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Standby Gasoline Rationing Plan

June 1980

U.S. Department of Energy
Economic Regulatory Administration
Office of Regulations and Emergency Planning



Standby Rationing Plan 80-1

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U.S. Department of Energy
Economic Regulatory Administration
Office of Regulations and Emergency Planning
Washington, D.C. 20461



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TITLE 10 - ENERGY

CHAPTER II - DEPARTMENT OF ENERGY

PART 570 - STANDBY GASOLINE RATIONING PLAN REGULATIONS

Standby Gasoline Rationing Plan

[Docket No. ERA-R-79-54-A]

AGENCY: Economic Regulatory Administration,
Department of Energy

ACTION: Final Rule

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to direction from the President of the United States, hereby publishes final rules adopted by the President for a Standby Gasoline Rationing Plan. Development of this rationing plan is required by the Energy Policy and Conservation Act (Pub. L. 94-163, EPCA), as amended by the Emergency Energy Conservation Act of 1979 (Pub. L. 96-102, EECA).

Pursuant to the procedures specified in EPCA, the plan will be submitted by the President to Congress for review over a period of 30 days. If not disapproved by Congress, these regulations will remain in standby status. They would become effective only upon a determination by the President that putting the Standby Gasoline Rationing Plan into effect is necessary to respond to a severe petroleum shortage or to meet international energy program obligations, in accordance with the procedures specified in the EPCA.

The Standby Gasoline Rationing Plan is intended to provide a basic framework for distribution of ration rights to end-users of gasoline. In many instances the regulations are broad in scope, and details will have to be provided in further regulations, guidelines and orders. These details will be developed during the so-called "pre-implementation period," which is expected to take several months. Only after this time will the complete gasoline rationing plan be ready for implementation.

The plan provides that eligibility for ration allotments will be determined primarily on the basis of motor vehicle registrations, taking into account historical differences in the use of gasoline among States. The regulations also provide authority for supplemental allotments to firms so that their allotment will equal a specified percentage of gasoline use during a base period. A priority classification, including, for example, national security, newspaper distribution, rental vehicles, agriculture and for hire mail and small parcel transportation and delivery, is established to assure adequate gasoline supplies for designated essential services.

Ration rights are required by the regulations to be provided by end-users to their suppliers for each gallon sold, and suppliers must provide "redeemed" (cancelled) ration rights to their suppliers on a gallon-for-gallon basis in order to be resupplied. Ration rights are freely transferable. A ration banking system is created to

facilitate transfers of ration rights and redeemed ration rights. Each State will be provided with a reserve of ration rights to provide for hardship needs and to alleviate inequities. A small national reserve also is established to meet emergency needs and other national purposes.

DOE will regulate the distribution of gasoline at the wholesale level according to the transfer by suppliers of redeemed ration rights and the gasoline allocation regulations in 10 CFR Part 211, if such regulations are in effect. The Secretary of Energy may, pursuant to his authority under other law, limit the impact of the allocation regulations in order to prevent any overlap and inconsistency with the rationing plan.

Development of any end-user gasoline rationing plan necessitates difficult tradeoffs between equitably meeting the diverse needs of millions of gasoline users and creating a program capable of rapid implementation with limited administrative complexity. Although the rationing plan, if fully implemented, would be costly and administratively complex, options have been incorporated into the plan to provide, to the maximum extent practical, equity among gasoline users throughout the Nation and to provide flexibility to minimize disparities within States.

Any gasoline rationing plan will inconvenience large numbers of gasoline users and will cause hardships to many persons. But in times of serious shortage, gasoline rationing

would assure access to some gasoline by all motorists (particularly priority users) and would also help to eliminate waiting lines, stabilize the market for gasoline, and mitigate the economic dislocations caused by a severe petroleum shortage.

DATES: Comments by August 15, 1980, 4:30 p.m.

ADDRESSES: All comments to: Office of Public Hearing Management, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

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I. Background and Statutory Requirements

On December 7, 1979, the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearings (44 FR 70799, December 10, 1979) to amend Chapter II, Title 10 of the Code of Federal Regulations by adding a new Part 570 setting forth regulations with respect to a Standby Gasoline Rationing Plan.^{1/} Written comments were invited and public hearings were held in Washington, D.C., New Orleans, Boston, San Francisco, Chicago and Seattle. Over 1300 written comments were received, and over 200 oral presentations were made at the six public hearings. Commenters included private citizens from every section of the country and representatives of an extremely broad range of business activities, consumer groups, interest groups and Federal, State and local governmental units. We are satisfied that virtually every interest that would be affected by the plan is represented in the comments and statements that were submitted. The comments submitted have been carefully considered, and several changes to the proposed plan have been made in response to the public comments.

