



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**John L. Mica**  
Chairman

**Washington, DC 20515**

**Dick J. Rahall, III**  
Ranking Member

James W. Coon II, Chief of Staff

June 22, 2012

James H. Zoia, Democrat Chief of Staff

**MEMORANDUM**

TO: Members, Subcommittee on Coast Guard and Maritime Transportation

FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation

RE: Hearing on "A Review of Vessels Used to Carry Strategic Petroleum Reserve Drawdowns"

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**PURPOSE**

On Wednesday, June 27, 2012, at 10:00 a.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to review the process used to determine the availability of U.S.-flagged vessels during the summer 2011 drawdown of crude oil from the Strategic Petroleum Reserve (SPR) and what steps are being taken to improve that process.

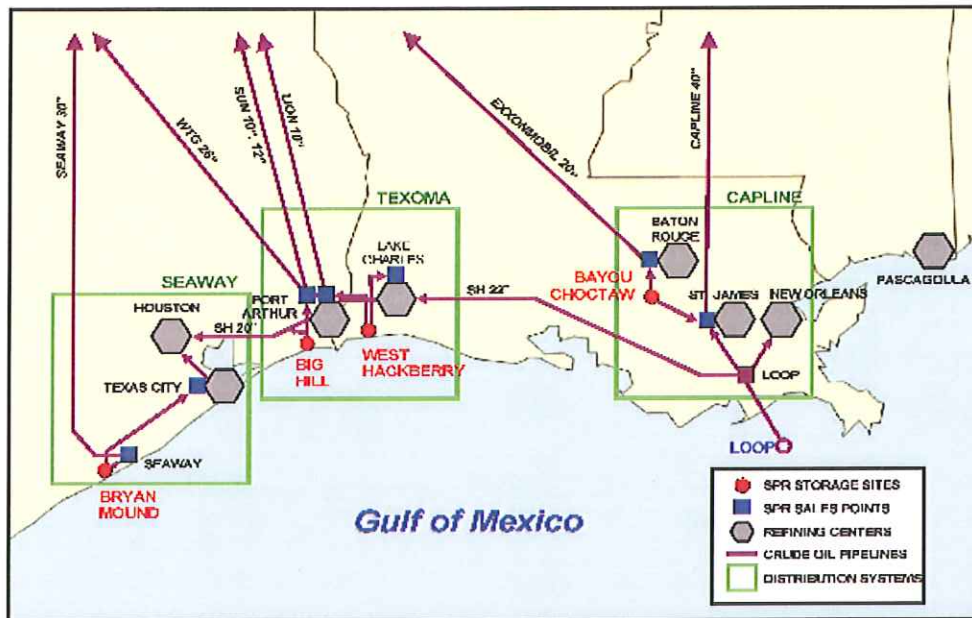
**BACKGROUND**

**Strategic Petroleum Reserve**

Established in the aftermath of the 1973-74 Arab oil embargo, the SPR is the federal government's reserve supply of emergency crude oil. The SPR is maintained by the Department of Energy (DOE). With a maximum capacity of 727 million barrels, the SPR is the largest stockpile of government-owned crude oil in the world. The SPR also meets the United States' obligation to the International Energy Agency (IEA) to maintain emergency oil stocks. IEA member countries are required to maintain total oil stock levels equivalent to at least 90 days of the previous year's net imports. As of June 12, 2012, the current inventory in the SPR was 695.9 million barrels, the equivalent of 80 days of import protection (based on 2012 EIA estimate of U.S. net petroleum imports of 8.72 million barrels per day). The United States fulfills its 90 day IEA commitment by combining SPR stocks and industry stocks.

## Strategic Petroleum Reserve Storage Sites

The SPR is stored in salt caverns which were built by the DOE deep within massive salt deposits at four sites under the Texas and Louisiana coastlines. Storage locations along the Gulf Coast were selected because they provide the most flexible means for connecting to the Nation's commercial oil transport network. SPR caverns range in size from 6 to 35 million barrels in capacity.



Source: Department of Energy

## SPR Draw Down Authority

The President has the authority to drawdown the SPR under two laws.

1. The Energy Policy and Conservation Act (EPCA, P.L. 94-163) authorizes a drawdown of the SPR upon a finding by the President that there is a "severe energy supply interruption". Under the law, such an interruption exists when the President determines that:
  - an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration;
  - a severe increase in the price of petroleum products has resulted from such emergency situation; and
  - a price increase is likely to cause a major adverse impact on the national economy.

2. The 1990 Energy Policy and Conservation Act Amendments (P.L. 101-383) authorizes the President to drawdown the SPR for domestic energy supply shortages without having to declare a "severe energy supply interruption" or the need to meet IEA obligations.

Under the 1990 EPCA Amendments, the President can initiate a drawdown in the event of a circumstance that "constitutes, or is likely to become, a domestic or international energy supply shortage of significant scope or duration" and where "action taken ... would assist directly and significantly in preventing or reducing the adverse impact of such shortage." This authority limits SPR sales to no more than 30 million barrels over a maximum 60-day period only when the SPR inventory is above 500 million barrels.

