III. Mockabee Refund Procedures

We will implement a two-stage refund procedure for distribution of the Mockabee fund by which purchasers of No. 2 heating oil and kerosene from Mockabee during the period covered by the MRO may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that applicants generally will be limited to ultimate consumers ("end users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.2

A. First Stage Refund Procedures

In order to receive a refund, each claimant must submit a schedule of its monthly purchases of No. 2 heating oil or kerosene from Mockabee during the period covered by the MRO—November 1, 1973 through December 31, 1975. Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we adopt the presumptions set forth below.

1. Calculation of Refunds

First, we adopt a presumption that the overcharges were dispersed equally over all of Mockabee's sales of products covered by the MRO during the period covered by the MRO. See Permian Corp., 23 DOE ¶ 85,034 (1993). In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.³ In the absence of better information, a volumetric refund

is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining prices.

Under the volumetric approach, a claimant's "allocable share" of the Mockabee fund is equal to the number of gallons of covered product purchased from Mockabee during the period covered by the MRO times the per gallon refund amount. In the present case, the per gallon refund is \$0.0612. We derived this figure by dividing the monies remitted by Mockabee (\$75,638.48) by the total volume of covered products sold by Mockabee from November 1, 1973 through December 31, 1975 (1,236,132 gallons). A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of accrued interest.4

In addition to the volumetric presumption, we also adopt a presumption regarding injury for endusers.

2. End Users

In accordance with prior Subpart V proceedings, we adopt the presumption that an end user or ultimate consumer of covered products purchased from Mockabee whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the MRO. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final price of goods and services produced by members of this group would go beyond the scope of the refund proceeding. Id. Therefore, end-users of covered products purchased from Mockabee need only document their purchase volumes from Mockabee during the period covered by the MRO to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from the Mockabee fund, a claimant should submit an Application for Refund containing all of the following information:

- (1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check. 5 If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names;
- (2) A monthly purchase schedule covering the Remedial Order period (November 1, 1973 through December 31, 1975). The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the Remedial Order period, if available. If these records are not available, the applicant may submit estimates of its purchases of covered products, but the estimation method must be reasonable and clearly explained;
- (3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;
- (4) If the applicant is or was in any way affiliated with Mockabee, it should explain this affiliation, including the time period during which it was affiliated.⁶

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² If a refiner, reseller, or retailer should file an application in this refund proceeding, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, e.g., Stark's Shell Service, 23 DOE ¶85,017 (1993); Shell Oil Co., 18 DOE ¶85,492 (1989).

If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Mockabee's overcharges See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co., 20 DOE ¶ 85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above volumetric refund

⁴ As in previous cases, we establish a minimum refund amount of \$15. In this proceeding, any potential claimant purchasing less than 245 gallons of covered product from Mockabee would have an allocable share of less than \$15. We have found through our experience that the cost of processing claims in which refund amounts of less than \$15 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590 (1998)

⁵ Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number, if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restititution Act of 1986 and other regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other federal agencies for statistical, auditing or archival purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

⁶As in other refund proceedings involving alleged refined products violations, the DOE will presume that affiliates of the Remedial Order firm were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.,* 15 DOE ¶ 85,288 (1987). This is because the Remedial Order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive