purchaser. Under 46 U.S.C. App. 1223, a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Copies of the Jones Act, CDS, or ODS requests should also be sent, as appropriate, to:

(1) Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, 1Fax: (202) 366–7901.

(2) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Strategic Petroleum Reserve, FE–40, 1000 Independence Avenue, SW, Washington, D.C. 20585, Fax: (202) 586–7919.

(3) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, Acquisition and Sales Division, 900 Commerce Road East, New Orleans, LA 70123, Fax: (504) 734–4947.

(d) In addition to the above addresses, copies of the ''Jones Act'' request should also be sent to: Assistant Secretary of Defense (Acquisition and Logistics), U.S. Department of Defense, Washington, DC 20301–8000.

(e) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by electronic transmittals may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after the transmission requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to Section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(f) If there are shown to be ''Jones Act'' vessels available and in a position to meet the loading dates required, no waivers may be approved.

(g) The names of any vessel(s) to be employed under a ''Jones Act'' waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision No. C.5.

C.8 Vessel Loading Procedures

(a) After notification of ASO, each ASO shall provide the SPR/PMO a proposed schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. If the purchaser schedules more than one window, the average quantity to be lifted during any single loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate commensurate with receiving an entire full cargo within twenty-four (24) hours pumping time. Barges with a load rate of not less than 4,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) name and size of vessel or advice that the vessel is ''To Be Nominated'' at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) of this provision); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO including but not limited to a copy of the crew list, ship's specifications, last three ports and cargoes, vessel owner/operator and flag, any known deficiencies, and on board quantities of cargo and slops. The listing of all required vessel information shall be provided in the Notice of Sale. DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made only by mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days' notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in paragraphs (d) and (f) of this provision shall be provided for each vessel.

(f) The vessel or purchaser shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (see Provision No. C.9). If the purchaser fails to make notification of the expected day of arrival, the 1-day window will be deemed to be the middle day of the scheduled 3-day window. The vessel shall also notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in Exhibit E. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(I) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours. Barges loading at Sun Terminal barge dock facilities shall be allowed berth time of three (3) hours plus the quotient determined by dividing the cargo size (gross standard volume barrels) by four thousand (4,000). Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions below excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time used by the vessel in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.11.

C.9 Vessel Laytime and Demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside (all fast) the loading berth or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon

arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside (all fast), or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside (all fast).

(c) For all hours or any part thereof of vessel laytime that elapse in excess of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the petroleum loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker. For foreign flag vessels, demurrage shall be as determined above, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the New Worldwide Tanker Nominal Freight Scale ''Worldscale'' shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with paragraph (a) of this provision.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision No. C.19).

C.10 Vessel Loading Expedition Options

(a) Notwithstanding Provision No. C.8(j)(1) above, in order to avoid disruption in the SPR distribution process, the Government may limit berthing time for any vessel receiving SPR petroleum to that period required for loading operations and the physical berthing/unberthing of the vessel. At the direction of the Government, activities not associated with the physical loading of the vessel (e.g., preparing documentation, guaging, sampling, etc.) may be required to be accomplished away from the berth. Time consumed by these activities will not be for the Government's account. If berthing time is to be restricted, the Government will so advise the vessel prior to berthing of the vessel.

(b) In addition to paragraph (a) of this provision, the Government may limit vessels calling at SPR terminals to a total of 24 hours for petroleum transfer operations. In such an event, the loading will be considered completed if the vessel has loaded 95 percent or more of the nominated quantity within a total of 24 hours. If the vessel has loaded less than 95 percent of its nominated quantity, then Provision C.11 shall apply.

C.11 Purchaser Liability for Excessive Berth Time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.12 Pipeline Delivery Procedures

(a) The purchaser shall nominate his delivery requirements to the pipeline carrier, to include the total quantity to be moved and his preferred five-day shipment range(s) as specified in C.5. The purchaser shall provide confirmation of the carrier's acceptance of the above quantity [in thousands of barrels per day] and shipment ranges to the SPR/PMO no later than the last day of the month preceeding the month of delivery. The purchaser shall also furnish the SPR/PMO with the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) The SPR/PMO will ensure oil is made available to the carrier within the shipment date range(s) established in accordance with Provision C.5. Once established, the pipeline delivery schedule can only be changed with SPR/PMO's prior written consent. Should the schedule established in accordance with paragraph (a) of this provision vary from the original schedule established in accordance with Provision No. C.5, the Government will provide its best efforts to accommodate this revised schedule but will incur no liability for failure to provide delivery on the dates requested.

(c) Three days prior to the beginning of any five-day shipping range in which the purchaser is to receive delivery, the purchaser shall furnish the SPR/PMO the firm date within that range on which the movement is to commence, the quantity to be moved, and the contract number.

(d) The date of delivery, which will be recorded on the CODR (see Provision No. C.19), is the date delivery commenced to the custody transfer point, as identified in the NS.

(e) The purchaser shall receive pipeline deliveries at a minimum average rate of 100,000 barrels per day. The purchaser is solely responsible for making the necessary arrangements with pipeline carriers, including storage, to achieve the stated minimum.

C.13 Title and Risk of Loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—as identified in the NS.

(c) For in-transit shipments—when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.14 Acceptance of Crude Oil

(a) An example of the assay format used for SPR crude oil is shown in Exhibit D, SPR Crude Oil Stream Characteristics. Updated assays for all nine SPR crude oil streams will be provided in the NS. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 20°API if Bryan Mound Maya, 28°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.16, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.16. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.32.