There have been three presidentially-directed releases from the SPR since it was first established:

- January 1991 – President George H. W. Bush in response to supply shortages at the beginning of Operation Desert Storm (IEA coordinated release);
- September 2005 – President George W. Bush in response to supply shortages due to damage to oil production, distribution, and refining industries in the Gulf from Hurricane Katrina; and
- June 2011 – President Obama in response to supply shortages due to unrest in Libya (IEA coordinated release).

### **Movement of SPR Oil**

Oil from the SPR must be sent to refineries to produce gasoline or other petroleum distillates. SPR oil can be distributed through interstate pipelines to nearly half of the nation's oil refineries or loaded into vessels or barges for transport to refineries along the Gulf and East Coasts. The movement of SPR oil aboard vessels or barges to points in the United States is governed by the Jones Act.

*Jones Act* - The Jones Act first came into effect as part of the Merchant Marine Act of 1920 to encourage a strong U.S. Merchant Marine for both national defense and economic security. The Jones Act contains a number of provisions designed to protect U.S. shipbuilding and mariner jobs:

1. U.S. Owned and Flagged - Chapter 551 of title 46, United States Code, requires that passengers and merchandise (such as oil) being transported by water between two U.S. points must travel on U.S.-citizen owned vessels documented (flagged) in the United States with a coastwise endorsement.
2. U.S. Built - Chapter 121, of title 46, United States Code, requires vessels seeking a coastwise endorsement to have been built in the United States.
3. U.S. Crewed - Chapter 81, of title 46, United States Code, requires the master, all of the officers, and at least three-quarters of the crew to be U.S. citizens in order for a vessel to be documented in the United States.



*Jones Act Waiver Process* – The process to waive compliance with the Jones Act and carry merchandise such as SPR oil on vessels that are not U.S.-owned, flagged, built, or crewed is found in section 501 of title 46, United States Code. Section 501(a) provides for a blanket waiver of the Jones Act at the request of the Secretary of Defense and “to the extent the Secretary [of Defense] considers necessary in the interest of national defense”. Section 501(b) provides for a conditional waiver of the Jones Act when the head of a federal agency requests a waiver in the interest of national defense. In such cases, section 501(b) requires the Administrator of the Maritime Administration (MARAD) to first determine that Jones Act qualified vessels are not available to carry the cargo before the waiver can be granted. If Jones Act qualified vessels are available, the waiver cannot be granted. Waivers are ultimately issued by Customs and Border Protection (CBP).

*DOE, MARAD, CBP Memorandum of Agreement* – In October 1987, DOE, MARAD and CBP entered into a memorandum of agreement (MOA) which continues to govern the process the agencies must follow to ensure compliance with the Jones Act during an SPR drawdown (see Attachment A). The MOA and its operating annexes require:

- The agencies to “cooperate fully in the identification of potential demand for and availability of suitable U.S.-flag vessels during a drawdown of the SPR”;
- That “prior to the granting of any Jones Act waiver, all reasonable efforts will be made to utilize suitable U.S.-flag vessels”;
- MARAD to “provide DOE and Customs with a preliminary profile of available Jones Act vessels”;
- DOE to include in its notice of sale that:
  - the Jones Act applies to SPR oil drawdowns;
  - the penalties for failing to comply with the Jones Act; and
  - the procedures to follow to obtain waivers of the Jones Act;
- In the event of a waiver request, MARAD may determine as “suitable” a Jones Act qualified “vessel or vessels with single or collective capacity exceeding the [waiver] requestor’s contract commitment”.

*Standard Sale Provisions* – The sales of oil from the SPR is also governed by 10 CFR Part 625. It lays out the process DOE must follow in announcing the sale, accepting offers, setting contract terms, the penalties for failure to perform, and establishes the process an applicant must follow to receive a Jones Act waiver. For Jones Act waivers, 10 CFR Part 625 requires the applicant to list the “reason for not using a qualified U.S.-flag vessel, including documentary evidence of a good faith effort to obtain suitable U.S.-flag vessels and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries.”

### **Summary of 2011 SPR Drawdown**

As noted above, on June 23, 2011 President Obama announced the U.S. and its partners in the IEA would release a total of 60 million barrels of oil onto the world market over a 30 day period to offset the disruption in the oil supply caused by unrest in

Libya. As part of the effort, the U.S. pledged to release 30 million barrels of oil from the SPR.

*Blanket Waiver* – As part of the announcement on the SPR drawdown, DOE indicated there would be a blanket waiver of the Jones Act for vessels seeking to move SPR oil between SPR terminal sites and refineries. A day later, on June 24, 2011 in response to strong adverse reaction from the U.S.-flagged industry and an effort by MARAD to remind DOE of the terms of the 1987 MOA, DOE dropped the language providing for a blanket waiver of the Jones Act. DOE then issued a “Notice of Sale of SPR Oil” which amended and added requirements for bidders on top of those mandated under 10 CFR Part 625. It provided updated information for bidders seeking Jones Act waivers that would be reviewed on a case-by-case basis pursuant to the procedures laid out in the 1987 MOA and 10 CFR Part 625. The Notice of Sale also set minimum delivery lot sizes for SPR oil at 300,000 barrels for vessels and 40,000 barrels for barges.

*Questionable Process for Individual Waivers* – According to press reports and information provided to the Subcommittee (see attachments), in the days following the issuance of the Notice of Sale officials at the DOE and MARAD made statements and took actions which may have been inconsistent with the laws and regulations governing Jones Act waivers.

On June 28, 2011 David Sandalow, DOE’s Assistant Secretary for Policy and International Affairs, Mike Hokana, MARAD’s Office of Cargo Preference and Domestic Trade, and representatives from CBP conducted a conference call with potential SPR drawdown bidders to answer questions on the process that would be followed. During the call, a bidder said “no U.S. ships could hold 500,000 barrels and asked if there would be a de facto blanket waiver for large-volume sales.” Assistant Secretary Sandalow responded, “Once a bid has been awarded, then, yes, a waiver would be granted in that situation. But you’ve got to apply for it.” (see Attachment B). The statement by the Assistant Secretary appears to imply that Jones Act waiver requests would be granted for foreign vessels with 500,000 barrel capacities before their applications were submitted and reviewed.

On the June 28, 2011 conference call, Assistant Secretary Sandalow also said, “It is not required that purchases be divided into smaller lots so as to meet the requirements of available U.S.-flag vessels.” (see Attachment B). This statement appears to contradict the 1987 MOA which grants MARAD authority to allow lot sizes to be divided into “suitable” amounts for carriage on Jones Act qualified vessels.

The failure to subdivide the lots effectively set a de facto 500,000 barrel threshold for SPR oil deliveries notwithstanding the 300,000 barrel minimum set in the Notice of Sale. Such a threshold would effectively eliminate U.S. vessels from consideration.



Emails sent by MARAD officials, copies of which have been received by the Subcommittee, indicate that MARAD officials were aware of a “500k min. standard” set by DOE (see Attachment C).

On the same conference call, Mr. Hokana is quoted in the press as saying about the waiver process, “We want to make this as easy as possible.” (see attachment A). This statement appears to undermine MARAD’s role in making availability determinations of Jones Act qualified vessels.

By September 2, 2011, DOE had completed the drawdown of 30.6 million barrels of oil from the SPR. Ultimately, 44 waivers of the Jones Act were issued to foreign owned, flagged, built, and/or crewed vessels to carry nearly 25.2 million barrels of SPR oil by water (the remaining 5.4 million barrels went by pipeline). Each waiver involved a foreign vessel carrying 500,000 barrels or more (see Attachment D). Only one delivery of SPR oil was conducted by a qualified Jones Act vessel. That U.S. vessel carried 150,000 barrels or less than 1 percent (0.59%) of the total SPR oil moved by vessel.

### **Congressional Action**

In response to the way in which Jones Act waivers were handled by the Administration during the June 2011 SPR drawdown, Congress has taken the following action:

- The Fiscal Year 2012 Consolidated and Further Continuing Appropriations Act (P.L. 112-55) requires that MARAD when reviewing Jones Act waiver applications “consider as suitable a vessel or vessels with single or collective capacity” and requires MARAD to provide CBP with a list of all U.S.-flag vessels capable of moving oil from the SPR.
- The Fiscal Year 2012 Consolidated Appropriations Act (P.L. 112-74) prohibits the use of funds to issue future Jones Act waivers for SPR drawdowns until the Department of Homeland Security (DHS) has consulted with the Department of Transportation, DOE, and the U.S.-flag industry and taken adequate steps to ensure the use of U.S.-flag vessels. It further requires DHS to notify Congress within 48 hours of any request for a waiver.
- H.R. 2838, The Coast Guard and Maritime Transportation Act of 2011 includes an amendment authored by Representatives Jeff Landry and Elijah Cummings to require MARAD to include in its vessel availability assessments information on actions that could be taken to enable Jones Act qualified vessels to carry the cargo for which the waiver is sought. It further requires MARAD to publish its availability determinations on its website and notify Congress when a waiver is requested and granted.

**WITNESSES**

Panel I

The Honorable John D. Porcari  
Deputy Secretary  
U.S. Department of Transportation

Panel II

Mr. Thomas Allegretti  
President and CEO  
American Waterways Operators  
*testifying on behalf of*  
American Maritime Partnership

# ATTACHMENT A

MS4

AGREEMENT AMONG THE  
U.S. CUSTOMS SERVICE OF THE DEPARTMENT OF THE TREASURY,  
MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION,  
AND THE DEPARTMENT OF ENERGY  
CONCERNING DRAWDOWN OF THE STRATEGIC PETROLEUM RESERVE

In order to comply with the requirements of Section 27 of the Merchant Marine Act, 1920 (the Jones Act), 46 U.S.C. 883, and to ensure the unimpeded distribution of crude oil from the Strategic Petroleum Reserve (SPR) during a severe energy supply interruption, and to the extent such action is necessary in the interest of national defense within the meaning of P.L. 81-891, 64 Stat. 1120 (Dec. 27, 1950), the U.S. Customs Service, the Maritime Administration, and the Department of Energy agree:

