through a series of rollers to remove any remaining skin and smooth the almond surface. Handlers with blanching equipment may clean up inedible almonds for market. However, increasing the percent of a handler's total annual obligation that must be true inedible from 25 to 50 percent will reduce the amount of inedible almonds that are available to be cleaned up with blanching equipment. Additionally, the revised tolerances apply to all handlers throughout the industry, regardless of size or processing capabilities.

Another commenter expressed concern that the reduced incoming tolerance is only being applied to the California almond industry, and that other producing countries like Spain and Australia would not be impacted by the change. The commenter added that the real concern to the California industry is aflatoxin, and suggested that the industry focus more on testing almonds prior to shipment rather than tightening up the inedible almond program under the order.

The comment correctly points out that the revised tolerances are applied under the California almond marketing order, and are only applicable to domestic California production. However, concerning the issue of aflatoxin, a number of initiatives have been recommended by the Board. For example, the Board has endorsed a voluntary aflatoxin sampling plan that recommends that loads of almonds with over 2 percent serious damage be tested for aflatoxin. Additionally, Board research has shown that aflatoxin in almonds is directly related to insect damage in inedible kernels. In order to help minimize the risk of aflatoxin, the Board recommended reducing the tolerance for inedible kernels from 1 to 0.50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. This rule implements the Board's recommendation.

Two commenters expressed concern that this issue was not fully deliberated by the Board and/or its committees. However, the Board formed a task force to address the industry's concerns regarding aflatoxin. The task force met on March 23 and April 26, 2006, and recommended reducing the incoming tolerance from 1 to 0 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. The FQS Committee reviewed the task force's proposal on April 11 and again on May 8, 2006. After much discussion, the FQS Committee reached a compromise and recommended that the incoming tolerance be reduced from 1 to 0.50 percent. The FQS Committee concurred with the proposal regarding true inedibles. The Board considered the issue on May 18, 2006. Ultimately, the majority of Board members concurred with the FQS Committee's proposal. The FQS Committee met again via teleconference on June 13, 2006, revisited the issue, and reaffirmed its previous recommendation that was ultimately approved by the Board and submitted to USDA. Thus, the issue was fully deliberated at several meetings, and interested persons had ample opportunity to express their views and participate in the discussions.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–07 crop year began on August 1, 2006, and handlers are disposing of inedible almonds. These changes should be in effect for as much of the crop year as possible. Handlers are aware of this action which was recommended at a public meeting. Additionally, a 7-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.442 is amended by revising the first sentence of paragraph (a)(4)(i) and the eleventh sentence in paragraph (a)(5) to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 0.50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * *

(5) *Meeting the disposition obligation.* * * * At least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided,* That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. * * *

* * * * *

Dated: November 3, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9133 Filed 11–3–06; 4:34 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 626

RIN 1901–AB16

Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve

AGENCY: Office of Petroleum Reserves, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy Act of 2005 (EPAct 2005) directs the Secretary of Energy (Secretary) to develop procedures for the acquisition of petroleum for the Strategic Petroleum Reserve (SPR) in appropriate circumstances. On April 24, 2006, the Department of Energy (DOE) published proposed procedures in the **Federal Register** for public comment. Today DOE is issuing the final rule governing procedures for the acquisition of petroleum for the SPR, including acquisition by direct purchase and transfer of royalty oil from the Department of the Interior (DOI). The final rule also has provisions concerning the deferral of scheduled deliveries of petroleum for the SPR. With the exception of some minor clarification changes and definitional and editorial adjustments, these final procedures are substantially the same as those proposed.

DATES: *Effective Date:* This final rule is effective December 8, 2006.

FOR FURTHER INFORMATION CONTACT:

Lynnette le Mat, Director, Operations and Readiness, Office of Petroleum Reserves, Office of Fossil Energy, FE–43, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4398.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

The Strategic Petroleum Reserve was established pursuant to the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*) to store petroleum to diminish the impact on the United States of disruptions in petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA authorizes the Secretary of Energy to acquire petroleum for storage in the SPR by a variety of methods.

Since its authorization, the Federal Government has created six crude oil storage sites and has subsequently decommissioned two of the six. The SPR currently consists of underground storage caverns located in the four Government-owned sites. The locations are Bryan Mound and Big Hill in Texas and West Hackberry and Bayou Choctaw in Louisiana. These four storage locations have salt dome caverns with 727 million barrels of useable storage capacity.

