

Dated: January 9, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Guaranty Agency Financial Report.

*Frequency:* Monthly, Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 612.

*Burden Hours:* 33,660.

*Abstract:* The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the FFEL program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account.

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Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address [IC DocketMgr@ed.gov](mailto:IC DocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-339 Filed 1-12-06; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Final Procedures for Distribution of Remaining Crude Oil Overcharge Refunds

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of final procedures for distribution of remaining crude oil overcharge refunds.

**SUMMARY:** In a May 21, 2004 Notice, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) announced procedures for making one final round of refund payments in this proceeding. However, there is ongoing litigation that could affect the amount of crude oil monies available for distribution, thus making it unworkable at this point to have a single, last round of payments that would exhaust the remaining crude oil refund monies. We instead announce here that we will issue refunds amounting to approximately 90% of the money due each eligible claimant.

**ADDRESSES:** Inquiries should be addressed to: Crude Oil Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585-1615, and submitted electronically to [crudeoilrefunds@hq.doe.gov](mailto:crudeoilrefunds@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Steven Goering, Staff Attorney, or Richard Cronin, Assistant Director, Office of Hearings and Appeals, Department of Energy; telephone: 202-287-1449, e-mail: [steven.goering@hq.doe.gov](mailto:steven.goering@hq.doe.gov), [richard.cronin@hq.doe.gov](mailto:richard.cronin@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

OHA published a notice of proposed procedures for the distribution of remaining crude oil overcharge refunds in the **Federal Register** on September 30, 2005 ("the September 30 notice"), and requested comments from interested parties. 70 FR 57274. The September 30 notice explained that events and proliferating litigation affecting the windup of this crude oil refund proceeding have precluded the Department from proceeding with the calculation of the per-gallon "volumetric" refund amount that is necessary to make a single, final payment of refunds to all qualified applicants. Calculating the volumetric amount requires two fixed numbers: (1) The amount of funds available for distribution ("the numerator"), which is divided by (2) the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants ("the denominator"). However, as explained in the September 30 notice, the increasing litigation that has been brought to bear on the proceeding may affect both the numerator and the denominator of the volumetric calculation. As a result, the

plan to make a single, final round of refunds to eligible persons is unworkable and cannot be achieved.

We therefore announced a provisional volumetric refund amount and defined that portion of the crude oil monies that would be reserved pending the resolution of the litigation. Specifically, we proposed to make refunds to claimants based upon a volumetric calculated using as a numerator approximately 90% of all available funds, and as a denominator the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants plus the number of gallons claimed in an application denied by OHA that is currently the subject of pending litigation.

We also proposed in the September 30 notice that we not distribute funds to 73 claimants, listed in the notice, whose refunds are currently being challenged by third parties in pending litigation. We proposed that, upon the conclusion of litigation and a final upholding of our refund awards, we would promptly release the funds to the affected claimants.

##### II. Summary and Response to Comments on Proposed Procedures

In response to the September 30 notice DOE received seven comments submitted by a State government, a member of the public, and law firms and filing services that represent eligible claimants. This section of the **SUPPLEMENTARY INFORMATION** summarizes the issues raised in the comments, and gives DOE's response, as follows:

*Comment:* Two commenters disagree with our proposal not to disburse at this time funds that are currently the subject of litigation in which a U.S. District Court awarded plaintiffs attorney's fees in the "amount of thirty percent (30%) of the fund derived from the amount of the increase in the per million-gallon distribution over the \$670 [per million gallons] initially proposed by DOE." *Consolidated Edison v. Abraham*, Civil Action No. 03-1991, *slip op.* at 12 (January 26, 2005). The Department has filed Notices of Appeal regarding this decision, and plaintiffs have filed appeals of the order insofar as it denied the full amount of attorney's fees they sought, which would have amounted to 10% of the entire "Subpart V" crude oil fund, *i.e.*, about \$28 million. See DC Cir. Docket Nos. 05-5089, 05-5090, 05-5223, and Fed. Cir. Docket Nos. 05-1309, 05-1310, 05-1450.