C.15 Delivery Acceptance and Verification

(a) The purchaser shall provide written confirmation to SPR/PMO, no later than 72 hours prior to the scheduled date of the first delivery under the contract, the name(s) of the authorized agent(s) given signature authority to sign/endorse the delivery documentation (CODR, etc.) on the

purchaser's behalf. Any changes to this listing of names must be provided to the SPR/PMO in writing no later than 72 hours before the first delivery to which such change applies. In the event that an independent surveyor (separate from the authorized signatory agent) is appointed by the purchaser to witness the delivery operation (gauging, sampling, testing, etc.), written notification must be provided to SPR/PMO, no later than 72 hours prior to the scheduled date of each applicable cargo delivery.

(b) Absence of the provision of the name(s) of bona fide agent(s) and the signature of such agent on the delivery documentation constitutes acceptance of the delivery quantity and quality as determined by DOE and/or its agents.

C.16 Price Adjustments for Quality Differentials

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, quality price adjustments will be applied only to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/−0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS.

(b) Price adjustments for SPR crude oil are expected to be similar to one or more commercial crude oil postings for equivalent quality crude oil. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the API gravity of the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.17 Determination of Quality

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API Manual of Petroleum Measurement Standards, Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products (ASTM D4057), latest edition; or from a representative sample collected by an automatic sampler whose performance has been proven in accordance with the API Manual of Petroleum Measurement Standards, Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method (ASTM D473) (IP53), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.8, Sediment in Crude Oil by Membrane Filtration (ASTM D4807), latest edition; and API Manual of Petroleum Measurement Standards, Chapter 10.2, Determination of Water in Crude Oil by Distillation (ASTM D4006) (IP358), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.9, Water in Crude Oil by Coulometric Karl Fischer Titration (ASTM D4928) (IP 386), latest edition.

Alternate methods: API Manual of Petroleum Measurement Standards, Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure) (ASTM D4007) (IP 359), latest edition.

(2) Sulfur

Primary method: ASTM D1552, Sulfur in Petroleum Products (High Temperature Method), latest edition.

Alternate method: ASTM D4294, Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry, latest edition.

(3) API Gravity

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 9.1, Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method (ASTM D1298) (IP 160), latest edition; or Density and Relative Density of Crude Oils by Digital Density Analyzer (ASTM D5002), latest edition.

Alternate method: API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method) (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The Government's test results will be binding in any dispute over quality characteristics of SPR petroleum.

(b) The purchaser or his representative may arrange to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.32. Should the purchaser opt not to witness the testing, then the Government findings will be binding on the purchaser.

C.18 Determination of Quantity

(a) The quantity of crude oil delivered to the purchaser will be determined by opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an automatic sampler is not available, or delivery meter reports. All volumetric measurements will be corrected to net standard volume in barrels at 60°F, using the API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume 1, Volume Correction Factors (ASTM D1250) (IP 200); Table 5A–Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F; Table 6A–Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a representative portion of the sample collected by a certified automatic sampler, and also corrected by the applicable pressure correction factor and meter factor.

(b) The quantity measurements shall be performed and certified by the DOE contractor responsible for delivery operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.32. Should the purchaser not arrange for additional services, then DOE's quantity determination shall be binding on the purchaser.

C.19 Delivery Documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO–F–6110.2–14b (Rev 8/91) (see Exhibit H for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.20 Contract Amounts

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics, changes in delivery mode and price index values, if applicable. In addition, due to conditions of vessel loading and shipping or pipeline transmission, the quantity actually delivered may vary by ±10 percent for each shipment. However, a purchaser is not required to engage additional transportation capacity if sufficient capacity to take delivery of at least 90 percent of the contract quantity has been engaged.

C.21 Payment and Performance Letter of Credit

(a) Within five business days of receipt of notification of Apparently Successful Offeror, the Purchaser must provide to the Contracting Officer an ''Irrevocable Standby Letter of Credit'' established in favor of the United States Department of Energy equal to 100 percent of the contract awarded value and containing the substantive provisions set out in Exhibit G. The purchaser must furnish

an acceptable letter of credit before DOE will execute the NA. The letter of credit must not vary in substance from the sample at Exhibit G. If the letter of credit contains any provisions at variance with Exhibit G or fails to include any provisions contained in Exhibit G, nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The letter of credit must be effective on or before the first delivery under the contract and remain in effect for a period of 120 days, must permit multiple partial drawings, and must contain the contract number. The original of the letter of credit must be sent to the Contracting Officer.

(b) The letter of credit must be issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(c) All wire deposit electronic funds transfer and letter of credit costs will be borne by the purchaser.

(d) The letter of credit must be maintained at 100 percent of the contract value of the petroleum remaining to be delivered, plus any other charges owed to the Government under the contract. In the event the letter of credit falls below the level specified, or at the discretion of the Contracting Officer must be increased because of the effect of the price indexing mechanism provided for in Provision B.2, DOE reserves the right to demand the purchaser modify the letter of credit to a level deemed sufficient by the Contracting Officer. The purchaser shall make such modification within two business days of being notified by the Contracting Officer by express mail or electronic means. The purchaser is deemed to have received such notification the next business day after its dispatch. If such modification is not made within two days after purchaser is deemed to have received the notice, the Contracting Officer may, on the 3rd business day, without prior notice to the purchaser, withhold deliveries in whole or in part under the contract and/or terminate the contract in whole or in part under Provision C.25.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the bank or financial institution issuing the letter of credit. A copy of the notice of cancellation will be provided to the purchaser.

C.22 Billing and Payment

(a) The Government will invoice the Purchaser at the conclusion of each delivery.

(b) Payment is due in full on the 20th of the month following each delivery month. Should the 20th of the month fall on a Saturday, Sunday, or Federal holiday, payment will be due and payable in full on the last business day preceding the 20th of the month.