Over the last thirty years, the Government has acquired approximately 800 million barrels of petroleum for the SPR. Over 100 million barrels of oil have been withdrawn from the SPR for sale or exchange. The inventory reached its highest level of 700.7 million barrels in August 2005 before the drawdown, exchange and sale of 20.8 million barrels in the aftermath of Hurricane Katrina.

Crude oil was initially acquired for the SPR by direct purchases on the open market. Through a 1977 Interagency Agreement, the Department of Defense served as DOE's agent to acquire crude oil using appropriated funds to attempt to meet a series of target fill rates specified by Congress. Petroleum was acquired through a combination of spot market purchases and term contracts, including a matching purchase and sale involving the Government's share of production from the Naval Petroleum Reserve in California. Except for various pauses occasioned by geopolitical events, such as Desert Storm in 1991, direct purchases continued with the Defense Fuel Supply Center (currently the Defense Energy Support Center) functioning as DOE's acquisition agent through 1994, at which time funds from direct appropriations and receipts from sales in 1990 and 1991 were exhausted.

In December 1981, DOE entered into the first of a series of four country-to-country contracts with Petroleos Mexicanos (PEMEX), the state-owned oil company of Mexico. These term contracts—under which deliveries of approximately 220 million barrels of petroleum were completed in 1990—employed commercial market terms and were priced according to a formula indexed to prices of globally-traded petroleum.

In 1996, in a series of congressionally-mandated sales, an aggregate 28 million barrels of SPR inventory were sold to fund SPR programmatic requirements and for general deficit reduction purposes. Subsequently, pursuant to a 1999 Memorandum of Understanding (MOU) between the DOI and DOE, DOE initiated a program to replace the 28 million barrels by the transfer to DOE of crude oil royalties collected in-kind on production from Federal leases in the Gulf of Mexico Outer Continental Shelf. Under this MOU, DOE contracted with commercial entities to receive the royalty oil at offshore production facilities and transfer it to the SPR, either directly or by exchange for other crude oil meeting SPR quality specifications.

In 1998, in order to improve the efficiency of drawdown operations at the Bryan Mound site, DOE conducted a competition under the exchange authority in EPCA to trade crude oil of one type for another type of superior quality. Although this resulted in a net decrease in the number of barrels in inventory, the upgrade in oil quality maintained the value of the Government's assets and enhanced emergency response capabilities.

In the fall of 2000, again under the EPCA exchange authority, DOE conducted a time exchange of oil from the SPR. Through open competition, DOE entered into agreements with nine companies to exchange 30 million barrels of oil. Under these agreements, oil delivered to companies from SPR sites was to be repaid the following year with oil of comparable quality and quantity, plus additional premium barrels paid as interest.

In November 2001, the Administration announced it would extend the royalty-in-kind program to fill the SPR to a level of 700 million barrels. To accomplish this, a new MOU was signed with DOI, and DOE issued a series of competitive solicitations for six-month terms, similar to those used previously to acquire 28 million barrels.

At various times since 1999, when the market moved into steep backwardation (prices are progressively lower in succeeding delivery months than in earlier months), suppliers under both the time exchange and royalty-in-kind transfer programs requested that contractually scheduled deliveries to the SPR be delayed. DOE granted these deferral requests through individual negotiations for the future return of the originally scheduled barrels plus additional premium barrels.

In addition, there have been periods when catastrophic events, most recently severe weather, have prompted requests for emergency time exchanges of oil from the SPR. These emergency time exchanges have been conducted in a manner similar to deferred deliveries, in that the exchanged oil is returned plus additional barrels as a premium.

B. EPAct 2005

Section 159 of EPCA (42 U.S.C. 6239) authorizes the Secretary to acquire petroleum products for storage in the SPR by purchase, exchange, or otherwise, subject to the provisions of section 160. The acquisition authority in section 160(b) of EPCA requires that the Secretary, to the greatest extent practicable, acquire petroleum products for the SPR in a manner consistent with the following objectives: Minimization of the cost of the SPR, minimization of the Nation's vulnerability to a severe energy supply interruption, minimization of the impact of such acquisition upon supply levels and market forces, and encouragement of competition in the petroleum industry.