Development by the President of a gasoline rationing plan is required by sec. 203 of the Energy Policy and Conservation Act (Pub. L. 94-163, EPCA), as recently amended by the Emergency Energy Conservation Act of 1979 (Pub. L. 96-102, EECA).

EPCA sec. 203(a)(1) provides that:

As soon as practicable after the date of the enactment of the Emergency Energy Conservation Act of 1979, the President shall prescribe, by rule, a rationing contingency plan....

^{1/} The history of previous DOE gasoline rationing plans is discussed in the Notice of Proposed Rulemaking, 44 FR at 70803.

The Secretary of Energy has been delegated the authority to develop for the President's consideration the gasoline rationing plan prescribed under EPCA section 203. (Executive Order 11912 (41 F.R. 15825, April 15, 1976), as amended by Executive Order 12038 (43 F.R. 4957, February 7, 1978)).

Although the EPCA does not specify a time limit for promulgation of a gasoline rationing plan, the Secretary of Energy has ordered that the plan be developed as expeditiously as possible consistent with the procedural requirements of the EPCA, EECA and other laws. 1979 was a year characterized by a temporary cessation of oil supplies from Iran and shortages of gasoline, aviation fuel, diesel fuel and other products. In response to the seizure of U.S. embassy employees in Tehran, the President issued a proclamation on November 12, 1979, which prohibits the importation into the U.S. of oil that originated in Iran. Prior to this action, Iran supplied 4-5 percent of our total oil supply.

The hostage situation in Tehran and the recent Soviet invasion of Afghanistan have continued to provoke further turmoil and unrest in the Middle East, an area which supplies over 60 percent of the petroleum consumed by the Western industrial nations. The beginning of the 1980's, therefore, is characterized by insecure foreign sources of petroleum

and a potential threat of gasoline shortages, underscoring the need for the government to have in place a Standby Gasoline Rationing Plan as soon as possible so as to be prepared to manage a severe gasoline shortfall.

The recent amendments to EPCA changed significantly the process by which a gasoline rationing contingency plan is approved by Congress and implemented by the President. EPCA sec. 201(d), as amended by the EECA, provides generally that the President must submit the rationing plan to Congress for review over a period of 30 days. The plan will be considered approved after that period unless a joint resolution of disapproval is enacted (which occurs when both Houses of Congress adopt the resolution and the President does not veto it, or, if the President vetoes it, both Houses of Congress override the veto by a two-thirds margin). A plan may be approved affirmatively by Congress in less than 30 days.

Pursuant to EPCA sec. 201(d), as amended, an approved plan would remain in standby status and could be imposed only if the President found that putting the plan into effect is required by a severe energy supply interruption or

is necessary to comply with obligations of the United States under the international energy program. EPCA sec. 201(d) defines a severe energy supply interruption as a national energy supply shortage which the President determines has resulted or is likely to result in a 20 percent shortfall, with respect to projected normal demand, of gasoline and middle distillate fuels for a period of at least 30 days. The shortfall must be one which is not manageable under other energy emergency authorities, is expected to persist for a substantial period of time and is expected to have a major adverse impact on national health or safety or the national economy. An international energy program obligation must have comparable impacts. The President must notify the Congress of his finding together with a request to implement rationing.

EPCA sec. 201(d) further provides that the President may request the Congress to waive the finding requirement described above.

The EPCA, as amended, also provides that an approved plan could be amended provided the Congress is notified and the proposed amendment lies before the appropriate committees of Congress for at least 15 days, or each such committee has transmitted to the President written notice that such committee has no objection to the amendment. Once a plan is implemented by the President in an emergency it can be amended only if the President transmits the amendment to Congress.