(c) If an invoice is not paid in full, the Government may provide the Purchaser oral or written notification that Purchaser is delinquent in its payments; draw against the letter of credit for all quantities for which unpaid invoices are outstanding; withhold all or any part of future deliveries under the contract; and/or terminate the contract, in whole or in part, in accordance with Provision C.25.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying the principal and any interest due (see Provision No. C.24) from the due date.

C.23 Method of Payments

(a) All amounts payable by the purchaser shall be paid by either:

(1) Deposit to the account of the U.S. Treasury by wire transfer of funds over the Fedwire Deposit System Network. The information to be included in each wire transfer will be provided in the NS.

(2) Electronic funds transfer through the Automated Clearing House (ACH) network, using the Federal Remittance Express Program. The information to be included in each transfer will be provided in the NS.

(b) If the purchaser disagrees with the amounts invoiced by the Government, the purchaser shall immediately pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection. Failure to agree to any adjustment shall be a dispute, and a purchaser shall file a claim promptly in accordance with Provision C.32.

(c) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(d) Notwithstanding any other contract provision, DOE may via a draft message request a wire transfer of funds against the standby letter of credit at any time for payment of monies due under the contract and remaining unpaid in violation of the terms of the contract. These would include but not be limited to interest, liquidated damages, demurrage, amounts owing for any services provided under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision No. C.25. If the invoice is for delinquent payments, interest shall accrue from the payment due date.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

C.24 Interest

(a) Amounts due and payable by the purchaser or its bank that are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

(b) Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Improvement Act of 1997 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.25 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.31 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under paragraph (b)(l)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under paragraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with paragraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(l) Subject to the provisions of paragraphs (b)(2) and (b)(3) of this provision, the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.31 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.27 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or an NS issued after the date of default that specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with paragraphs (b)(2) and (3) of this provision, the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in paragraphs (a)(1) or (b)(1) of this provision, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and an electronic or express mail notice on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) of this provision, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.32.

(h) The term ''subcontractor'' or ''subcontractors'' includes subcontractors at any tier.

C.26 Other Government Remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.25, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.27 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.27 Liquidated damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of Provision No. C.25 and paragraph (c) of Provision No. C.26.

(b) As provided in paragraph (a) of this provision, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.25. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.32.

C.28 Failure To Perform Under SPR Contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future SPR contracts.

C.29 Government Options in Case of Impossibility of Performance

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(l) Terminate for the convenience of the Government under Provision No. C.25; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in

substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. C.25.

C.30 Limitation of Government Liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.31 Notices

(a) Any notices required to be given by one party to the contract to the other in writing shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, telegram, or electronic means as provided in the NS. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.32 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. Section 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR l–33.211.

(b) ''Claim'' means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name

Signature

Title

(d) The Government shall pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register**.

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C.24 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.33 Assignment

The purchaser shall not make or attempt to make any assignment of a contract that incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (4l U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.34 Order of Precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**) made applicable to the contract by the NS;

(d) The instructions to the SPR Sales Offer Form; and

(e) The successful offer.

C.35 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) of this provision, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Exhibits

A—SPR Sales Offer Form
B—Sample Notice of Sale
C—SPRPMO Form 33S
D—SPR Crude Oil Comprehensive Analysis
E—SPR Delivery Point Data
F—Offer Standby Letter of Credit
G—Payment and Performance Letter of Credit
H—Form SPRPMO–F–6110.2–14b (Rev 8/91)—SPR Crude Oil Delivery Report
I—Instruction Guide for Return of Offer Guarantees by Electronic Transfer
J—Offer Guarantee Calculation Worksheet

BILLING CODE 6450–01–P

Strategic Petroleum Reserve Sales Offer Form

INSTRUCTIONS

1. Maximum MLI Quantity (MAXQ)

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

2. Delivery Line Items (DLI)

Nominal DLI delivery methods are as follows:

DLI A	Pipeline delivery from first terminal
DLI B, C, D	Tanker delivery from first terminal
DLI E, F, G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

Pipeline DLIs A and H nominally have a 30-day delivery period. Vessel DLIs B, E, and I have ten day delivery periods nominally from the 1st to the 10th; C, F, and J cover the 11th to the 20th; and D, G, and K cover the 21st to the last day of the period of sale. Additional DLIs may be added when storage sites are connected to more than two pipelines or terminals. However, not all DLIs may be available on a particular MLI. In addition, buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month.

3. Unit Price (UP$)

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001). but in no smaller fraction thereof.

4. Delivery Preference (P)

Where the offer has the same unit price for two or more DLIs on the same MLI, the offer may indicate the offerors order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLIs to be awarded at its discretion.

5. Desired DLI Quantity (DESQ)

Offers must indicate at least one desired DLI, stating (in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

6. Minimum Contract Quantity (MINQ)

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y'. DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

7. Total Price

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

8. Offer Guarantee

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit J. Submission of the worksheet is not desired.

EXHIBIT A

1 of 4

Strategic Petroleum Reserve Sales Offer Form

Offer Guarantee

Offeror Information

Name

Address

City

State

Zipcode -

Country

Telephone -

Agent Information

Name

Address

City

State

Zipcode -

Country USA

Telephone - -

Exhibit A

Offer

DLI=Delivery Line Item (*2, 5)
UP$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

* = See Instructions

MAXQ=Maximum MLI Quantity (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

Bryan Mound Sweet MLI 0 0 1 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

Bryan Mound Sour MLI 0 0 2 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

Bryan Mound Maya MLI 0 0 3 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

West Hackberry Sweet MLI 0 0 4 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