In addition, section 301(e)(2)(A) of EPAct 2005 amends EPCA by adding a new subsection (c) to section 160. Subsection (c) directs the Secretary to develop, with public notice and opportunity for comment, procedures consistent with the objectives of section 160 to acquire petroleum for the SPR. Such procedures must take into account the need to:

(1) Maximize overall domestic supply of crude oil (including quantities stored in private sector inventories);

(2) Avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers;

(3) Minimize the costs to DOI and DOE in acquiring such petroleum products (including foregone revenues to the Treasury when petroleum products for the SPR are obtained through the royalty-in-kind program);

(4) Protect national security;

(5) Avoid adversely affecting current and futures prices, supplies, and inventories of oil; and

(6) Address other factors that the Secretary determines to be appropriate.

Section 301(e)(2)(B) of EPAct 2005 further provides that the procedures developed under section 160(c) shall include procedures and criteria for the review of requests for the deferrals of scheduled deliveries.

Consistent with the principles set forth in EPCA and the requirements and objectives of EPAct 2005, DOE is issuing this final rule establishing procedures for oil acquisition by direct purchase and by royalty oil transfers from DOI, including procedures to address deferrals of scheduled deliveries.

These acquisition procedures will be effective thirty (30) days after the publication of this final rule in the **Federal Register**. However, the President has directed DOE to defer filling the SPR for the summer of 2006. Therefore, DOE has no current plans to utilize these procedures to enter into the market to acquire additional oil supplies for the SPR.

II. Discussion of the Comments and Changes to Proposed Procedures

As previously mentioned, DOE published a notice of proposed rulemaking in the **Federal Register** on April 24, 2006 (78 FR 20909) and requested public comments on the proposed procedures. In response to the request for comments, three comments were received, one from an anonymous member of the general public, one from a trade association and one from a refiner.

The general public comment was not directed specifically at the proposed SPR acquisition regulations. It simply encouraged DOE to look for more effective measures to deter disruptions in the U.S oil supply.

The trade association comment recommended that DOE should establish procedures to acquire oil for the SPR when prices are low in order to minimize the effect on present and future market conditions and petroleum product prices. It suggested that the proposed procedures be modified to provide that DOE would not acquire oil for the SPR or would delay acquisition transactions when prices exceed a fixed percentage from the median monthly average for a specified period. Specifically, it recommended setting this trigger at a 40 percent differential using the prior ten year period. Generally, DOE does not support tying the acquisition of oil for the SPR or deferral of transactions to a specific pricing trigger. DOE believes that such trigger mechanisms do not always reflect the true state of petroleum markets or necessitate activities related to petroleum stockpiles. Use of a predetermined calculation raises definitional issues and questions as to accuracy and timeliness of data, questions as to whether the market is experiencing sustained trends versus anomalies, and questions as to what would be the appropriate action when calculations no longer exceed thresholds. DOE prefers to retain the flexibility to achieve the statutory objectives through the management of acquisition activities only after a careful review of a number of market indicators. For these reasons, DOE has not accepted this recommendation.

Finally, the refiner comment suggested that the wording for termination of contracts in proposed section 626.5(d)(2) be clarified. The comment wanted clarification that the Government would be liable for any reasonable costs incurred by suppliers in the performance of valid contracts for the delivery of SPR oil prior to termination or deferral of such contracts. The comment suggested using language modified from the termination provisions of the SPR price competitive sales regulations in 10 CFR Part 625. DOE agrees with the intent of this recommendation and has modified the language of sections 626.5(d)(2) and 626.8(c)(1) accordingly.

The procedures adopted in section 626.1 do not represent actual terms and conditions to be contained in contracts for the acquisition of SPR petroleum.

The definition of Contracting Officer in section 626.2 was modified to more clearly define the responsibilities of the Contracting Officer.

III. Final Acquisition Procedures

A. Discussion of Acquisition Principles

DOE will consider a wide range of factors consonant with the objectives set forth in section 160 (b) of EPCA and the new section 160 (c) added by EPAct 2005. DOE will give careful and deliberative consideration of these factors prior to acquisition of petroleum for the SPR or deferral of scheduled deliveries.

While the mission of the SPR is to provide energy security by storing substantial quantities of petroleum, the acquisition of petroleum to meet this long term objective must be conducted using the criteria set forth in EPCA, as amended by the EPAct 2005. When acquiring petroleum, whether by purchase or royalty transfer, DOE will seek to balance the objectives of assuring adequate security and minimizing impact to the petroleum market. To this end, DOE will consider various factors that may be affecting market fundamentals, current and projected SPR and commercial receipt capabilities, and the geopolitical climate.