If this Standby Gasoline Rationing Plan regulation is adopted according to these procedures, it might remain in standby status for a substantial period of time after approval by Congress before it would have to be implemented. In addition, developing a program for rationing gasoline on a national level is a unique and extraordinarily complex undertaking. Preparation of a complete gasoline rationing program will require several months of pre-implementation planning and effort by DOE to complete the details of such a far-reaching program. In consideration of these factors and the necessity of having a plan ready as soon as possible, the final regulations strike a balance between providing as much detail as practicable, yet retaining the flexibility to respond to a broad range of situations. Given the delicate balance of the world oil situation, the Standby Gasoline Rationing Plan must be capable of implementation in a range of circumstances. It is contemplated that further rules, orders and guidelines consistent with the general plan will be issued during the pre-implementation period and at the time rationing is implemented to provide any necessary additional details. These rules, orders, or guidelines will be adopted only after public comments are received and considered in accordance with normal rulemaking procedures.

They will not be subject to formal Congressional review unless they change the Standby Gasoline Rationing Plan.

II. Other Statutory Requirements of the EPCA

Section 203(a)(1) of the EPCA, as recently amended by the EECA, establishes the general framework that must be included in any rationing contingency plan. The plan shall provide, consistent with the attainment to the maximum extent practicable of the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, EPAA),

(A) for the establishment of a program for rationing and ordering of priorities among classes of end-users of gasoline and diesel fuel used in motor vehicles, and

(B) for the assignment of rights, and evidence of such rights, to end-users of gasoline and such diesel fuel, entitling such end-users to obtain gasoline or such diesel fuel in precedence to other classes of end-users not similarly entitled.

The rationing plan also must take into account the mobility needs of the handicapped.

EPCA sec. 203(a)(3), as amended, prescribes that any rationing plan must (1) distribute end-user rights on a State-to-State basis that results in the degree of shortfall being equally shared among the various States, (2) make end-user rights available on a basis which takes into account fairly the relative needs of end-users, and (3) ensure that adequate end-user rights are available to carry out sections 203(a)(1)(A) and (B) quoted above.

EPCA also provides that the President, in developing the rationing plan, make provisions for use of local boards to respond to hardship and other needs.

Section 203(e) of the EPCA prohibits any rationing contingency plan developed under the EPCA from:

- (1) Imposing any tax;
- (2) Providing for a credit or deduction in computing any tax; or
- (3) Imposing any user fee, except to the extent necessary to defray the cost of administering the rationing contingency plan or to provide for initial distribution of end-user rights.

III. Final Standby Gasoline Rationing Plan

In response to numerous public comments and further study and effort by DOE, the final Standby Gasoline Rationing Plan has been modified in many substantial respects from the proposal. These changes are discussed in detail in the section by section analysis.

Many of the comments focused on specific issues which likely will be the subject of further rationing rulemakings during the pre-implementation period. Such rulemakings will be required to work out the details of the rationing program. At such time, all relevant comments received in response to the proposed plan will be given further attention, together with comments submitted in response to those rulemakings.

IV. Summary of the Final Standby
Gasoline Rationing Regulations

A. Distribution of Ration Rights

In order to carry out, to the maximum extent possible, the dual objectives of the EPCA to distribute ration rights among the States on the basis of historical use and to provide equitable distribution among all classes of end-users, the distribution of ration rights will be as follows:

For each ration period, DOE will project the national total available supply of gasoline. This amount will determine the total number of ration rights that will be made available. These ration rights will be distributed generally as follows:

(1) A small percentage of these rights will be reserved for distribution for a National Ration Reserve.

(2) The total number of ration rights to be distributed to classes of end-users within each State will be determined on a State-by-State basis that takes into account historical use of gasoline by those classes in that State. With the exception of agriculture, allotments for firms and priority activities in each State will be taken from that State's share of total allotments. Agriculture priority allotments will be distributed before distributions are made to individual States to avoid distortions that might otherwise be caused to other classes of end-users because of the size of this priority category. Under this procedure, each class of end-user in one State would share any shortfall equally (as measured against historical use) with the corresponding class of end-user in other States.

(3) A percentage of each State's ration rights will be reserved for a State Ration Reserve, from which the State will make distribution to meet hardship needs.

(4) DOE will provide allotments to firms and priority class activities on the basis of their historical use of gasoline.

(5) In each State, the remaining ration allotments will be distributed to all other registrants, eligible individuals and other persons entitled to allotments on a per vehicle basis.

B. Entitlements for Ration Allotments

1. Eligibility for ration allotments will be primarily on the basis of motor vehicle registration. However, DOE will implement a system by which such allotments will be

supplemented for all business firms and priority users based upon their historical use of gasoline. Persons (whether individuals or firms) with the most recent valid vehicle registration for an eligible vehicle will receive ration allotments. Authority is provided for a limit to be imposed on the number of ration rights distributed to any person or household. Provisions will be made for the expeditious transfer of eligibility for ration allotments when a vehicle is transferred. Provisions also will be made to enable purchasers of new cars to obtain ration rights on an expedited basis.