1. That they will cooperate fully in the identification of the potential demand for and availability of suitable U.S.-flag vessels during a drawdown of the SPR;
2. That program coordinators shall be appointed by each Department to serve as the principal liaison officers between the Departments and that these program coordinators will be identified to all signatories of this Agreement within 30 days of the date it becomes effective, and immediately in the event of any change in program coordinators thereafter;
3. That these coordinators will develop and implement Operating Annexes to this Agreement that are consistent therewith for the processing of waivers of the Jones Act for carriage of SPR crude oil to domestic destinations;
4. That prior to the granting of any Jones Act waiver, all reasonable efforts will be made to utilize suitable U.S.-flag vessels, including subsidized vessels, to the extent all approvals required for these vessels can be expeditiously granted;
5. That the Department of Energy shall make available to potential SPR purchasers the administrative information necessary to apply for a Jones Act waiver or to have a shipowner request domestic operating approval for a subsidized vessel in accordance with these Operating Annexes;
6. That the Department of Energy shall obtain the concurrence of the Department of Defense that the movement of SPR crude oil is necessary in the interest of national defense, unless such finding already has been established by Presidential proclamation;
7. That the Department of Energy, at its discretion, may act for one or more prospective purchasers of SPR oil; and

ATTACHMENT A

MB# 13 (ADD)



- 8. That any party may request a deviation from or change in this Agreement. The parties to this Agreement will negotiate the provisions to effect deviations or changes requested to this Agreement, and such revisions shall become effective on such date as is agreed upon by the parties. Deviations from or changes to any Operating Annexes will be permitted only as agreed upon by the program coordinators.

This Agreement is effective when signed by all Departments.

*William P. Reed*  
 \_\_\_\_\_  
 Commissioner of Customs  
 Customs Service  
 Department of the Treasury

Date: October 16, 1987

*J. L. Chao*  
 \_\_\_\_\_  
 Maritime Administrator  
 Maritime Administration  
 Department of Transportation

Date: 9/28/87

*W. K. King*  
 \_\_\_\_\_  
 Deputy Assistant Secretary  
 for Petroleum Reserves  
 Department of Energy

Date: 9/24/87

*E. W. Ward, Sr.*  
 \_\_\_\_\_  
 Deputy Assistant Secretary  
 for Energy Emergencies  
 Department of Energy

Date: 9/24/87

## OPERATING ANNEX A

In accordance with the Agreement among the Customs Service of the Department of the Treasury, the Maritime Administration of the Department of Transportation, and the Department of Energy (DOE), dated October 16, 1987, this Operating Annex outlines the procedures for the processing of applications from purchasers of Strategic Petroleum Reserve (SPR) crude oil for Jones Act waivers covering specific voyages and requests from operators of subsidized vessels, at the request of SPR purchasers, for authorization of domestic operation in carrying SPR crude oil.

1. After the decision to draw down the SPR and prior to the issuance of the Notice of Sale (NS) offering SPR crude oil for sale, DOE will notify the Customs Service (hereafter Customs) and the Maritime Administration (MarAd) of the amount of SPR crude oil to be offered, the delivery period, and the locations at which it is to be loaded.
2. Pursuant to receipt of the notification in paragraph 1. above, MarAd will provide Customs and DOE with a preliminary profile of available Jones Act vessels, as well as the potential availability of Construction Differential Subsidy (CDS) (Appendix I) and Ready Reserve Fleet (RRF) vessels for carriage of SPR crude oil.
3. The NS, issued by DOE, will incorporate Standard Sales Provisions B.3, "Requirements for vessels-caution to offerors," and C.7, "Application procedures for 'Jones Act' waivers," which are Appendix II to this Annex. DOE will apprise Customs and MarAd of any subsequent modifications of these provisions which would materially impact the procedures outlined in this Annex.
4. As soon as practical after release by the SPR Project Management Office Contracting Officer, an abstract of offers received to purchase SPR crude oil will be provided to Customs and MarAd.
5. Within one business day of receipt of a Jones Act waiver request, in conformance with the requirements of this Annex, Customs will request MarAd to determine the availability of suitable coastwise-qualified vessels to meet the requestor's SPR contract commitment. In making this request to MarAd, Customs will reference the telex or telegram by which the original waiver request was made, of which MarAd, in accordance with Standard Sales Provision C.7, should have already received a duplicate information copy. Upon full consideration of such factors as delivery date, bid price, and efficient use of available capacity, MarAd may determine as "suitable" a vessel or vessels with single or collective capacity exceeding the requestor's contract commitment. The vessel or vessels so determined must be able to load crude oil in a safe manner without significant detriment to loading schedules.



- 6. Within two business days after receipt of the duplicate information copy of the request from the requestor, MarAd will respond to Customs with either concurrence or nonconcurrence with the waiver request.
- 7. In the case of nonconcurrence with the waiver request, MarAd will provide Customs with specific information on available suitable coastwise-qualified vessels and the information source by which MarAd determined their availability.
- 8. Within one business day of receipt of MarAd's concurrence or nonconcurrence, Customs will act to grant or deny the original waiver request. A denial will include in the telex or telegram to the requestor the specific vessel availability information provided by MarAd.
- 9. DOE will be made a concurrent recipient of all correspondence between Customs and Marad, Customs and the requestor and, if applicable, MarAd and the requestor concerning Jones Act or CDS waiver request processing.
- 10. All parties will make a good faith effort to respond within the working day limits specified in this Annex.
- 11. Termination or modification to this Operating Annex will be made in accordance with paragraph 8 of the Agreement cited above.

