

rate of purchase, or suspend the acquisition process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a world-wide basis. DOE may consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(c) *Fill requirements determination.* DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of storage capacity, and the need for specific grades and quantities of crude oil.

(d) *Market analysis.* (1) DOE shall establish a market value for each crude type to be acquired based on a market analysis at the time of contract award.

(2) In conducting the market analysis, DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(3) A market analysis may also consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(e) *Evaluation of offers.* (1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors, in the form of a letter of credit or equivalent financial assurance.

§ 626.7 Royalty transfer and exchange.

(a) *General.* DOE shall conduct royalty transfers pursuant to an agreement between DOE and DOI for the transfer of royalty oil.

(b) *Acquisition strategy.* (1) DOE and DOI shall select a royalty volume from specified leases for transfer usually over six-month periods.

(2) If logistics and crude oil quality are compatible with SPR receipt capabilities and requirements respectively, DOE may take the royalty oil directly from DOI and place it in SPR storage sites. Otherwise, DOE may competitively solicit suppliers to deliver oil of comparable value to the SPR in exchange for the receipt of royalty-in-kind oil.

(3) If, based on the market analysis described in paragraph (d) of this section, DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may contract for delivery at a future date in expectation of lower prices and a higher quantity of oil in exchange. Conversely, it may schedule deliveries at an earlier date under the contract in anticipation of higher prices at later dates.

(4) Based on the market analysis in paragraph (d) of this section, DOE may, after consultation with DOI, suspend the transfer of royalty oil to DOE if it appears the added demand for oil will add significant upward pressure to prices either regionally or on a world-wide basis.

(c) *Fill requirements determination.* DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of royalty oil and storage capacity, and need for specific grades and quantities of crude oil.

(d) *Market analysis.* (1) DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools to determine the most desirable acquisition profile.

(2) A market analysis may also consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for

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world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(e) *Evaluation of royalty exchange offers.* (1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors in the form of a letter of credit or equivalent financial assurance.

§ 626.8 Deferrals of contractually scheduled deliveries.

(a) *General.* (1) DOE prefers to take deliveries of petroleum for the SPR at times scheduled under applicable contracts. However, in the event the market is distorted by disruption to supply or other factors, DOE may defer scheduled deliveries or request or entertain deferral requests from contractors.

(2) A contractor seeking to defer scheduled deliveries of oil to the SPR may submit a deferral request to DOE.

(b) *Deferral criteria.* DOE shall only grant a deferral request for negotiation under paragraph (c) of this section if it determines that DOE can receive a premium for the deferral paid in additional barrels of oil and, based on

DOE's deferral analysis, that at least one of the following conditions exists:

(1) DOE can reduce the cost of its oil acquisition per barrel and increase the volume of oil being delivered to the SPR by means of the premium barrels required by the deferral process.

(2) DOE anticipates private inventories are approaching a point where unscheduled outages may occur.

(3) There is evidence that refineries are reducing their run rates for lack of feedstock.

(4) There is an unanticipated disruption to crude oil supply.

(c) *Negotiating terms.* (1) If DOE decides to negotiate a deferral of deliveries, DOE shall estimate the market value of the deferral and establish a strategy for negotiating with suppliers the minimum percentage of the market value to be taken by the Government. During these negotiations, if the deferral request was initiated by DOE, DOE may consider any reasonable, customary, and applicable costs already incurred by the supplier in the performance of a valid contract for delivery. In no event shall such consideration account for any consequential damages or lost profits suffered by the supplier as a result of such deferral.

(2) DOE shall only agree to amend the contract if the negotiation results in an agreement to give the Government a fair and reasonable share of the market value.