2. All vehicles, except motorcycles and mopeds, will receive the same allotment. Motorcycles will receive one-fourth of the allotment for other vehicles, and mopeds will receive one-tenth of an allotment. Firms will receive the same per vehicle allotments but will be able to supplement them with additional allotments to reflect their historical usage of gasoline.

3. DOE will issue supplemental allotments for certain priority activities, such as national security, agriculture, law enforcement, fire fighting, United States Postal Service, emergency medical services, public passenger transportation, sanitation services, search and rescue, snow removal, telecommunications services, gas and electric utilities service, newspaper distribution, energy production activities, vehicle rentals and firms engaged in for hire mail and small parcel transportation and delivery.

C. Issuance and Distribution of Ration Rights

1. DOE will distribute ration rights by printing and mailing Government ration checks to eligible ration recipients.

2. Ration recipients will be permitted to exchange Government ration checks for ration coupons at designated coupon issuance points, endorse them for deposit in a ration rights account, endorse them for transfer or sale to any individual or firm, or exchange them for gasoline to a willing supplier.

D. Gasoline Sales

1. DOE will control the sale of gasoline by requiring that each purchaser of gasoline at a retail sales outlet present ration rights (coupons or checks) to the retailer equal on a gallon basis to the amount of gasoline purchased. DOE will establish procedures by which bulk purchasers and other wholesale purchaser-consumers shall transfer ration rights to their suppliers.

2. Retail outlets and other suppliers of end-users will be required to "redeem" the ration rights received in exchange for gasoline sold. Certain gasoline suppliers may be required to open "redemption accounts" for the deposit of redeemed ration rights.

3. Suppliers will be required to remit to their suppliers redeemed ration rights or a redemption check drawn on a redemption account equal on a gallon basis to the amount of gasoline received.

4. Principal suppliers, i.e., refiners and importers, will be required periodically to write a redemption check to

DOE equal on a gallon basis to the volume of gasoline sold during a given reporting period.

E. Relationship of Allocation Program to Rationing

1. As is explained more fully in the section by section analysis, the Secretary of Energy's authority to allocate gasoline under the EPAA regulations in 10 CFR Parts 210 and 211 is distinct from the rationing authority in EPCA, and is not subject to EPCA review procedures. At the time rationing is implemented, the Secretary of Energy will have the discretion under his EPAA authority either to continue allocation controls or to rely solely upon the Standby Gasoline Rationing Plan to allocate gasoline.

2. To the extent that Parts 210 and 211 remain in effect and the provisions of these regulations are inconsistent with the provisions in Parts 210 and 211, the rationing regulations will control. The principal impact of these regulations on the allocation program, if it remains in effect, is that each purchaser's right to receive product will be limited by the number of ration rights or redeemed ration rights it has to transfer for the gasoline.

3. The Secretary of Energy is provided in these regulations with authority to prohibit suppliers from increasing above a specified limit transfers of gasoline to certain purchasers. This provision will be important particularly if the allocation requirements of Part 211 are not in effect, since they will allow the Secretary to prevent a supplier from increasing supplies to its own retail outlets at the expense of independent retailers which it also supplies.

F. Ration Banking

1. Subject to conditions to be established by DOE, any firm or individual will be permitted to open a ration rights account at a participating bank. Ration rights accounts will operate in much the same manner as monetary checking accounts, i.e., account holders will be able to deposit ration coupons and ration checks in their accounts and can write ration checks against their accounts.

2. Gasoline suppliers will be able to open "redemption accounts" for the deposit of redeemed ration coupons and ration checks. Redemption checks can be written against these accounts, payable to other suppliers for resupply of gasoline. Suppliers will receive an initial redemption advance in order to permit them to be resupplied until they have accumulated sufficient redeemed ration rights. DOE may place restrictions on the transfer of redeemed ration rights other than for the resupply of gasoline if such restrictions are necessary to prevent fraud or abuse.

G. The Ration Rights Market

1. Ration coupons that have not been redeemed will be freely transferable. DOE does not intend to regulate the ration rights market directly, but the final plan reserves the right to do so, if in DOE's judgment such regulation becomes necessary to prevent abuses.

2. In order to facilitate the establishment of a market for ration coupons, DOE has the authority under the regulations to sell some ration rights to the public, provided such sale does not cause the total number of issued ration rights to exceed the total amount of gasoline available. In addition DOE can authorize the States to sell ration rights from the State Ration Reserves (see below). DOE also is authorized, to the extent appropriations are available, to buy and sell coupons whenever necessary to equilibrate the number of issued ration rights with the actual supply of gasoline.

H. National Ration Reserve

A percentage of the total ration rights issued will be reserved for the establishment of a National Ration Reserve. The National Ration Reserve will be used to meet national disaster relief needs and other national emergencies, to provide allotments to Canadian and Mexican firms that drive vehicles across the border for the purpose of conducting business in the United States, and for such other purposes as DOE finds necessary.

I. States' Role in Gasoline Rationing

1. A percentage of the ration rights to be issued within each State will be reserved for distribution to that State as a State Ration Reserve, to be used by the State primarily for the relief of hardship. The States will have broad discretion and flexibility in the administration of the State Ration Reserves but will be required to submit to DOE a plan describing how the State Ration Reserve will be administered before receiving the ration rights. DOE can authorize the States to sell to the public a portion of the State Ration Reserve in order to facilitate the establishment of a market for ration coupons.

V. Section by Section Analysis of the
Standby Gasoline Rationing Regulations

A. General Provisions

1. § 570.1 Scope and Effective Date

Section 570.1 provides that gasoline rationing will be effective in all or such parts of the United States as specified by DOE. Several comments urged that the State of Alaska be exempted from gasoline rationing because of many unique factors existing in that State, primarily associated with climatic conditions and sparse population. Section 570.1 will permit DOE to exempt a State or a territory from rationing if such an exemption would result in a more equitable and efficient distribution of gasoline, but it would be more appropriate to postpone such a decision until more facts can be developed during the pre-implementation period.

Section 570.1(c) has been modified so as to clarify the applicability of 10 CFR Parts 205, 210, 211, and 212 to rationing. The procedural regulations contained in Part 205 will be applicable to this Part, unless the Secretary of Energy by rulemaking modifies Part 205 to reflect the specialized needs of rationing. The Secretary may conclude, for example, that it would be preferable to develop a separate appeals mechanism within DOE for rationing issues, rather than relying upon the procedures in Part 205.

The authority to administer Parts 210, 211 and 212 of 10 CFR during a period of rationing is not dependent upon the rationing provisions of the EPCA or the EECA, but on the EPAA and the regulations issued thereunder. The

Secretary will determine under his discretionary EPAA authority which provisions of the allocation and pricing regulations will remain in effect during rationing. Section 570.1(c) provides that if any provisions of Parts 210, 211 and 212 are in effect at the time rationing is in effect, they will apply to rationing. It is further provided, however, that if any of the provisions of these regulations are inconsistent with any provisions of any other Part of this Chapter, the provisions of Part 570 shall control.

2. § 570.2 General Definitions

Most of the definitions which were proposed in the December 7 notice have been adopted as proposed. There are two new definitions and several modifications to definitions. The explanations in the preamble to the proposed regulations (44 FR at 70810, Dec. 10, 1979) of definitions which have not been modified remain valid.

"Agriculture" has been defined to mean agricultural production as defined in 10 CFR Part 211, and related distribution of agricultural products. Further information on the meaning of this definition is included in the discussion below of priority activities.

The definition of "base year" has been changed from the proposed regulation. As proposed, the base year would have

been the same base year as in the allocation regulations, 10 CFR Part 211, or the 12 month period specified by DOE. We have determined that it is not necessary for the rationing regulations to be tied to the base year definition for allocation, and that it is preferable to use the most recent base year for which data is available, regardless of whether that is the base year for allocation purposes. This is so because the allotments to firms would then be made using the same historical period as that used for State-by-State

distribution, which must be done according to "the most recent base period use data available." EPCA sec. 203(a)(3). Moreover, if it is determined that gasoline should be resupplied to dealers on the basis of their redeemed ration rights only, as is likely, the base year under the allocation program becomes much less significant. We therefore have defined the base year as the most recent 12 calendar month period for which accurate and reliable gasoline use data are available. If rationing remains in effect for a prolonged period, the base year may change as new gasoline use data is collected.

