December 1979. An ERA audit of Macmillan's business records revealed possible pricing violations with respect to the firm's sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil during the period November 1, 1973, through April 30, 1974. In order to settle all claims and disputes between these companies and the DOE regarding their compliance with the price regulations, the DOE entered into consent orders with Larson and Macmillan on September 21, 1981, and March 7, 1988, respectively.

In the Larson consent order, the firm agreed to remit a total of \$7,415. approximately 38 percent of the amount of the overcharges alleged by the DOE, plus installment interest. Of the principal amount, \$5,842 was to be remitted to the DOE, and \$1,573 was to be paid directly to six of Larson's customers. Larson failed to comply with the Consent Order and remitted no funds to either the DOE or the six customers.¹ On August 29, 1994, we granted Larson a refund of \$15,822 in the Texaco special refund proceeding. Texaco Inc./Kenny Larson Oil Company, 24 DOE ¶ 85,081 (1994) (Texaco/ Larson). At that time, Larson was in default in the amount of \$26,168 (\$7,415) principal plus \$18,753 interest) in its obligations pursuant to the Consent Order. Accordingly, in Texaco/Larson, we determined that the Texaco refund should be used to fund Larson's consent order escrow account, in satisfaction of the firm's principal settlement amount and partial satisfaction of its debt for interest accrued. Accordingly, the \$15,822 Texaco refund was deposited into the Kenny Larson Oil Company escrow account maintained at the Department of the Treasury, Consent Order No. 000H00439. This is the amount which is available for distribution in this proceeding.

On February 1, 1983, a Proposed Remedial Order was issued to Macmillan which alleged that the firm violated the price regulations with respect to its sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil. Macmillan contested the PRO before the OHA (Case No. HRO–0122). During the course of that proceeding, the ERA reduced the amount of the alleged overcharges from \$383,268 to \$333,853. See Letter from Ann C. Grover, Associate Solicitor, ERA, to Richard T. Tedrow, OHA Deputy Director (October 5, 1987). On March 7, 1988, Macmillan and DOE entered into a consent order that settled the PRO's allegations. Pursuant to the consent order obligation, Macmillan remitted a total amount of \$592,001 (including presettlement interest) to the DOE in full satisfaction of the amount owed. The audit workpapers identify the customers that Macmillan allegedly overcharged.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement plans of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. It is DOE policy 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 obtained as part of settlement agreements, see Office of Enforcement, 9 DOE ¶ 82,553 (1982); Office of Enforcement, 9 DOE ¶ 82,508 (1981). After reviewing the records in the present cases, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Larson and Macmillan consent order funds. We therefore propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

A. Refund Claimants

In the first stage, refund monies will be distributed to those parties which were directly injured in transactions with Larson and Macmillan during the audit periods. We believe that the Larson and Macmillan customers who were adversely affected by the alleged overcharges are primarily those purchasers specifically identified in the consent orders and in the audit papers. In addition, customers who purchased motor gasoline from the three retail outlets operated by Larson were referred to as a class in the ERA audit files but could not be individually identified.² These parties may also file for refunds in this proceeding.

Based on the information we have about Larson's business, we expect that all applicants in the Larson proceeding and most applicants in the Macmillan proceeding will be ultimate consumers. As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the Consent Order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period and were not required to keep records which justified selling-price increases by reference to cost increases. See, e.g., Marion Corp., 12 DOE ¶ 85,014 (1984); Thornton Oil Corp., 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. See Office of Enforcement, 10 DOE 9 85,072 (1983); see also Texas Oil & Gas Corp., 12 DOE ¶ 85.069 at 88.209 (1984). We therefore propose that the end-users of Larson and Macmillan petroleum products named in the consent orders or workpapers be presumed injured by the alleged overcharges. Other end-user applicants in the Larson proceeding, if any, need only demonstrate that they purchased from Larson and document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.³

We expect some of the applicants in the Macmillan proceeding to be resellers or retailers. With respect to such applicants, we shall adopt a smallclaims threshold of \$5,000. Reseller or retailer applicants seeking refunds of \$5,000 or less will not be required to demonstrate that they were injured by Macmillan's alleged overcharges. In addition, one former customer of Macmillan, E.L. Bride, appears to be a reseller whose potential refund amount is \$141,986. Consistent with prior cases, it will be able to obtain a refund of \$50,000 without making a demonstration that it was injured by Macmillan's overcharges. In order to obtain a refund of its full overcharge amount, it would have to show that it was injured by the overcharges. See Gulf Oil Corporation, 16 DOE ¶ 85,381 at 88,738 (1987); Marathon Petroleum Company, 14 DOE ¶ 85,269 at 88,510 (1986).

¹ On October 13, 1983, ERA filed a Subpart V petition with respect to the Larson Consent Order (Case No. HEF–0104). However, because of Larson's failure to remit the settlement amount, that petition was dismissed without prejudice. *See* Memorandum from Richard T. Tedrow, OHA Deputy Director, to Rayburn Hanzlik, ERA Administrator (July 3, 1985).

² See Memorandum from Leslie Adams, Director of the Case Settlement Division, ERA, to Milton Lorenz, Special Counsel, ERA, Case No. HEF–0104 (June 24, 1982).

³One of the named Larson customers (Portland General Electric) and three Macmillan customers (Iowa Power & Light, Atlantic Municipal Utilities, and Iowa South Utilities) are public utilities. As in other Subpart V proceedings, we will treat the utilities as end-users. Moreover, because each of their potential refunds is less than \$5,000, we will not require them to submit the type of certification of pass-through required of public utilities that receive refunds in excess of the \$5,000 small claims threshold. *See, e.g., Placid Oil Co.,* 18 DOE ¶ 85,176 at 88,290 (1988).