II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07; *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

We considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Murphy funds and, on December 12, 1994, we issued a Proposed Decision and Order (PDO) setting forth the tentative plan to distribute these funds. *See* 59 FR 65332 (December 19, 1994). In the PDO, we proposed to distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of the Stripper Well Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986). Under the MSRP, 40 percent of the crude oil overcharge funds will be remitted to the federal government and 40 percent to the states for indirect restitution, and up to 20 percent may be initially reserved for direct restitution to injured parties. Any money remaining after all valid claims by injured parties are paid will be disbursed to the federal government and the states in equal amounts.

We received two comments on the PDO. The first comment was submitted by the Controller of the State of California (Controller). The second comment was submitted by Utilities, Transporters and Manufacturers (UTM), a consortium of six utilities, fourteen transporting companies, and five manufacturers. Both address the issue of royalties paid by Murphy to the federal government under its lease agreements to produce crude oil from federal lands.[1]

A. The Royalty Issue

As part of its operations, Murphy leased land from the United States and paid royalties to the United States Geological Survey of the Department of the Interior (USGS) on all crude oil produced from federal lease areas. During the Murphy enforcement proceedings, Murphy claimed that the United States had benefited from the overcharges through increased royalty payments (since royalty payments are based on the sale price of crude produced from leased federal land). Accordingly, Murphy argued, the amount of any overcharges assessed against Murphy should be reduced by the amount of royalties paid to prevent the United States from enjoying a double recovery. *Murphy Oil Corp.,* 22 DOE ¶ 83,005 at 86,097. While the OHA rejected this argument, the FERC ALJ found that the argument had merit. The ALJ ordered the OHA to reconsider the issue on remand and determine to what extent the United States benefited from the overcharges through increased royalty payments, and to reduce Murphy's overcharges accordingly. *Ocean Drilling & Exploration Co., et al.,* 66 FERC ¶ 63,002 at 65,027–29.

The second Murphy Consent Order eliminated the need to make any such determination, since it settled all claims by the DOE against Murphy in exchange for one lump sum payment. In its announcement of the Proposed Consent Order, the ERA listed the royalty issue as one of the matters addressed and settled by the agreement between Murphy and the DOE. Announcement of Proposed Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc., and Murphy Exploration & Production Co., 59 FR 38169, at 38170 (July 27, 1994).

In response to the Proposed Consent Order, the Controller and UTM submitted comments asking that, if the ERA accepted an offset from the alleged overcharges based on FERC's determination on the royalty issue, the ERA identify the amount of money in the settlement set aside as royalty payments. UTM and the Controller further stated that this amount should not be subject to the usual division of funds between the federal government, the states, and individual claimants, as set forth in the MSRP. Instead, they argued that the amount attributable to the royalty issue should be divided exclusively between the states and individual claimants to prevent any sort of ''double recovery'' by the federal government. For a more detailed discussion of their comments, see Announcement of Final Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company, 59 Fed. Reg. 47315 (September 15, 1994) (Final Consent Order Notice). In considering these comments, the ERA stated that it would be difficult to set a dollar value on the amount attributable to the royalty issue.[2] The ERA also stated that consideration of any comments regarding the division of funds should wait until the implementation of the Subpart V process. Accordingly, the Controller and UTM have filed comments with us after the publication of the PDO in the **Federal Register**.

B. Comments of the Controller and UTM

Both the Controller and UTM argue that none of the Murphy Consent Order fund attributable to the royalty issue should be disbursed to the federal government for indirect restitution under the MSRP. In addition, since the ERA did not set a value on the royalty issue in the Final Consent Order Notice, UTM proposes its own formula for determining the percentage of the Murphy funds attributable to the royalty issue.

C. Analysis of Comments

As explained below, we find no merit in the Controller's and UTM's arguments that we should alter the normal formula set forth in the MSRP for the disbursement of funds in this proceeding.

The Controller asserts that, by compromising with Murphy on the royalty issue in the final Consent Order, the ERA reduced the amount of the settlement. The Controller argues that, in so doing, ERA had, in effect, acted to reduce the potential amount of restitutionary funds available to the states and individual claimants. Controller Comments at 1. The Controller maintains that this is inequitable in light of the determination of the FERC ALJ that the federal government may have benefited from the overcharges through the royalties. The Controller therefore asks us to deny the federal government the right to receive any money attributable to the royalty issue, so that the states and individual claimants ''are not required to bear this burden out of their share of the refund.'' *Id.* at 2.

UTM's position is also based on the issue raised by the FERC ALJ that the federal government, through the royalty payments made to the USGS, may have benefited from the overcharges. UTM

[1] UTM also commented, without elaboration, upon the Subpart V proceedings as a whole. We have previously considered these comments at length and rejected them. We therefore do not discuss them again here. See *Permian Corp.,* 23 DOE ¶ 85,034 (1993); *Seneca Oil Co.,* 21 DOE ¶ 85,327 (1991).

[2] However, in two footnotes, the ERA indicated that the value could be $341,798, or 3.2% of the total. Final Consent Order Notice at 47316 n.3, 47317 n.5.