Jerry S. Much  
 Name  
 Associate Administrator for  
 Marketing and Domestic  
 Enterprise  
 \_\_\_\_\_  
 Title  
9 Feb. 1988  
 Date

Kathryn Peterson  
 Name  
 Chief, Carrier Rulings Branch  
 \_\_\_\_\_  
 Title  
2/29/88  
 Date

John W. Bartholomew  
 Name  
 Director, Office of Strategic  
 Petroleum Reserve  
 \_\_\_\_\_  
 Title  
2/15/88  
 Date

## Appendix I to Operating Annex A

This Appendix outlines the procedure for use of subsidized vessels by purchasers of SPR crude oil. It addresses both the situation where the purchaser initially elects to use a subsidized vessel and the situation where, in the course of processing a Jones Act waiver application, MarAd determines that a subsidized vessel is available to perform the voyage for which the Jones Act waiver is being sought. In the former case, the first step of the procedure does not apply.

- o If there is no Jones Act vessel available, but there is a U.S. vessel available that was built with construction-differential subsidy (CDS), MarAd will so advise Customs, in accordance with paragraph 7 of Operating Annex A, noting that the vessel owner must apply to MarAd for a waiver of Section 506 and possibly Section 805(a) (if the vessel is also receiving operating-differential subsidy) of the Merchant Marine Act, 1936, as amended. Customs will so advise the SPR purchaser.
- o The SPR purchaser will ask the owner of the CDS vessel to submit to MarAd a prompt request for the necessary waivers. For speed and brevity, the request may incorporate by reference appropriate contents of the earlier Jones Act waiver request by the offeror. However, the request must contain an agreement for CDS payback pursuant to Section 506.
- o Upon receipt of the vessel owner's request, MarAd will have two full working days to process the waiver(s). MarAd will telex and follow up by telephone with all Jones Act vessel owners to advise them of the request, to determine if there are any objections to the waiver(s). A Jones Act vessel owner will have (within the 2-day processing period) 24 hours from receipt of initial notification to respond to MarAd with particulars of vessel availability and position.
- o If there are shown to be Jones Act vessels available and in a position to meet the loading dates required, no Section 506 and/or 805(a) waivers may be approved. Section 805(a) requires a hearing 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 coastwide or intercoastal service.
- o If the owner's waiver application is satisfactory and no Jones Act vessel owner objects to the waiver(s), MarAd will issue the waiver(s), immediately notifying the applicant, Customs, and DOE.



B.3 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; however, the terminals 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 which lack reception facilities for oily ballast.



# ATTACHMENT B



## DOE offers more details on SPR auction

Sayeh Tavangar 2 months ago



Inside Energy Extra (28-Jun-11)

An Energy Department briefing with refiners and oil traders Tuesday gave some hints about companies interested in snapping up oil from the Strategic Petroleum Reserve and how they might transport it.

The auction for the 30 million barrels of crude - the third-ever presidentially directed drawdown of US emergency stockpiles - starts at 1 p.m. CDT Wednesday, with deliveries occurring in August.

"We're committed to getting all this additional oil into the market as soon as possible and not later than August 31," David Sandalow, DOE's assistant secretary for policy and international affairs, said on the conference call.

Potential bidders on the call included BP, Statoil, Koch Supply and Trading, Valero, Morgan

Stanley, JP Morgan and Hepco.

Officials from DOE, Customs and Border Protection and the Maritime Administration fielded questions about how the government would enforce the Jones Act, a maritime law that requires US-flagged vessels to carry shipments between US ports.

Sandalow said companies could seek expedited waivers of the law after they post winning bids. He said the buyers would have to demonstrate that they either cannot find a US ship or that available ones cannot hold the amount of crude they purchased. The government would then grant a waiver in two days.

"If a US ship of adequate size is available, it must be used for marine delivery of oil purchased under the SPR release," Sandalow said. "It is not required that purchases be divided into smaller lots so as to meet the requirements of available US-flag vessels."

Michael Hokana of the customs authority added: "We want to make this as easy as possible."

A Statoil representative posed the scenario of a buyer getting a Jones Act waiver only to have a US ship free up later. "Can it be revoked if any US-flagged ships show up available after the waiver was granted?" he asked.



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Sandalow said that once granted, waivers would be "unconditional and permanent" for the duration of the permit.

A caller from Valero said no US ships could hold 500,000 barrels, and asked if there would be a de-facto blanket waiver for large-volume sales.

"Once a bid has been awarded, then, yes, a waiver would be granted in that situation," Sandalow said. "But you've got to apply for it."

On Thursday, DOE promised a blanket waiver of the Jones Act, but rescinded it a day later. It told bidders they would have to apply for individual waivers and promised to expedite their review.

DOE set the base reference price (BRP) for Light Louisiana Sweet at \$112.78/barrel, based on Argus assessments. Bidders will submit a fixed-price bid for the crude stream, but the difference between the fixed-price bid and the BRP will be called the price adjustment factor (PAF). Bids must be 95% of that BRP, or \$107.141/b.

The government will then rank the bids to determine the winner. When it comes time to lift the crude, the PAF will be applied to a new calculation of the five-day average of LLS to determine the final price.