Neither commenter disagreed with the withholding of the amount of the attorney's fee already awarded by the District Court, approximately 4% of the

funds to be disbursed. Rather, they object to the withholding of amounts representing the additional attorney's fees sought by plaintiffs on appeal in that case, an additional 6% of the funds at issue. The commenters question the necessity of withholding funds for the possible success of claims that have become "increasingly questionable" and "been repeatedly found to be meritless."

Similarly, one commenter, a State government, took issue with our proposal not to disburse refunds at this time to those claimants, including the commenter, whose refunds are currently being challenged by third parties in pending litigation. The State government notes that it "decided to earmark the supplemental crude refund to supplement the Low Income Energy Assistance Program" and that if it does not receive its refund at this time, it "will be forced to reduce the 2005–2006 available funding for heating assistance benefits."

*Response:* While we are sympathetic to the expressed concerns that continued litigation is delaying refunds that otherwise could be paid, we nevertheless cannot disburse funds now based on the assumption of a favorable outcome in these cases, given the enormous complications that would result should that assumption turn out to be wrong. Instead, fiscal prudence requires that we reserve sufficient funds to pay the appropriate parties whatever the outcome of this and other pending cases. In the meantime, these funds are being held in an interest-bearing account, the effect of which will be to compensate claimants for the delay in disbursement.

*Comment:* One commenter, the attorney for the private parties in all of the pending litigation at issue, suggests that, before making any disbursement, we calculate a volumetric that represents "the full amount per gallon available if DOE is successful in all pending litigation, \* \* \*." The commenter then suggests that nearly 99.5% of this volumetric, "prior to the 10% reduction" for the pending attorney's fee claim, should be paid to clients of the commenter "as to whom he has waived any common fund fee." Another commenter contends that "[s]uch a differentiated payment cannot be justified, either legally or equitably," arguing that the commenter proposing this scheme "has no authority to decide which claimants pay and which do not for the alleged benefit conferred on the entire group of claimants."

*Response:* We agree with the commenter quoted above that there is simply no basis for paying a higher refund amount to the clients of the

attorney for the private parties in the pending litigation. As a matter of basic fairness, we intend to pay all claimants at the same volumetric rate. Moreover, the January 26, 2005 order of the U.S. District Court, currently being appealed, states that a certain amount of the funds at issue (representing 30% of the volumetric amount exceeding \$0.00067/gallon) be paid out as *attorney's fees*, thus reducing the volumetric refund amount paid to *all* claimants, without exception. We are reserving funds, in part, so that we can comply with this order should it ultimately be upheld. In that event, the funds will be paid to the attorney as attorney's fees, *i.e.*, we will not pay a portion of any attorney fee award directly to his clients.

*Comment:* One commenter also proposes that "the volumetric should be rounded down to the seventh decimal place, rather than the fifth as proposed, in order to better accomplish the goal of distribution of all available funds to the extent practicable."

*Response:* Because there is theoretically no limit to the number of decimal places we could use in the volumetric, whatever number of decimal places we choose can always be faulted for not being great enough. In this sense, there is no "correct" choice. On the other hand, there is no compelling reason why we should not round to a greater number of decimal places. In fact, in prior announcements regarding this proceeding, we have already proposed adding a decimal place to the four used in all prior refund distributions. We therefore calculate the volumetric refund amount below by rounding to the ninth decimal.

*Comment:* The commenter who represents the private parties in the pending litigation also suggests that six additional claimants "be added to the list of those from whom distribution is to be withheld pending conclusion of the litigation."

*Response:* In his court filings, the commenter has repeatedly stated that his clients are challenging the refunds of "fewer than 75 claimants." Our September 30 notice listed 73 claimants whose refunds we identified as potentially being challenged. The commenter, who is the one challenging these refunds on behalf of his clients and who has ready access to the entire list of eligible claimants, is clearly in the best position to identify the particular claims that he is challenging.

In this connection, the commenter identifies six claimants that we did not list in our September 30 notice. These six claimants will be added to the list of those to whom we will not disburse

refunds until the litigation challenging their claims is resolved.