Exhibit A

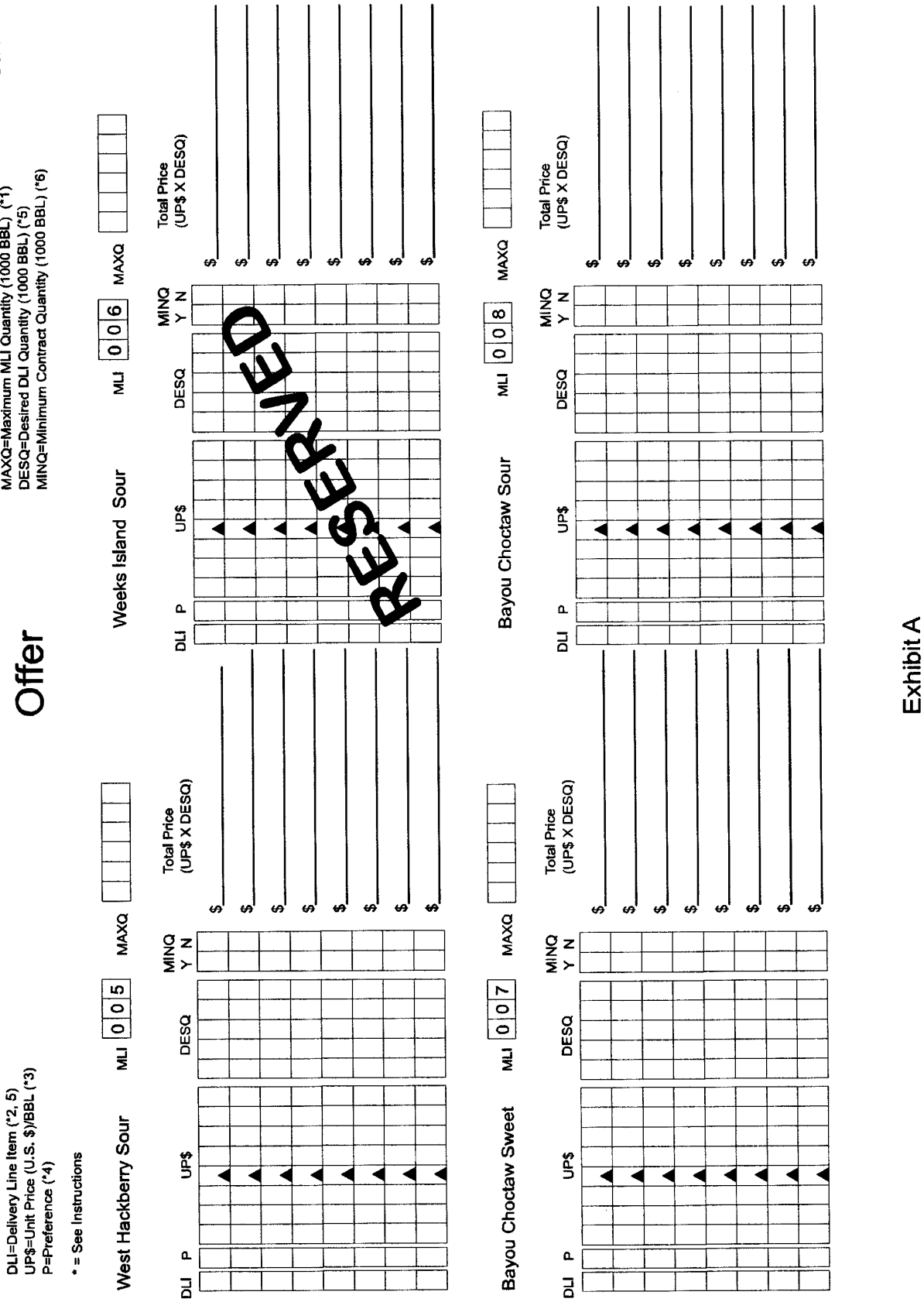
3 of 4
Offer
DLI=Delivery Line Item (*2, 5)
UP$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)
* = See Instructions
MAXQ=Maximum MLI Quantity (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)
West Hackberry Sour
MLI 0 0 5
MAXQ
DLI P UP$ DESQ MINQ Y N Total Price (UP$ X DESQ)
Weeks Island Sour
MLI 0 0 6
MAXQ
DLI P UP$ DESQ MINQ Y N Total Price (UP$ X DESQ)
RESERVED
Bayou Choctaw Sweet
MLI 0 0 7
MAXQ
DLI P UP$ DESQ MINQ Y N Total Price (UP$ X DESQ)
Bayou Choctaw Sour
MLI 0 0 8
MAXQ
DLI P UP$ DESQ MINQ Y N Total Price (UP$ X DESQ)

Exhibit A

Offer

DLI=Delivery Line Item (*2, 5)
UP$=Unit Price (U.S. $)/BBL (*3)
P=Preference (*4)

* = See Instructions

MAXQ=Maximum MLI Quantity (1000 BBL) (*1)
DESQ=Desired DLI Quantity (1000 BBL) (*5)
MINQ=Minimum Contract Quantity (1000 BBL) (*6)

Big Hill Sweet MLI 0 0 9 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

Big Hill Sour MLI 0 1 0 MAXQ

DLI	P	UP$	DESQ	MINQ Y	MINQ N	Total Price (UP$ X DESQ)
						$
						$
						$
						$
						$
						$
						$
						$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 8) is $_____

Signature: Offeror or Agent _____

Company Name _____

Exhibit A

Exhibit B - Sample Notice of Sale (NS)

1. NS No. DE-NS96-92P0x000x is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are supplemented or modified to read: (give changes). Additional requirements applicable to this sale are as follows: (give text).

   (Note: Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these modified complete text SSPs have no contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.)

2. Mailed and handcarried offers and offer guarantees must be received by 3:00 p.m. local time on (date) at (address). Offer guarantees sent by wire transfer must also be received at the U.S. Treasury by the time stated above.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions, including financial.