Whether acquiring by purchase or royalty transfer, DOE will seek to maximize the overall domestic supply of crude oil. Assuming the necessary authorizations and appropriations have been made, DOE decisions on crude oil acquisition will take into consideration the current level of the SPR and private inventories, national and regional import dependency, the outlook for international and domestic production levels, oil acquisition by other stockpiling entities, the added security value of the marginal barrel in storage, incipient disruptions of supply or refining capability, the level of market volatility, the demand and supply elasticity to price changes, logistics and economics of petroleum movement, and any other considerations that may be pertinent to the balance of petroleum supply and demand. More indirect considerations, such as monetary policy, the current and projected rate of economic growth, and impacts on specific domestic market segments, as well as foreign policy considerations may also be pertinent to near-term acquisition strategy. All of these factors are recognized as having an impact, at some level, on U.S. energy security.

The timing of DOE entry into the market, its sustained presence, and the quantities sought will all be sensitive to these factors. DOE will remain aware of the extent to which the SPR fill rate and prices paid for its own acquisitions will impact supply availability and prices for other market participants. DOE will strive to avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers by analyzing market activity for crude oil and related commodities and prices of oil for delivery in future months, as well as the perceived availability of near term and forward supplies.

For purchases or exchanges, DOE will ensure the use of commercially reasonable terms and conditions.

B. Vehicles for Petroleum Acquisition

DOE may acquire oil for the SPR through direct purchase, the transfer of royalty-in-kind oil, through deferrals and exchanges, or other means authorized in sections 159 and 160 of EPCA. In order to acquire oil, DOE may enter into agreements with other Federal agencies with relevant expertise and resources to acquire oil for the SPR consistent with the provisions of 10 CFR Part 626.

1. Direct Purchases

Use of the direct purchase method for oil acquisition is contingent upon the availability of funds. If funds are made available, DOE would provide public notice of its intent to issue a solicitation for the acquisition of crude oil. The quantity and quality of oil to be purchased would be identified in the solicitation. When acquiring by direct purchase, DOE would use competitive solicitations to assure that prices paid are fair and reasonable in a global market, and in line with contemporaneous commercial transactions for comparable quality crude oils. The use of open, continuous solicitations that allow entry into price and delivery negotiations would enable DOE to increase the rate of purchases if price volatility reduces prices below trend and offers the opportunity to reduce the average cost of oil acquisition. Under these procedures, DOE also may decrease the rate of purchase if volatility or future price projections indicate a delay would result in better acquisition prices and less stress on seasonal petroleum markets. DOE's decision to enter the market, delay purchases or defer deliveries would follow the careful analysis of the effect of such a decision on current and futures prices, supplies and inventories of oil.

2. Royalty-in-Kind Transfers

DOI is responsible for collecting royalties on production from leases on Federally-owned properties. DOI, on behalf of the Federal Government, receives royalties of a defined percentage of the amount or value of the oil produced from the leases. Royalties taken ''in kind'', in the oil itself, may be transferred to the SPR pursuant to agreement between DOE and DOI for the transfer of royalty oil. Such transfers are conducted in coordination with the Minerals Management Service of DOI. Under the royalty-in-kind acquisition method in this rule, DOE may take the royalty oil directly from DOI and place it in the SPR if it is of suitable quality and transportation logistics are amenable for direct transfer. DOE expects this would be a small proportion of the total oil transferred. However, in most cases, DOE will competitively solicit suppliers to deliver oil of comparable value to the SPR in exchange for the receipt of royalty-in-kind oil. In these competitive exchange agreements, the suppliers are bound by contract to provide oil of suitable quality to the SPR.

When using royalty production to fill the SPR, DOE would minimize the cost to the DOI and DOE through its analysis of royalty values, as well as a comparative analysis of the relative market values of crude oil offered in a competitive exchange. Both agencies will encourage the direct transfer of royalty oil to the SPR when in the Government's interest.

3. Deferrals

DOE may defer scheduled deliveries to the SPR for the purpose of obtaining additional crude oil. Under the rule, DOE could defer scheduled crude oil deliveries to the SPR to a later date in exchange for a premium, which would be paid to DOE in oil.

The precise amount of that premium would be negotiated with the contractor by a DOE contracting officer. The determination of an appropriate premium would take into consideration the length of deferral as well as prevailing market conditions.