*Comment:* Several commenters addressed the procedures for the distribution of whatever funds remain after the resolution of pending litigation. One comment proposes that the remaining funds be paid without "any further action or submissions by claimants." Another commenter asks OHA to consider further interim distributions upon the resolution of each of the pending court cases, and seeks confirmation that the remaining funds would be paid "only to those individual verified claimants of record as of December 31, 2004." Finally, one commenter states that OHA should commit "to distribute to claimants any remaining funds after the conclusion of litigation."

*Response:* If the DOE prevails in all of the pending litigation at issue, there would likely be sufficient remaining funds to warrant a final distribution. However, with six pending lawsuits, there are literally dozens of hypothetical possible combinations of outcomes, each resulting in a potentially different amount of funds available for distribution. In view of the uncertainties posed by the outstanding litigation, we are not in a position to commit ourselves to any course of action until all pending litigation is resolved.

Similarly, the administrative expense of each distribution of funds also makes impractical further interim distributions to all eligible claimants as each pending case is resolved. However, we plan to make prompt initial distributions to those individual claimants whose refunds we are withholding in their entirety at this time, as soon as each case in which the refunds are being challenged is resolved.

We also can confirm that all further distributions will be made only to those eligible claimants who filed verification information with our office by the December 31, 2004 deadline, and that we will require no additional submission or verification from those claimants beyond that which is required to determine eligibility for the initial distribution. We remind each claimant of its continuing obligation to promptly inform us of any changes to its payment address or bank account deposit information, as required in the Decisions and Orders by which each claimant was originally granted a refund in this proceeding.

*Comment:* One commenter suggests that "every claim about which no further questions remain unresolved should be paid as soon as possible. \* \* \* [W]here the funds can be transferred electronically, the OHA can

and should make all the disbursements immediately. Then, as OHA works through the cases in which questions remain, we encourage administrative choices premised on completing the maximum number of disbursements, rather than distributing the maximum number of dollars. The rough justice required in equitable proceedings favors an administrative course that assures that the maximum number of participants receive as much of their final refund as possible before they lose touch with the proceeding.”

*Response:* We agree with the commenter, and share his desire that refunds be paid as soon as possible. Over the past months, we have worked to resolve pending issues that would delay refunds in particular cases, such as gathering necessary documentation in order to demonstrate that a successor-in-interest to a prior refund recipient should now receive the refund. In doing so, our goal has always been and will continue to be to resolve as many claims as possible, as soon as possible, irrespective of the size of the claims.

### III. Final Refund Procedures

Based on our discussion of the comments above, OHA will adopt the following final refund procedures. First, we will use the method set forth in our September 30 notice for calculating the volumetric refund amount, as follows: We will use as the numerator, \$254,738,494.09, *i.e.*, approximately 90% (or \$255,714,292.20) of all funds available as of December 28, 2005 (\$284,126,991.33)<sup>1</sup> minus the amount of an initial refund claimed in one application that was denied by OHA but is currently the subject of pending litigation (\$975,798).<sup>2</sup> As the denominator, we will use 366,324,981,322 gallons, *i.e.*, the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants (365,715,107,505 gallons) plus the number of gallons claimed in the application denied by OHA that is currently the subject of pending litigation (609,873,817 gallons). This produces a volumetric refund of

<sup>1</sup> One commenter suggests that the “volumetric should be calculated, reflecting all interest earned through a date not more than 15 days prior to distribution.” The volumetric refund amount announced here reflects the most disbursement of refunds as soon as possible after publication of this notice.

<sup>2</sup> As noted by one commenter, were the claimant whose application was denied by OHA to prevail in litigation, that claimant would not only be entitled to the supplemental refund calculated using the volumetric announced here, but also in the initial refund that has already been paid to other successful claimants, *i.e.* \$0.0016/gallon of approved petroleum product purchases.

\$0.000695389 and distributes approximately 90% of the money due to over 99.75% of all eligible claimants.<sup>3</sup>

Also as proposed in our September 30 notice, we will not distribute refunds at this time to certain claimants whose refunds are currently being challenged by third parties in pending litigation.

Below is a list of these claimants:

RF272-00011 DEFENSE LOGISTICS AGENCY;  
 RF272-00350 WISCONSIN DEPT. TRANSPORTATION;  
 RF272-00512 STATE OF WEST VIRGINIA;  
 RF272-04416 STATE OF CONNECTICUT;  
 RF272-08074 STATE OF CONNECTICUT;  
 RF272-09853 WASHINGTON STATE PATROL;  
 RF272-11717 WASHINGTON STATE DEPT. TRANS.;  
 RF272-12181 NEBRASKA PUBLIC POWER DIST.;  
 RF272-12588 STATE OF CONNECTICUT;  
 RF272-17487 KENTUCKY DEPT. OF EDUCATION;  
 RF272-18164 STATE OF NORTH DAKOTA;  
 RF272-18963 STATE OF NEW MEXICO;  
 RF272-19364 STATE OF MISSOURI;  
 RF272-19386 STATE OF VERMONT;  
 RF272-19457 STATE OF SOUTH DAKOTA;  
 RF272-20947 LUBRIZOL CORPORATION;  
 RF272-23229 DISTRICT OF COLUMBIA;  
 RF272-23790 HERCULES, INC.;  
 RF272-25793 OHIO DEPT. OF TRANSPORTATION;  
 RF272-28260 WASHINGTON STATE FERRIES;  
 RF272-35431 MARYLAND STATE AVIATION ADMIN.;  
 RF272-44094 OHIO STATE HWY. PATROL;  
 RF272-44344 STATE OF SOUTH CAROLINA;  
 RF272-45477 ILLINOIS STATE TOLL HWY. AUTH.;  
 RF272-49283 COMMONWEALTH OF KENTUCKY;  
 RF272-49892 NEBRASKA ENERGY OFFICE;  
 RF272-49898 STATE OF KANSAS;  
 RF272-50638 WASHINGTON STATE DEPT. OF TRANS.;  
 RF272-51829 WASHINGTON STATE PARKS & REC.;

<sup>3</sup> We round down the volumetric refund amount to the ninth decimal place. As explained in the September 30 notice, rounding down ensures that there will be sufficient funds to pay refunds at a given volumetric refund amount.

RF272-54955 U.S. POSTAL SERVICE;  
 RF272-56597 STATE OF OKLAHOMA;  
 RF272-59085 STATE OF UTAH, ENERGY OFFICE;  
 RF272-59907 STATE OF COLORADO;  
 RF272-60251 STATE OF WISCONSIN;  
 RF272-61569 STATE OF MINNESOTA;  
 RF272-61591 ARKANSAS HWY. & TRANS. DEPT.;  
 RF272-62009 STATE OF NEW HAMPSHIRE;  
 RF272-62522 STATE OF NEW YORK;  
 RF272-63433 STATE OF DELAWARE;  
 RF272-63623 MARYLAND STATE HWY. ADMIN.;  
 RF272-63624 MARYLAND DEPT. GENERAL SERVICE;  
 RF272-64195 STATE ARIZONA DEPT. OF TRANS.;  
 RF272-64288 STATE OF ARKANSAS;  
 RF272-64986 STATE OF FLORIDA;  
 RF272-65199 STATE OF IOWA;  
 RF272-65200 IOWA DEPT. OF TRANSPORTATION;  
 RF272-65398 STATE OF NEVADA;  
 RF272-65470 STATE OF MICHIGAN;  
 RF272-65524 ILLINOIS DEPT. OF COMMERCE;  
 RF272-65526 ALASKA DEPT. OF TRANS. & PUB. FAC.;  
 RF272-66878 NEW YORK TRANSIT AUTHORITY;  
 RF272-67007 COMMONWEALTH OF PENNSYLVANIA;  
 RF272-67187 STATE OF INDIANA;  
 RF272-67248 STATE OF CALIFORNIA;  
 RF272-67313 STATE OF TEXAS;  
 RF272-67507 STATE OF VERMONT DEPT. OF COR.;  
 RF272-67509 STATE OF VERMONT—TRANSPORTATION;  
 RF272-67563 OREGON DEPT. OF GEN. SERVICES;  
 RF272-67586 STATE OF ALABAMA;  
 RF272-68243 NEW JERSEY TRANSIT CORP.;  
 RF272-68934 NEW YORK STATE THRUWAY AUTH.;  
 RF272-69744 STATE OF NEW JERSEY;  
 RF272-69948 WEST VIRGINIA HWY. DEPT.;  
 RF272-71331 STATE OF TENNESSEE;  
 RF272-72465 COMMONWEALTH OF MASSACHUSETTS;  
 RF272-74169 STATE OF MAINE;  
 RF272-75269 VIRGINIA DEPT. OF STATE POLICE;  
 RF272-75775 R.I. DEPT. OF ADMINISTRATION;  
 RF272-76126 U.S. DEPT. OF AGRICULTURE;  
 RF272-87985 STATE OF MARYLAND;