4. Direct questions regarding NS to (name of individual), telephone (504) 734-4660. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows:

   MLI 001: ____ bbls; MLI 002 not offered this sale; MLI 003: ____ bbls;
   MLI 004: ____ bbls; MLI 005 not offered this sale; MLI 006 not offered this sale;
   MLI 007: ____ bbls; MLI 008: ____ bbls; MLI 009 not offered this sale; MLI 010: ___ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (see provision No. B.17 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

9. Applicable quality differentials are plus or minus ___ ¢ per degree API gravity, or part

thereof, for sweet crude oil streams, and plus or minus ___ ¢ per one-tenth degree API gravity for sour crude oil streams. These quality adjustments will only be applied to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/- 0.5° API) from the API gravity of the crude oil stream contracted for as published in this Notice of Sale.

10. The following information is provided in connection with SSP Provision No. B.4 "'Superfund' tax on SPR petroleum - caution to offerors":

11. All offerors and purchasers are cautioned that letters of credit must not vary in substance from the sample provided in Exhibits F and G. Nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted.. It is recommended, therefore, that offerors/purchasers review letters of credit issued on their behalf, to assure their full compliance with the above cited Exhibits.

12. The information to be included for payment by wire transfer of funds over the Federal Deposit System Network is provided in Attachment __. Information to be included for payment by electronic funds transfer using the Automated Clearing House Network is provided in Attachment __.

EXHIBIT "C" **SPRPMO FORM 33S**

GOVERNMENT PROPERTY SALES CONTRACT	CONTRACT NUMBER	PAGE 1 of 1

This contract is entered into by and between the United States of America, hereinafter called the "Government," represented by the Contracting Officer executing this contract and the Purchaser below identified. The Government agrees to sell and the Purchaser agrees to buy the material described below in accordance with the terms and conditions of _____, incorporated herein by reference.

ACKNOWLEDGMENT OF AMENDMENTS	AMENDMENT NO.	DATE
The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:		

EXECUTION BY PURCHASER

NAME OF PURCHASER

ADDRESS (Street, City, State & Zip Code) (Type or Print)

_____ _____

SIGNATURE AND TITLE OF PERSON AUTHORIZED TO SIGN THIS CONTRACT **DATE**
(Type or print name and title under signature)

EXECUTION BY GOVERNMENT

Items on the attached NOTICE OF ACCEPTANCE are accepted.

UNITED STATES OF AMERICA BY:

_____ _____

NAME AND SIGNATURE OF CONTRACTING OFFICER **DATE**

EXHBIT D

SPR CRUDE OIL COMPREHENSIVE ANALYSIS

Sample ID: West Hackberry, Cavern 108

Number: 97SPR068-077 Date collected: 2/27/97 Date results reported: 12/29/97

Crude									
Specific Gravity, 60/60° F	0.8394	Ni, ppm	2.67	RVP, psi @ 100° F				5.05	
API Gravity	37.1	V, ppm	4.30	Acid number, mg KOH/g				0.09	
Sulfur, Wt. %	0.34	Fe, ppm	1.21	Mercaptan Sulfur, ppm				3.7	
Nitrogen, Wt. %	0.099	Cu, ppm	3.59	H_2S Sulfur, ppm				0	
Micro Car. Res., Wt. %	1.90	Org. Cl, ppm	0.3	Viscosity: 77° F	5.763	cSt	44.7	SUS	
Pour Point, °F	35	UOP "K"	11.95	100° F	3.888	cSt	38.8	SUS	

Fraction	Gas	1	2	3	4	5	6	Residuum	Residuum
Cut Temp.	C_2 - C_4	C5 - 175° F	175° - 250° F	250° - 375° F	375° - 530° F	530° - 650° F	650° - 1050° F	650° F+	1050° F+
Vol. %	3.5	7.7	9.5	13.2	19.9	9.8	28.1	37.0	8.5
Vol. Sum %	3.5	11.2	20.7	33.9	53.8	63.6	91.7	100.6	100.2
Wt. %	2.5	6.1	8.4	12.3	19.7	10.0	30.7	40.9	10.2
Wt. Sum %	2.5	8.6	17.0	29.3	49.0	59.0	89.7	100.0	99.9
Specific Gravity, 60/60° F		0.6692	0.7417	0.7803	0.8305	0.8612	0.9180	0.9284	1.005
API Gravity		79.9	59.3	49.8	38.9	32.8	22.6	20.9	9.3
Sulfur, Wt. %		0.0010	0.0005	0.0061	0.10	0.27	0.44	0.58	1.05
Mercaptan Sulfur, ppm		1.2	3.5	5.3	4.4				
H_2S Sulfur, ppm		0.0	0.0	0.0	0.0				
Organic Cl, ppm		0.5	0.6	1.2	0.6				
Research Octane Number		71.5							
Motor Octane Number		68.1							
RON for C_5 - 375° F		53.5							
MON for C_5 - 375° F		52.9							
Aniline Point, ° F				121.3	146.3	163.6	194.0		
Acid Number, mg KOH/g					0.04	0.13			
Cetane Index					45.1	50.5			
Naphthalenes, Vol. %					4.78	9.93			
Smoke point, mm					19.2	14.7			
Nitrogen, Wt. %					0.0012	0.014	0.118	0.253	0.565
Viscosity, cSt 77° F					2.798				
100° F					2.185	5.861			
130° F						3.885	32.04	109.1	
180° F							12.11	30.78	4685
210° F									1405
250° F									
Freezing Point, °F					-16.7				
Cloud Point, °F						35.3	108		
Pour Point, °F						30	105	90	
Ni, ppm								7.03	29.1
V, ppm								11.3	47.2
Fe, ppm								3.56	14.6
Cu, ppm								7.65	32.0
Micro Car. Res., Wt. %							0.32	4.52	17.76