The definition of "emergency services" has been expanded to include search and rescue activities and utilities services. These activities too will be entitled to receive supplemental allotments of ration rights as priority class firms. Further effort will be necessary during pre-implementation to establish a precise definition of "search and rescue activities."

"Utilities services" has been defined to include repair, operation and maintenance of gas and electric service to the public by public utilities. This definition is intended to encompass only the systems involved and does not include repairs to appliances and devices owned by the consumer, whether such service is performed by the public utility or a private firm. Furnace repair is an example of a service which is not covered by the definition.

The term "Governor" is used in the final regulations and has been defined to mean the chief executive officer of the State (the definition of which includes the District of Columbia, Puerto Rico and U.S. territories and possessions).

A definition of "person" has been added to the final regulations which includes any individual, corporation, partnership, association or any other organized group, and includes any agency of the United States Government or any other government.

The definition of "bulk purchaser" has been modified to have the same meaning as it does under the allocation regulations. The term is defined in 10 CFR § 211.102, and presently is defined as any firm which is an ultimate consumer and which, as part of its normal business practice, purchases or obtains motor gasoline from a supplier and either (a) receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location, (b) with respect to use in agricultural production, receives delivery into a storage tank with a capacity not less than 50 gallons substantially under the control of that firm, or (c) receives delivery of that product for use in cargo, freight and mail hauling by truck.

The definition of "retail sales outlet" has been modified from the definition contained in the allocation regulations, 10 CFR § 211.51. Many commenters expressed concern that the

proposed definition did not include marinas and other suppliers to gasoline consuming equipment other than motor vehicles. The term "retail sales outlet" has been defined so as to make it clear that the term is intended to include the typical gas station and marina as well as any other retail site where gasoline is sold to end-users (other than into the user's gasoline storage tank at a fixed location). A retailer who provides gasoline delivery service to large consumers who have a gasoline storage tank at a fixed location is not, in such sales, considered to be selling from a "retail sales outlet" under these regulations.

Many comments were received urging that the definition of "telecommunications services" be modified so as not to limit the activity to "periods of substantial disruption of normal service." It was argued that it is impractical to grant a priority after the emergency has occurred. Rather, providing the priority in advance likely could prevent many disruptions in services from occurring. We found these arguments to be persuasive and have modified the definition accordingly. Under the revised definition, telecommunications firms will be able to receive priority allotments at the beginning of a rationing period in amounts sufficient to provide for anticipated repair, operation and maintenance needs. In response to several commenters who felt that the definition discriminated against competitors of the telephone

companies, firms which provide the same services in direct competition with common carriers also have been included in the priority classification. By way of illustration, if a firm which is not a common carrier services office telephone equipment in competition with a telephone common carrier, it will be entitled to a priority allotment, limited, of course, to the extent of service to such competitive equipment.

A few other modifications were made to definitions so as to clarify their intent. Other definitions will be discussed below in the separate sections where these terms are applied.

3. § 570.3 Penalties and Violations

Section 570.3 is unchanged from the proposal and provides that any person who violates any provision of these regulations or any further regulations or orders issued under them will be subject to the penalties set forth in section 5 of the EPAA, sections 524 and 525 of the EPCA, and Subpart P of 10 CFR Part 205. Section 570.3 also imposes an obligation upon all firms having custody, care or control of ration rights to take all reasonable precautions against the use of counterfeit and altered ration rights, as well as a duty to safeguard ration coupons, Government ration checks and other ration rights from embezzlement, loss, theft, damage or unauthorized destruction.

Subsections (c), (d) and (e) of § 570.3 specifically proscribe counterfeiting, fraud and related activity with respect to ration checks, ration coupons or other ration rights, as well as with respect to redemption checks. Additionally, subsection (f) implements section 105(b)(5) of the Emergency Energy Conservation Act of 1979, providing that ration rights or any other evidence of right prepared by or on behalf of the United States for use in connection with a rationing contingency plan shall be considered to be an obligation or other security of the United States for purposes of the criminal statutes in Title 18, United States Code.

4. § 570.4 Reporting Requirements

Section 570.4 of the regulations authorizes DOE to require filing of such reports or information as it deems necessary to administer the Standby Gasoline Rationing Plan.

5. § 570.5 User Fees

Section 570.5(a) of the final regulations retains the provision permitting DOE to impose a uniform fee on each gallon sold during the period for which rationing is in effect. Under the EPCA, such a fee can be imposed only to the extent necessary to defray administrative costs or to provide for initial distribution of ration rights.