RF272-97101 CHESEBROUGH-  
POND'S USA CO.;

RF272-98890 COMMONWEALTH OF  
VIRGINIA;

RG272-00507 STATE OF OHIO;

RK272-00147 STATE OF MONTANA;

RK272-00362 STATE OF KANSAS;

RK272-03404 WYOMING DEPT. OF  
TRANSPORTATION.;

RK272-03418 STATE OF GEORGIA—  
ENERGY RES.;

RK272-04041 STATE OF NORTH  
CAROLINA;

RR272-00207 STATE OF  
TENNESSEE.

We note that six of the claimants listed above were not listed in our September 30 notice. Thus, while the general public, including these six claimants, has been given notice and an opportunity to comment on our proposal to withhold payment on claims currently being challenged in court, these six claimants were not put on notice that this decision would directly and adversely impact them. Thus, each of these claimants should be given an opportunity to show that, in fact, its claim should not be included in the list—*i.e.*, is not among those currently being challenged in pending litigation. If such a showing is made by any of the six claimants within 30 days of the date of this notice, we will not delay the distribution of a refund to that claimant. In any event, upon the conclusion of any of the litigation challenging particular refund claims, if our refund award is upheld we will promptly order the disbursement of refunds to the affected claimant(s).

It is imperative that all refund recipients immediately inform OHA in the event of any change of payment address or bank account deposit information. DOE will not attempt to locate payees of returned refund payments, and the associated funds will be divided equally between the States and the Federal Government.

Issued in Washington, DC, on January 6, 2005.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*  
[FR Doc. E6-373 Filed 1-12-06; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. RF-006]

### Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Liebherr Hausgeräte From the DOE Refrigerator and Refrigerator-Freezer Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petition for waiver and solicitation of comments.

**SUMMARY:** Today's notice publishes a petition for waiver for Liebherr Hausgeräte (Liebherr). The Liebherr petition requests a waiver to modify the refrigerator test procedure for the Liebherr line of combination wine storage-freezer products. The Department of Energy (DOE or Department) is soliciting comments, data, and information respecting the petition for waiver.

**DATES:** The Department will accept comments, data, and information not later than February 13, 2006.

**ADDRESSES:** DOE will accept comments on this petition, identified by case number RF-006, and submitted by any of the following methods:

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121.
- *Telephone:* (202) 586-2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J-018, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket: For access to the docket to read copies of public comments received, this notice, and the petition for waiver, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611; e-mail: [Michael.Raymond@ee.doe.gov](mailto:Michael.Raymond@ee.doe.gov); or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507; e-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov), or [Thomas.DePriest@hq.doe.gov](mailto:Thomas.DePriest@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291-6309) provides for the "Energy Conservation Program For Consumer Products Other Than Automobiles" which requires, among other things, that DOE prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The relevant DOE test procedure for purposes of today's decision and order is "Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-freezers" (current test procedure). The current test procedure is set forth in 10 CFR part 430, subpart B, Appendix A1. It prescribes a method for characterizing the energy requirements of all types of refrigerators and refrigerator-freezers and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to waive temporarily the test procedure for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(1)) Waivers generally remain in effect until final test procedure amendments become effective, thereby