

specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it had received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) show that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges. End-users, therefore, need only submit documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987). Additionally we stated that we would calculate crude oil refunds on a per gallon (or volumetric) basis. We obtained this figure by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See *e.g.*, *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

These standard crude oil procedures will be used to distribute the monies in the King and Bridewell funds. We have chosen initially to reserve 20 percent of these funds, \$67,653.38, plus accrued interest, for direct refunds to claimants in order to ensure sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims filed in this proceeding in a manner consistent with our previous crude oil refund proceedings under Subpart V. See *Mountain Fuel*, 14 DOE at 88,869. Claimants in this proceeding will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the overcharges.

We adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPA), 15 U.S.C. 751-760h. Under this presumption, end-user claimants need not

submit evidence of injury, and may become eligible for a refund by simply documenting their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, refiner, and reseller applicants must submit detailed documentation of injury. They may not rely upon the injury presumptions utilized in some refined products refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also PODRA § 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Agreement, it has waived its right to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As we have stated in prior Decisions, a crude oil refund applicant need only submit one application for its share of all available crude oil overcharge funds. See, *e.g.*, *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

The DOE had previously established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. See 58 FR 26318 (May 3, 1993). Although that date has passed, it has been decided to reopen the crude proceeding. See 59 FR 55656 (November 8, 1994). The new closing date for this proceeding has tentatively been set for June 3, 1996. *Id.* It is the policy of the DOE to pay all crude oil refund claims at the rate of \$0.008 per gallon. While we anticipate that the applicants that filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See *e.g.*, *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. Crude Oil Application Requirements

To apply for a crude oil refund, 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 a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.* If the applicant

* Under the Privacy Act of 1974, the submission of a social security number by an individual

operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or cooperative, certification that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both,

applicant is voluntary. An applicant that does not wish to 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 Restitution Act of 1986 and the regulations codified at 10 C.F.R. part 205, subpart V. The information may be shared with other federal agencies for statistical, auditing, or archiving 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.