Many jobbers, retailers, State governments and other commenters were concerned about the substantial administrative costs they may incur during rationing. A new section 570.5(b) has been added which provides that DOE shall establish

procedures to provide for reimbursement of some or all administrative and related costs incurred by coupon issuance points, State and local governments and such other firms and governmental units as shall be called upon to implement the Standby Gasoline Rationing Plan. These costs would include the costs of administering the State Ration Reserves, costs incurred by firms serving as coupon issuance points, and costs incurred by other firms that are called upon by government to provide services for the ration rights distribution, use and collection process. Costs incurred by ration recipients would not be reimbursable under this section. In addition, it is not intended that reimbursement of costs will be made under this section to firms that recover such costs by passing them on to their customers. Thus, for example, no provision has been included for suppliers to recoup additional costs resulting from rationing since DOE's pricing regulations in 10 CFR Part 212 already provide a mechanism to recover such costs. It is expected that banks which provide ration banking services (other than coupon distribution) will recover the cost of providing such services by charging a service fee to their customers.

6. § 570.6 Authority to Contract or Delegate

Section 570.6 provides DOE with the authority to delegate any of the functions contained in these regulations to any other governmental agency at the Federal, State or local level. This section also gives DOE authority to contract for goods and services necessary to implement rationing.

7. § 570.7 Authority to Issue Further Regulations and Orders

These regulations may be in a standby status for a substantial period after Congressional approval before they would have to be implemented. Also, the need for certain authorities may not be ascertained until they are identified during the pre-implementation process. Accordingly, there are many instances in the regulations where the need for further orders, rules or guidelines is anticipated. Section 570.7 provides authority to issue such rules, orders and directives in order to implement these regulations.

Although an implementing regulation will not be an amendment to the rationing plan (provided, of course, it is consistent with the plan) and therefore will not be subject to Congressional review, it will have to be promulgated in accordance with applicable administrative procedures, including an opportunity for public input, as required by sec. 203(h) of EPCA. DOE also will, to the maximum extent possible, obtain comments from the public prior to the issuance of any orders or guidelines which are developed for the rationing program during pre-implementation.

Any regulation which amends this Standby Gasoline Rationing Plan will be submitted for Congressional review in accordance with the EPCA procedures.

B. Ration Rights: General Provisions

1. § 570.11 Distribution of Ration Rights

The Standby Gasoline Rationing Plan provides, in § 570.11(a), that DOE will issue ration rights in the form of Government ration checks or will deposit them (through, for example, electronic transfers) directly into ration rights accounts. Flexibility also is retained to allow DOE to distribute ration allotments by any other means that it determines to be expeditious and efficient in the circumstances, as long as the amount of the allotments made to each recipient are determined in accordance with Subpart C.

The regulations provide in § 570.11(b) that DOE may establish procedures whereby all or a portion of the ration rights allotted to a State Ration Reserve may be distributed by DOE. Such a situation may arise, for example, where a State has accumulated a large number of ration rights in the State Ration Reserve and for the next ration period would rather have DOE distribute the Reserve's allotment for that period directly to ration recipients within the State. Or, if a State is not administering its Reserve in accordance with an approved plan, DOE could issue those ration rights that would have gone into the Reserve directly to ration recipients within the State.

Section 570.11(c) as proposed in the December 7 notice, which would have allowed for the separate rationing of leaded and unleaded gasoline and gasohol, has been eliminated. Many commenters pointed out that a bifurcated rationing plan would be excessively complicated and expensive. We agree. However, if further analysis of this issue during pre-implementation should reveal that a single rationing system would exacerbate fuel-switching or would have other environmentally harmful effects, we will consider an amendment to adopt the more complicated system. Further comments are invited on this issue.

It should be noted that this plan deals only with the rationing of gasoline. Gasohol, which typically is a blend of 90 percent unleaded gasoline and 10 percent ethyl alcohol, will be subject to rationing only to the extent of its gasoline content. Therefore, the purchase of a 90/10 blend of gasohol will require only nine-tenths as many ration rights as the purchase of the same volume of pure gasoline. (See discussion below of § 570.43(e)).

2. § 570.12 Disposition of Government Ration Checks

Section 570.12 has been adopted as proposed. Government ration checks will be exchangeable for ration coupons at designated issuance points (see discussion below). Additionally, a Government ration check will be transferable by endorsement

to any individual or firm, by deposit in a ration rights account or by endorsement to a supplier when purchasing gasoline, provided the supplier is willing to accept the check rather than coupons.

