gallons of covered product which they purchased from Mockabee.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Ave., S.W., Washington, DC 20585.

Dated: January 11, 1995. Richard W. Dugan, Acting Director, Office of Hearings and Appeals.

Name of Firm: Mockabee Gas & Fuel Co.

Date of Filing: October 18, 1994. Case Number: VEF-0001.

On October 18, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute \$75,638.48, plus accrued interest, which Mockabee Gas & Fuel Co. (Mockabee) remitted to the DOE pursuant to a Modified Remedial Order (MRO) issued by the OHA on April 10, 1985. In accordance with the provisions of the procedural regulations found at 10 CFR Part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of the regulatory violations set forth in the MRO. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, Mockabee was a retailer of No. 2 heating oil, kerosene, diesel fuel, and motor gasoline in Upper Marlboro, Maryland. On December 18, 1974, the Federal Energy Administration (FEA) issued a Notice of Probable Violation to Mockabee. On January 28, 1975, the FEA issued a Remedial Order (RO) to

Mockabee, finding that Mockabee had overcharged purchasers of No. 2 heating oil and kerosene. A further investigation disclosed additional overcharges other than those cited in the RO, and on December 22, 1976, the FEA rescinded the RO and issued a Revised Remedial Order requiring Mockabee to roll back prices to compensate consumers who were overcharged by Mockabee.

Mockabee failed to comply with the Revised Remedial Order. On April 10, 1985, the ERA 1 issued a Modified Remedial Order which rescinded the price rollbacks it had ordered Mockabee to make. Instead, the MRO required Mockabee to pay to the DOE \$29,583.08 in assessed overcharges, and an additional \$46,071.46 in interest due. On September 30, 1985, Mockabee appealed the MRO to the OHA, which denied the Appeal on December 19, 1985. Mockabee Gas & Fuel Co., 13 DOE ¶ 83,059 (1985). Mockabee has since remitted \$75,638.48 in compliance with the MRO, which is now available for distribution through Subpart V.

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 for the distribution of 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 Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 et seq.; Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981).

We have considered ERA's Petition that we implement a Subpart V proceeding with respect to the funds remitted by Mockabee and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund. We intend to publicize our proposal and solicit comments from interested parties before taking the actions set forth in this Proposed Decision and Order.

Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be

filed with the OHA within 30 days of its publication in the Federal Register.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the monies remitted by Mockabee (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 will be required to 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 propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will 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

¹Under the DOE Organization Act, 42 U.S.C. 7151, *et seq.*, and Executive Order 12009, 42 Fed. Reg. 46367 (September 25, 1977), all functions vested by law in the FEA were transferred to and vested in the DOE. Within the DOE, the ERA was delegated the authority to investigate violations of applicable regulations and to seek compliance of those regulations.

²If 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).

³ If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forgo 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