SPR GAS CHROMATOGRAPHIC ANALYSES
Sample ID: West Hackberry, Cavern 108
Number: 97SPR068-077

		Distillate fractions, ASTM D2892		
		C_5-175° F Wt. %	175-250° F Wt. %	250-375° F Wt. %
* Total Paraffins		43.81	21.35	19.97
Total Iso-paraffins		37.53	24.82	28.36
Total Aromatics		3.19	10.14	26.22
Total Naphthenes		15.48	43.69	23.16
Unknowns		0.00	0.00	2.30
Paraffins	C2	0.00	0.00	0.00
	C3	0.43	0.02	0.03
	C4	4.04	0.09	0.10
	C5	25.07	0.31	0.22
	C6	13.95	3.57	0.17
	C7	0.32	12.11	0.32
	C8	0.00	5.25	4.81
	C9	0.00	0.00	7.64
	C10	0.00	0.00	4.60
	C11	0.00	0.00	2.02
	C12	0.00	0.00	0.06
Iso-paraffins	C4	0.64	0.03	0.02
	C5	16.11	0.15	0.27
	C6	18.54	2.11	0.11
	C7	2.24	11.39	0.11
	C8	0.00	9.52	2.28
	C9	0.00	1.63	13.04
	C10	0.00	0.00	8.65
	C11	0.00	0.00	3.87
	C12	0.00	0.00	0.00
Aromatics	C6	2.68	1.52	0.04
	C7	0.50	7.70	0.97
	C8	0.00	0.93	11.25
	C9	0.00	0.00	5.73
	C10	0.00	0.00	6.63
	C11	0.00	0.00	1.42
	C12	0.00	0.00	0.18
Naphthenes	C5	3.23	0.22	0.01
	C6	10.89	9.07	0.14
	C7	1.36	24.32	1.19
	C8	0.00	10.02	6.89
	C9	0.00	0.07	7.31
	C10	0.00	0.00	6.11
	C11	0.00	0.00	1.51
	C12	0.00	0.00	0.00

Debutanization Fraction	
Component	Wt. %
Ethane	0.00
Propane	31.40
i-Butane	12.44
n-Butane	40.45
i-Pentane	8.90
n-Pentane	5.92
C_6+	0.90

* Whole Crude	
Component	Wt. % of crude
Benzene	0.37
Toluene	0.71
Ethylbenzene	0.21
m-Xylene	0.36
p-Xylene	0.16
o-Xylene	0.28

* The modified ASTM D 5134 gas chromatographic method was used for elution and identification of components up to n-C_{12} (420° F).

EXHIBIT E - SPR DELIVERY POINT DATA

SEAWAY FREEPORT TERMINAL
(Formerly Phillips Terminal)

(Data as of May, 1997)

LOCATION: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)

CRUDE OIL STREAMS: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya

DELIVERY POINTS: Seaway Terminal marine dock facility number 2

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 3 Docks: Nos. 1, 2 and 3

MAXIMUM LENGTH OVERALL (LOA): Dock 1 - 750 feet during daylight and 615 feet during hours of darkness. Docks 2 and 3 - 820 feet during daylight and 615 feet during hours of darkness

MAXIMUM BEAM: Dock 1 - 107 feet
Docks 2 and 3 - 145 feet

MAXIMUM DRAFT: Dock 1 - 36.5 feet salt water; Docks 2 and 3 - 42 feet salt water; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 and 3 can accommodate up to 120,000 DWT if they meet other port restrictions. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Freeport Harbor sea buoy approximately 4.5 miles from the terminal.

SEAWAY TEXAS CITY TERMINAL
(Formerly ARCO Texas City)

(Data as of May, 1997)

LOCATION: Docks 11 and 12, Texas City Harbor, Galveston County, Texas

CRUDE OIL STREAMS: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya

DELIVERY POINTS: Marine Docks (11 and 12) and connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 11 and 12

MAXIMUM LENGTH OVERALL (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.

MAXIMUM BEAM: Dock 11 - 108 feet; Dock 12 - 220 feet

MAXIMUM DRAFT: 39.5 feet brackish water; subject to change due to weather and silting conditions

MAXIMUM AIR DRAFT: None

MAXIMUM DEADWEIGHT TONS (DWT): 150,000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Bolivar Roads (breakwater) or Galveston sea buoy.

SUN PIPE LINE COMPANY, NEDERLAND TERMINAL

(Data as of May, 1997)

LOCATION: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINTS: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 5 Docks: Nos. 1, 2, 3, 4 and 5

MAXIMUM LENGTH OVERALL (LOA): 1000 feet

MAXIMUM BEAM: 150 feet

MAXIMUM AIR DRAFT: 136 feet

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 150,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: 3 Barge Docks: A, B and C. Each is capable of handling barges up to 25,000 barrels capacity.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar Bouy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet of less.

TEXACO 22-INCH/DOE LAKE CHARLES PIPELINE CONNECTION

(Data as of May, 1997)

LOCATION: Lake Charles Upper Junction, located in Section 36, Township 10 South, Range 10 West, Calcasieu Parish, (Lake Charles) Louisiana

CRUDE OIL STREAMS: West Hackberry Sweet, West Hackberry Sour

DELIVERY POINT: Texaco 22-Inch/DOE Lake Charles Pipeline Connection

MARINE DISTRIBUTION FACILITIES: None

DOE ST. JAMES TERMINAL

(Data as of May, 1997)

LOCATION: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3)

CRUDE OIL STREAMS: Bayou Choctaw Sweet, Bayou Choctaw Sour

DELIVERY POINTS: St. James Terminal marine dock facility and LOCAP and Capline Terminals (connections to Capline interstate pipeline system and local commercial pipelines)

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 1 and 2

MAXIMUM LENGTH OVERALL (LOA): 940 feet

MAXIMUM BEAM: None

MAXIMUM DRAFT: 45 feet fresh water

MAXIMUM AIR DRAFT: 153 feet less the river stage

MAXIMUM DEADWEIGHT TONS (DWT): 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILIITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.