Meghan Gordon

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# ATTACHMENT C

**From:** Hokana, Michael (MARAD)  
**To:** Williams, Linda (MARAD)  
**Subject:** Update: SPR Shell Jones Act Waiver request of 7/7/11  
**Date:** Friday, July 08, 2011 10:42:53 AM  
**Attachments:** Shell Response to CBP of 070811 (2).docx

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Linda: Please see the below pre the 1100 meeting. I would like you to attend, Tom's Old Office.

All the best,

Mike

Michael Hokana  
Office of Cargo Preference & Domestic Trade  
Maritime Administration  
Tel: 202-366-0760  
Fax: 202-366-7901  
[michael.hokana@dot.gov](mailto:michael.hokana@dot.gov)

**From:** Hokana, Michael (MARAD)  
**Sent:** Friday, July 08, 2011 10:14 AM  
**To:** Bloom, Murray (MARAD); Gilmore, David (MARAD); Vogel, Jeff (MARAD); Brennan, Dennis (MARAD); Yarrington, Michael (MARAD)  
**Subject:** FW: SPR Shell Jones Act Waiver request of 7/7/11

Murray: Pre-1100 meeting; Tom Harrelson's old office . Update: Shell oil asked for a waiver last night late. MARAD has a 3 hour reply requirement Denise said send Customs our availability list , which I did until a MARAD letter could be developed . Customs said that general availability is not enough, they want a letter concurring or not concurring with a waiver.

Customs is the final decision maker.

The Administrator crafted this first paragraph (attached above) to put more onus on DOE to set the 500K min. standard. MAR-100 talking with S2 now for approval. ←

There is a 200K bbl OSG barge available but it would have to make three trips TX to LA

I hope this helps...

Mike,

Michael Hokana  
Office of Cargo Preference & Domestic Trade  
Maritime Administration



(b)(5)

Thank you.

**From:** Matsuda, David (MARAD)**Sent:** Tuesday, July 12, 2011 08:11 PM**To:** Smith, Douglas A <Douglas.A.Smith@dhs.gov>; Daniel.Poneman@hq.doe.gov  
<Daniel.Poneman@hq.doe.gov>; Porcari, John (OST); JHL <Jhl@dhs.gov>; Froman, Michael B.  
<Michael\_B\_Froman@nss.eop.gov>; Tamarin, Nathanael P. <Nathanael\_P\_Tamarin@who.eop.gov>**Cc:** De Vallance, Brian <Brian.DeVallance@dhs.gov>; brandon.hurlbut@hq.doe.gov  
<brandon.hurlbut@hq.doe.gov>; jonathan.levy@hq.doe.gov <jonathan.levy@hq.doe.gov>; Frias, Michael  
<Michael.Frias@dhs.gov>; Krepp, Denise (MARAD); Sweetnam, Glen E. <Glen\_E\_Sweetnam@nss.eop.gov>**Subject:** RE: Jones Act Board Meeting

All-

Two items:

1. We have heard from several in the U.S. maritime industry, who have serious concerns about this SPR/Jones Act waiver process as a departure from previous practices. While they were pleased to learn that the President did not issue a blanket Jones Act waiver, they are concerned because no winning bidders are contacting them about potential work, and they are starting to believe this process is facilitating a means for the winning bidders to exclude them altogether. They are particularly curious about the policies underlying the need to move entire lots—even on journeys as short as from Texas to Louisiana—with a foreign-flag vessel.

We have urged them to refrain from commenting publicly until they learn about the process and the rationale behind it, and believe they will so refrain if they have an opportunity to meet with DOT/DOE/DHS officials. Several barge owners are flying in on Thursday, to be joined by their representatives in Washington, possibly including labor. We have scheduled them at 3 p.m. on Thursday here at DOT and ask that DOE/DHS be available to meet with them and discuss their concerns. We can provide a final guest list when you RSVP to Denise (cc:'d).

2. In addition, following up on the discussion over the weekend, we have now seen 3 separate requests by Shell Oil to move over 1.5M barrels of oil in roughly 500k barrel increments, and they were winning bidders on an additional 2.0M barrels. We fully appreciate the Administration priorities discussed at length prior to today on the need to move expeditiously, but under the Jones Act we are hard-pressed to find that no U.S. flag vessel is available for transportation of any of the Shell oil without fully understanding their transportation plan for the entire amount of the oil they purchased and without hearing evidence that Shell dealt in good faith with U.S. carriers to try to procure their transportation services. **If we are to presume Shell (and all winning bidders) will simply transport the oil only in 500k barrel shipments (this is not a contractual obligation, correct?), and seek Jones Act waivers for each of them to carry all of it on foreign flag vessels for the entire 3.5M barrels, there may be no opportunities at all for U.S. flag in this initiative.**

It is possible that Shell's overall transportation plan could include a mix of both foreign flag and U.S. flag—without adding any additional trips—but we would like to understand it first and determine whether reasonable efforts have been made to work with the U.S. companies. We are asking to discuss this further before making a finding on availability here, and will set up a call in the a.m. if that works for everyone.

Thanks.