4. Exceptions to Applicability

The procedures do not apply to the following transactions during which oil may be acquired: (1) Country-to-country oil purchases; (2) facility leases with payments in oil; and (3) contracts for oil not owned by the United States as provided for by section 171 of EPCA. These excluded transactions generally are not conducted primarily for the acquisition of oil by DOE.

IV. Regulatory Review

A. Executive Order 12866

Today's rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's procedures under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These procedures would not directly affect small businesses or other small entities. The procedures would apply only to individuals who are engaged in the acquisition of petroleum products for the Strategic Petroleum Reserve. On the basis of the foregoing, DOE certifies that the procedures, if implemented would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This rule would not impose any new collection of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

These procedures would not impose a Federal mandate on State, local or tribal governments. The rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well being. These procedures apply only to Federal employees involved in the acquisition of petroleum products for the SPR. While some of these individuals may be members of a family, the rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the procedures meet the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have an adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

L. Approval by the Office of the Secretary

The Secretary has approved the issuance of this notice of final rulemaking.

List of Subjects in 10 CFR Part 626

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

Issued in Washington, DC on November 1, 2006.

Jeffrey D. Jarrett,

Assistant Secretary for Fossil Energy.

■ For the reasons stated in the preamble, DOE hereby amends chapter II of title 10 of the Code of Federal Regulations by adding a new part 626 as set forth below:

PART 626—PROCEDURES FOR ACQUISITION OF PETROLEUM FOR THE STRATEGIC PETROLEUM RESERVE

Authority: 42 U.S.C. 6240(c); 42 U.S.C. 7101, *et seq.*

§ 626.1 Purpose.

This part establishes the procedures for acquiring petroleum for, and deferring contractually scheduled deliveries to, the Strategic Petroleum Reserve. The procedures do not represent actual terms and conditions to be contained in the contracts for the acquisition of SPR petroleum.

§ 626.2 Definitions.

Backwardation means a market situation in which prices are progressively lower in succeeding delivery months than in earlier months.

Contango means a market situation in which prices are progressively higher in the succeeding delivery months than in earlier months.

Contract means the agreement under which DOE acquires SPR petroleum, consisting of the solicitation, the contract form signed by both parties, the successful offer, and any subsequent modifications, including those granting requests for deferrals.

Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings, including entering into sales contracts on behalf of the Government. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

DEAR means the Department of Energy Acquisition Regulation.

Deferral means a process whereby petroleum scheduled for delivery to the SPR in a specific contract period is rescheduled for later delivery, outside of that period and encompasses the future delivery of the originally scheduled quantity plus an in-kind premium.

DOE means the Department of Energy.

DOI means the Department of the Interior.

Exchange means a process whereby petroleum owned by or due to the SPR is provided to a person or contractor in return for petroleum of comparable quality plus a premium quantity of petroleum delivered to the SPR in the future, or when SPR petroleum is traded for petroleum of a different quality for operational reasons based on the relative values of the quantities traded.

FAR means the Federal Acquisition Regulation.

Government means the United States Government, and includes DOE as its representative.

International Energy Program means the program established by the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including any subsequent amendments and additions to that Agreement.

OPR means the Office of Petroleum Reserves within the DOE Office of Fossil Energy, whose responsibilities include the operation of the Strategic Petroleum Reserve.

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, or temporarily stored in other storage facilities.

Secretary means the Secretary of Energy.

Strategic Petroleum Reserve or *SPR* means the DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*

§ 626.3 Applicability.

The procedures in this part apply to the acquisition of petroleum by DOE for the Strategic Petroleum Reserve through direct purchase or transfer of royalty-in-kind oil, as well as to deferrals of contractually scheduled deliveries.

§ 626.4 General acquisition strategy.

(a) *Criteria for commencing acquisition.* To reduce the potential for negative impacts from market participation, DOE shall review the following factors prior to commencing acquisition of petroleum for the SPR:

(1) The current inventory of the SPR;

(2) The current level of private inventories;

(3) Days of net import protection;

(4) Current price levels for crude oil and related commodities;

(5) The outlook for international and domestic production levels;

(6) Existing or potential disruptions in supply or refining capability;

(7) The level of market volatility;

(8) Futures market price differentials for crude oil and related commodities; and

(9) Any other factor the consideration of which the Secretary deems to be necessary or appropriate.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of oil acquisition each time an open market acquisition has been suspended for more than three months, and every six months in the case of ongoing or suspended royalty-in-kind transfers.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire oil for the SPR on behalf of DOE.