CUSTOMARY ANCHORAGE: Grandview Reach approximately 11 miles from the terminal.

UNOCAL BEAUMONT TERMINAL

(Data as of May, 1997)

LOCATION: Beaumont Terminal, located downstream south bank of the Neches River, approximately 8 miles SE of Beaumont, Texas

CRUDE OIL STREAMS: Big Hill Sweet, Big Hill Sour

DELIVERY POINTS: Unocal Beaumont Terminal No. 2 Crude Dock and connections to local commercial pipelines

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 1 Dock (No. 2)

MAXIMUM LENGTH OVERALL (LOA): 1,020 feet

MAXIMUM BEAM: 150 feet

MAXIMUM DRAFT: 40 feet fresh water

MAXIMUM AIR DRAFT: 136 Feet

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 2 is 150,000 DWT. Vessels larger than 85,000 DWT, 875 feet LOA, or 125 feet beam are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arangements with the terminal and for bearing costs associated with such arrangements.

VAPOR RECOVERY: Dock No. 2 is equipped with a crude oil vapor control system. All vessels loading crude must be outfitted with vapor control equipment. No vessel will be allowed to load without this equipment onboard.

CUSTOMARY ANCHORAGE: South of Sabine Bar Buoy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet or less.

TEXACO 20-INCH PIPELINE (TPLI) METER STATION

LOCATION: Jefferson County, Texas , Seven miles west and one mile north of FM 365 and Old West Port Arthur Road.

CRUDE OIL STREAMS: Big Hill Sweet, Big Hill Sour

DELIVERY POINT: TPLI East Houston Terminal, Exxon Junction (Channelview), Oil Tanking Junction

MARINE DISTRIBUTION FACILITIES: None

EXHIBIT F

SAMPLE - OFFER STANDBY LETTER OF CREDIT

BANK LETTERHEAD

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE:_____

Acquisition and Sales Division
Mail Stop FE-4451
Project Management Office
Strategic Petroleum Reserve
U.S. Department of Energy
900 Commerce Road East
New Orleans, LA 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer _____ we hereby establish in the U.S. Department of Energy's favor, an irrevocable standby Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____(_____) effective immediately on account of our customer in response to the U.S. Department of Energy's Notice of Sale No._____, including any amendments thereto, for the sale of Strategic Petroleum Reserve petroleum. This Letter of Credit expires 60 days from the date of issuance of this Letter of Credit.

This Letter of Credit is available by wire payment to the U.S. Department of Energy against presentation of a demand on us of a manually signed statement (with blanks filled in) containing the following:

> **"THIS DRAWING OF U.S. $_____ (_____) AGAINST YOUR LETTER OF CREDIT NUMBERED _____, DATED _____, IS DUE THE U.S. GOVERNMENT BECAUSE OF THE FAILURE OF _____ TO HONOR ITS OFFER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PETROLEUM FROM THE STRATEGIC PETROLEUM RESERVE, IN ACCORDANCE WITH THE U.S. GOVERNMENT'S NOTICE OF SALE NO. _____ , INCLUDING ANY AMENDMENTS THERETO."**

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at out office located at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by either wire transfer of funds as a deposit to the account of the U.S. Treasury over

the Fedwire Deposit System Network, or by electronic funds transfer through the Automated Clearing House Network, using the Federal Remittance Express Program. The information to be included in each transfer will be as provided by the above referenced Notice of Sale.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision, International Chamber of Commerce Publication No 500) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the State in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to

_____.

Yours truly,

_____

Authorized Signature

INSTRUCTIONS FOR OFFER LETTER OF CREDIT

1. Letters of Credit must not vary in substance from this attachment. Provide a copy of this exhibit to your bank.

2. Insert date of issuance of Letter of Credit.

3. Insert dollar amount of Letter of Credit in numbers and in words.

4. Banks shall fill in all blanks except those in drawing statement. The drawing statement is in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

5. The information to be included and format to be used either for wire transfer as a deposit over the Fedwire Deposit System Network or for electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program, will be provided in the applicable Notice of Sale.

6. If available, please include the American Bank Association Number on Letter of Credit.

7. Type name under authorized signature.

8. If Offeror (banks's customer) or bank forwards letter of credit separately from the offer, the envelope shall clearly say "Offer Standby Letter of Credit (Name of Company)" and shall be clearly marked in accordance with Standard Sales Provision B.7(c).

EXHIBIT G

SAMPLE - PAYMENT AND PERFORMANCE LETTER OF CREDIT

BANK LETTERHEAD

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: _____

TO: Acquisition and Sales Division
Mail Stop FE-4451
Project Management Office
Strategic Petroleum Reserve
U.S. Department of Energy
900 Commerce Road East
New Orleans, LA 70123

CONTRACTOR: _____
CONTRACT NO.: _____
LETTER OF CREDIT NO.: _____

Gentlemen:

We hereby establish in the U.S. Department of Energy's favor our irrevocable standby Letter of Credit for about $U.S_____(_____) effective immediately. This letter of credit is available by your draft/s at sight, drawn on us and accompanied by a manually signed statement that the signer is an authorized representative of the Department of Energy, and one or both of the following statements:

a. "I HEREBY CERTIFY THAT THE UNITED STATES GOVERNMENT HAS DELIVERED CRUDE OIL UNDER THE TERMS OF CONTRACT NUMBER_____AND THAT (CONTRACTOR) HAS NOT PAID UNDER THE TERMS OF THAT CONTRACT, AND AS A RESULT OWES THE GOVERNMENT $_____."

b. " I HEREBY CERTIFY THAT (CONTRACTOR) HAS FAILED TO TAKE DELIVERY OF CRUDE OIL UNDER THE TERMS OF CONTRACT NUMBER _____, AND AS A RESULT OWES THE GOVERNMENT $_____."