# ATTACHMENT D

SPR RELEASE - AUGUST 2011  
CONTRACT AWARD REPORT

Officer	Contract No.	Award Date	Barrels (1,000's)	Water Approved	Lead	Draw Point	Discharge Window	Location	Comd. District	Ship Name	Flag	Owner Domicile	Note #	Amd.	Shipment Complit
ConocoPhillips	DE-SC98-11P097001	7-Jul	550	8-Jul	18-20-Jul	Nederland, TX	21-23-Jul	LOOP, LA	LA-3	Jeff Landry	Singapore	Singapore	6, 8		X
ConocoPhillips	DE-SC98-11P097002	7-Jul	500	22-Jul	1-3-Aug	Nederland, TX	3-5-Aug	LOOP, LA	LA-3	Jeff Landry	Singapore	Singapore	6, 8		X
ExxonMobil	DE-SC98-11P097003	7-Jul	500	13-Aug	14-16-Aug	Freeport, TX	23-31-Aug	Bayway, NJ	LA-13	Abdo Siles	Marshall Isl	Singapore			
Hess Energy	DE-SC98-11P097004	7-Jul	500	3-Aug	9-11-Aug	Nederland, TX	13-15-Aug	LOOP, LA	LA-3	Jeff Landry	Greece	Greece	2		X
J.P. Morgan Ventures	DE-SC98-11P097005	8-Jul	500	10-Aug	11-13-Aug	Nederland, TX	12-13-Aug	Beaumont, TX	TX-27	Rob Poe	Singapore	Singapore			
Marathon Petroleum	DE-SC98-11P097006	8-Jul	500	18-Jul	23-25-Jul	Freeport, TX	25-27-Jul	Meraux, LA	LA-3	Rob Andrews	Marshall Isl	Singapore	6, 8	XXX	X
Marathon Petroleum	DE-SC98-11P097007	8-Jul	500	15-Jul	19-21-Jul	Freeport, TX	22-24-Jul	Pascagoula, MS	MS-4	Stewen Palazzo	Liberia	Singapore	5		X
Murphy Oil USA	DE-SC98-11P097008	8-Jul	500	21-Jul	1-3-Aug	Freeport, TX	5-7-Aug	Garrettsville, OH	LA-3	Jeff Landry	Singapore	Singapore	6, 8	X	X
Plains Marketing LP	DE-SC98-11P097009	8-Jul	500	3-Aug	10-12-Aug	Freeport, TX	10-12-Aug	Garrettsville, OH	LA-3	Jeff Landry	United Kingdom	Singapore	8		
Plains Marketing LP	DE-SC98-11P097010	8-Jul	500	11-Aug	17-19-Aug	Freeport, TX	20-22-Aug	Garrettsville, OH	LA-3	Jeff Landry	Singapore	Singapore	6, 8		X
Shell Trading (US)	DE-SC98-11P097011	8-Jul	500	20-Jul	20-31-Jul	Freeport, TX	1-3-Aug	Ingleside, TX	TX-27	Blake Farenthold	Singapore	Singapore	13	XX	X
Shell Trading (US)	DE-SC98-11P097012	8-Jul	500	9-Aug	16-18-Jul	Nederland, TX	23-25-Jul	St. James, LA	LA-3	Jeff Landry	Singapore	Singapore	3	X	X
Shell Trading (US)	DE-SC98-11P097013	8-Jul	500	12-Jul	28-30-Jul	Nederland, TX	29-Jul-2-Aug	LOOP, LA	LA-3	Jeff Landry	Singapore	Singapore	6, 8, 9	XX	X
Shell Trading (US)	DE-SC98-11P097014	8-Jul	150	28-Jul	5-7-Aug	Nederland, TX	7-9-Aug	LOOP, LA	LA-3	Jeff Landry	Singapore	Singapore	6, 8, 14	XX	X
Stonco Inc	DE-SC98-11P097015	8-Jul	700	5-Aug	19-21-Aug	Nederland, TX	20-22-Aug	Philadelpia, PA	PA-1	Bob Brady	Bahamas	France (Euronav)			
Stonco Inc	DE-SC98-11P097016	8-Jul	700	12-Aug	25-27-Aug	Nederland, TX	1-3-Sep	Philadelpia, PA	PA-1	Bob Brady	Bahamas	France (Euronav)			
Valero Refining	DE-SC98-11P097017	8-Jul	1,200	19-Aug	3-5-Aug	Freeport, TX	21-25-Aug	East Coast of Panama	N/A	N/A	Marshall Isl.	Marshall Isl.	1, 11, 16	XX	X
Valero Refining	DE-SC98-11P097018	8-Jul	600	19-Aug	28-30-Aug	West Coast of Panama	11-13-Sep	Anacostia, WA	WA-2	Rick Larsen	Marshall Isl.	Marshall Isl.	11, 12	XX	X
Valero Energy	DE-SC98-11P097019	8-Jul	600	21-Jul	5-Aug	Freeport, TX	12-14-Aug	Highland Grande, Panam	WA-2	N/A	Marshall Isl.	Marshall Isl.	1, 11		
Valero Energy	DE-SC98-11P097020	8-Jul	600	21-Jul	5-Aug	Freeport, TX	12-14-Aug	Barbo's Point, HI	HI-2	Mazie Hirono	Panama	Panama	11, 8		
Valero Energy	DE-SC98-11P097021	8-Jul	550	22-Aug	25-27-Aug	Port Arthur, Texas	30-Aug-1-Sep	Port Arthur, Texas	TX-27	Ted Poe	Marshall Isl.	Marshall Isl.	15		
Valero Energy	DE-SC98-11P097022	8-Jul	500	18-Jul	25-27-Jul	Sun Nederland, TX	30-Jul-2-Aug	St. James, LA	LA-3	Jeff Landry	Singapore	Singapore	6, 8, 15		X
Valero Energy	DE-SC98-11P097023	8-Jul	500	20-Jul	28-29-Jul	Freeport, TX	31-Jul	Corpus Christi, TX	TX-27	Blake Farenthold	Marshall Isl.	Marshall Isl.	1, 8, 15		X
Valero Energy	DE-SC98-11P097024	8-Jul	500	5-Aug	11-13-Aug	Nederland, TX	18-19-Aug	St. James, LA	LA-3	Jeff Landry	Singapore	Singapore			
Valero Energy	DE-SC98-11P097025	8-Jul	500	19-Aug	25-27-Aug	Freeport, TX	30-31-Aug	St. James, LA	LA-3	Jeff Landry	Marshall Isl.	Marshall Isl.			
Valero Energy	DE-SC98-11P097026	8-Jul	500	2-Aug	8-10-Aug	Freeport, TX	29-31-Aug	Corpus Christi, TX	TX-27	Blake Farenthold	Bahamas	Marshall Isl.			
Valero Energy	DE-SC98-11P097027	8-Jul	500	4-Aug	10-12-Aug	Nederland, TX	12-14-Aug	St. Charles, LA	LA-1	Sieve Scialize	Marshall Isl.	Marshall Isl.	15, 10		X
Valero Energy	DE-SC98-11P097028	8-Jul	500	18-Aug	21-23-Aug	Nederland, TX	20-22-Sep	Delaware City, DE	DE-1	John G. Carney Jr.	Liberia	Liberia	10		
Valero Energy	DE-SC98-11P097029	8-Jul	500	17-Aug	23-25-Aug	Nederland, TX	20-22-Sep	Delaware City, DE	DE-1	John G. Carney Jr.	Liberia	Liberia	10		
Valero Energy	DE-SC98-11P097030	8-Jul	500	22-Aug	23-25-Aug	Freeport, TX	31-Aug-2-Sep	Philadelpia, PA	PA-1	Bob Brady	Marshall Isl	Marshall Isl	10		
Valero Energy	DE-SC98-11P097031	8-Jul	500	22-Aug	23-25-Aug	Nederland, TX	10-12-Sep	Meraux, LA	LA-3	Jeff Landry	Liberia	Liberia	10		
Valero Energy	DE-SC98-11P097032	8-Jul	500	25-Aug	29-31-Aug	Freeport, TX	5-7-Sep	Meraux, LA	LA-3	Jeff Landry	Marshall Isl.	Marshall Isl.	10		
Valero Energy	DE-SC98-11P097033	8-Jul	500	29-Aug	29-31-Aug	Freeport, TX	2-5-Sep	Corpus Christi, TX	TX-27	Blake Farenthold	Panama	Panama	10		
Valero Energy	DE-SC98-11P097034	8-Jul	500	29-Aug	29-31-Aug	Freeport, TX	5-7-Sep	Bayway, NJ	LA-13	Abdo Siles	Liberia	Liberia	10		
Valero Energy	DE-SC98-11P097035	8-Jul	500	12-Jul	14-Jul	Nederland, TX	22-24-Jul	St. James, LA	LA-3	Jeff Landry	Panama	Singapore	6, 8		X