§ 626.5 Acquisition procedures—general.

(a) *Notice of acquisition.*

(1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum for the SPR. The notice of acquisition is usually in the form of a solicitation. DOE shall state in the notice of acquisition the general terms and details of DOE's crude oil acquisition and, to the extent feasible, shall inform the public of its overall fill goals, so that they may be factored into market participants' plans and activities.

(2) The notice of acquisition generally states:

(i) The method of acquisition to be employed;

(ii) The time that the solicitations will be open;

(iii) The quantity of oil that is sought;

(iv) The minimum crude oil quality requirements;

(v) The acceptable delivery locations; and

(vi) The necessary instructions for the offer process.

(b) *Method of acquisition.*

(1) DOE shall define the method of crude oil acquisition, direct purchase or royalty-in-kind transfer and exchange, in the notice of acquisition.

(2) DOE shall determine the method of crude oil acquisition after taking into account the availability of appropriated funds, current market conditions, the availability of oil from the Department of the Interior, and other considerations DOE deems to be relevant.

(c) *Solicitation.*

(1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum to the SPR, DOE shall maintain a listing, developed through on-line registration and personal contact, of interested suppliers. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered e-mail addresses.

(2) DOE shall make the solicitation publicly available on the Web sites of

the DOE Office of Fossil Energy *http://www.fe.doe.gov/programs/reserves* and the OPR *http://www.spr.doe.gov.*

(d) *Timing and duration of solicitation.*

(1) DOE shall determine crude oil requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) DOE may terminate all solicitations and contracts pertaining to the acquisition of crude oil at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than costs for oil delivered to the SPR and for reasonable, customary, and applicable costs incurred by the supplier in the performance of a valid contract for delivery before the effective date of termination of such contract. In no event shall the Government be liable for consequential damages or the contractor's lost profits as a result of such termination.

(e) *Quality.*

(1) DOE shall define minimum crude oil quality specifications for the SPR. DOE shall include such specifications in acquisition solicitations, and shall make them available on the Web sites of the DOE Office of Fossil Energy *http://www.fe.doe.gov/programs/reserves* and the OPR *http://www.spr.doe.gov.*

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the crude oil mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of oil to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or crude oil market fundamentals.

(g) *Offer and evaluation procedures.*

(1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation and award procedures may vary depending on the method of acquisition.

(2) DOE shall use relative crude values and time differentials to the maximum extent practicable to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE shall evaluate offers based on prevailing market prices of specific crude oils, and shall award contracts on a competitive basis.

(4) Whether acquisition is by direct purchase or royalty transfer and exchange on a term contract basis, DOE shall use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.*

(1) Except as provided in paragraph (h)(4) of this section, DOE shall accept offers for crude oil delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (h)(4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically-sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

§ 626.6 Acquiring oil by direct purchase.

(a) *General.* For the direct purchase of crude oil, DOE shall, through certified contracting officers, conduct crude oil acquisitions in accordance with the FAR and the DEAR.

(b) *Acquisition strategy.*

(1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time (usually no longer than 6 months); and

(ii) May provide either for prompt delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of oil, based on a consideration of the availability of storage capacity in the SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines and terminals to move and receive the oil.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers or suspend the acquisition process on the basis of Government estimates that project substantially lower oil prices in the future than those contained in offers. If 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 either contract for delivery at a future date or delay purchases to take advantage of projected future lower prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of oil acquisitions in anticipation of higher prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers, decrease the 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 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.

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 613, 614, and 615

RIN 3052–AC15

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This final rule is intended to reduce regulatory burden on the Farm Credit System (FCS or System) by repealing or revising five regulations. The final rule also corrects eight outdated and erroneous cross-references in five regulation sections. These revisions provide System banks and associations with greater flexibility concerning stock ownership of service corporations, employee reporting under standards of conduct rules, domestic lending to cooperatives, and real property evaluations for certain business loans.

DATES: *Effective Date:* These regulations will be effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Associate Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434; or Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this rule is to reduce regulatory burden by repealing and/or revising regulations and correcting outdated and erroneous regulations.

II. Background

On March 28, 2006, we invited the public to comment on five proposed changes to our regulations. *See* 71 FR 15343. The comment period was scheduled to close on May 30, 2006. However, on May 26, 2006, the Independent Community Bankers of America requested that the FCA extend