Drafts must be presented for negotiations on or before the expiration date of this Letter of Credit, (Expiration Date), at our bank. The Government may make multiple drafts against this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at out office we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by either wire transfer of funds as a

deposit to the account of the U.S. Treasury over the Fedwire Deposit System Network, or by electronic funds transfer through the Automated Clearing House Network, using the Federal Remittance Express Program. The information to be included in each transfer will be as provided in the above referenced Contract.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision, International Chamber of Commerce Publication No. 500) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

We hereby agree with the drawers, endorsers and bona fide holders that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of the above documents for negotiation at our bank on or before the expiration date.

Sincerely,

_____
(Authorized Signature)

_____
(Typed Name & Title)

INSTRUCTIONS FOR PAYMENT AND PERFORMANCE LETTER OF CREDIT

1. Letter of Credit must not vary in substance from this attachment. Provide a copy of this attachment to your bank.

2. Insert date of issuance of Letter of Credit.

3. Insert dollar amount of Letter of Credit in numbers and in words.

4. Banks shall fill in all blanks except those in the drawing statements. The drawing statements are in bold print with double lines for the blanks. Do not fill in the double-lined blanks.

5. The information to be included and format to be used either for wire transfer as a deposit over the Fedwire Deposit System Network or for electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program, will be provided in the Contract.

6. If available please include the American Bank Association Number on Letter of Credit.

7. Type name under authorized signature.

Exhibit H

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

1. SALES CONTRACT NUMBER	2. TERMINAL REPORT NUMBER	3. CARGO NUMBER

4. DATE DELIVERED	5. TRANSPORTATION MODE	6. ACCEPTANCE POINT	7. PRICE DATE
	☐ TANKER ☐ BARGE ☐ PIPELINE	☐ ORIGIN ☐ DESTINATION	

8. SHIPPING SPR SITE/TERMINAL	9. PURCHASER-NAME AND ADDRESS	10. CARRIER

11. CONTRACT LINE ITEM		12. DESCRIPTION OF CRUDE OIL AND GROSS BBLS	13. API GRAVITY	14. TOTAL SULPHUR %	15. DEL'D NET BBLS @ 60°F	16. UNIT PRICE	17. AMOUNT DUE
MLI	DLI						
18. QUALITY ADJUSTMENT – INCREASE/(DECREASE) 18A. NET GRAVITY ADJUSTMENT FROM 18B(5)_____ °							

18B. CALCULATION OF GRAVITY ADJUSTMENT

(1) ADVERTISED API GRAVITY	
(2) DELIVERED API GRAVITY	
(3) VARIANCE—(2) MINUS (1)	
(4) ALLOWABLE VARIANCE	
(5) NET VARIANCE—(3) MINUS (4)	

19. NET AMOUNT DUE

20. THE DELIVERED NET BARRELS, UNIT PRICE, PRICE DATE, QUALITY ADJUSTMENT AND NET AMOUNT DUE HAVE BEEN VERIFIED.

SIGNATURE: _____

ACCOUNTABLE OFFICER

22. REMARKS

21. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
PILOT ON BOARD		
WEIGHED ANCHOR		
FIRST LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

23. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE_____ SIGNATURE_____

NAME TYPED/PRINTED

24. RECEIPT IS ACKNOWLEDGED FOR THE QUANTITY AND QUALITY SHOWN HEREON:

DATE RECEIVED:_____

AGENT:_____

BY:_____

NAME TYPED/PRINTED

25. I CERTIFY THAT THE TIME STATEMENT SHOWN IHEREON IS CORRECT.

SIGNATURE_____

MASTER OF VESSEL

SPRPMO-F-6110.2-14b 1/87 REV. 8/91

EXHIBIT I

INSTRUCTION GUIDE FOR RETURN OF OFFER GUARANTEES BY ELECTRONIC TRANSFER OR TREASURY CHECK

Offer guarantees will be returned at the option of the Government by either check or electronic funds transfer through the Treasury Fedline Payment System (FEDLINE). Offerors shall designate a financial institution for receipt of electronic funds transfer payments and provide the following information:

(1) Name and address of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to FEDLINE.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to FEDLINE, name and address of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the American Bankers Association identifying number for the correspondent institution.

EXHIBIT J

OFFER GUARANTEE CALCULATION WORKSHEET

MLI:

COLUMN ROW	(A) MAXQ (000/bbls)	(B) UNIT PRICE	(C) DLI	(D) DESQ (000/bbls)	(E) MINQ (000/bbls)	(F) TOTAL DLI PRICE (000/$)	(G) BOND FACTOR	(H) PRODUCT ($)
1		$				$	x50	$
2		$				$	x50	$
3		$				$	x50	$
4		$				$	x50	$
5		$				$	x50	$
6		$				$	x50	$
7		$				$	x50	$
8		$				$	x50	$
9		$				$	x50	$
10		$				$	x50	$
11		$				$	x50	$
							Total	$

1. Using a separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. See instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures.

8. Multiply the lesser of the remaining maximum quantity in Column (A) (even if this quantity is less than MINQ), or the desired quantity in Column (D) times the unit price and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6-9 for the next higher unit price until the maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Send with the offer or wire concurrently to the U.S. Treasury (refer to instructions in the Notice of Sale) an offer guarantee in the amount indicated on the offer form. These worksheets need not be submitted with the offer and should be retained for your files.

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