Notes: 1. All "Overseas" vessels are owned by foreign subsidiaries of Overseas Shipholding Inc  
 2. No requirement for Jones Act waiver for transfer/shipment  
 3. Pliner conveniently amended request after our internal conversations on not granting waiver  
 4. Shell request for lot 7013, granted on Jul-15, revoked by ODP Jul-18, after requesting a change in load date and vessel TBD, revised waiver issued  
 5. HS Tosca owned by Schiffahrt-Gesellschaft "HS Tosca" mbH & Co. KG (Germany)  
 6. All "Eagle" vessels are owned by AET Shipmanagement, Pte Limited (Singapore), which is indirectly controlled by the government of Malaysia  
 7. Vessel owned by Sovcomflot, a Russian State-owned corporation  
 8. Amended for different vessel with later load date, discharge remained the same  
 9. Requested that the waiver be amended to allow cargo be split into two different lots for delivery at separate ports.

Notes	10	11	12	13	14	15	16	17
Letter from Sm. Nurkowskij, questioning legality of bids								
Tosco is splitting its 1200 bbl. Needs four waivers for both proposed two part (1 & 2)								
affiliated with AET, jointly owned by Enterprises Shipping & Trading SA								
Amended for different vessel. Load and discharge date moved.								
Tosco has requested approval for modifying its original waiver to allow splitting its 400K bbls load into 300K bbls loads to transit the canal with Overseas Josito Camelo loading at SPR and Caribbean Galaxy delivering the cargo to the dest.								
Requested that the waiver be amended to allow cargo be split into two different lots for delivery at separate ports.								

Current - 28-Aug-2011