3. § 570.13 Ration Rights

This section also has been adopted as proposed in the notice of proposed rulemaking. Under § 570.13(a), ration coupons will entitle the bearer to purchase a specified quantity of gasoline. It was proposed that ration coupons would be issued primarily in five gallon amounts. Commenters raised two principal objections to this proposal. First, many of the comments argued that five-gallon coupons will be unfair to owners of motorcycles and mopeds which generally have gas tanks substantially smaller than five gallons, resulting in forfeited gallonage. The other major concern was that a motorist could not fill his car gasoline tank with, say, 12 gallons of gas without giving up coupons worth 15 gallons. These problems could be avoided by issuing one-gallon coupons, but it would significantly increase the number of coupons to be printed and circulated. The points raised by the commenters are valid, however, and DOE will continue to study the issue during pre-implementation. We invite additional comments or suggestions from the public on this question.

Ration coupons which were printed in early 1974 with the designation "one unit" also may be utilized. If they are used, DOE will announce, by advance notice published in the Federal Register and other publications, the gallon amount for which each such coupon would be redeemable.

Ration coupons will have a series designation and the DOE will publish an advance notice of the effective date for each coupon series designation. A coupon would not be valid until such date, but once a coupon becomes valid, it would remain valid for the duration of gasoline rationing. However, it may become necessary periodically to require old coupons to be redeemed for newer ones to avoid having too many series valid at one time or to counteract counterfeiting activities. Thus, the regulations allow for limitations to be placed on the continuing validity of coupons and other indicia of ration rights, such as Government ration checks.

A ration check likely will provide ration rights for more than one month, with the probable ration period to be three months. So as not to create an immediate imbalance in the first month of the period between the supply of gasoline and the number of ration rights issued, the ration check will entitle the bearer to several series of coupons. Using the example of a three month ration period, the check will entitle the bearer to coupons for months A, B and C. During month A, only A coupons may be used. B and C coupons would not yet be valid. During month B, both A and B coupons

would be valid. In month C, all three series would be valid and would remain valid for the duration of gasoline rationing (unless a limitation is imposed as described above). Therefore, when an endorsee of a Government ration check (such as a retail station operator who agrees to accept Government ration checks in lieu of coupons) turns it in for coupons, he will receive more than one series designation, some of which may not yet be valid.

4. § 570.14 Mandatory Transfers of Ration Allotments

The regulations provide in § 570.14 that DOE may, in order to prevent windfalls to the lessor of a registered vehicle receiving ration allotments, require such lessor to transfer such ration allotments to the lessee of such vehicle according to terms and conditions to be established by DOE. This authority is provided only as a precaution. It is expected that the transfer of ration rights from lessor to lessee will become routine as part of the lease agreement.

The preamble to the proposed regulations noted that there is no reference to the length of time of the lease so DOE would not be precluded from requiring transfer of coupons for short term rental vehicles if DOE should determine that is necessary. Several rental car companies commented that mandatory transfer of coupons would not be justifiable for short-term rentals since the rental company usually receives

its cars back with partially empty tanks, which it then refills. We agree that the rental of a day, or a few days or perhaps a week should not require transfer of coupons. However, there is a period when rentals become sufficiently long to warrant such transfers on the same theory as a lease. Therefore, § 570.14 will enable DOE to monitor rental and lease operations and mandate transfers where necessary or appropriate to prevent windfalls.

C. Computation of Reserves and Allotments

The methodology for computing the allotments of ration rights to registrants of motor vehicles has been modified from the December 7 notice as a result of deducting supplemental allotments for the agriculture priority from the national supply of ration rights as opposed to subtracting from each State's supply of ration rights. The reasons for this change in the method of allotment calculation are explained below in subsection (b) of section (2). Also, the final regulations provide that a limitation may be placed on the number of allotments a person or household may receive (discussed below). The issue of whether ration rights allotments should be on the basis of registered vehicles or drivers' licenses also is discussed in a later section of this preamble.

1. § 570.21 Definitions

Section 570.21 provides definitions for terms used in the computations that will determine the State and National Ration Reserves and the allotments to registrants and other ration recipients for each ration period. Each term will be discussed at the point at which it is introduced into the computation.

2. § 570.22 Calculations

The basic method of calculating allotments of ration rights is unchanged from the proposal. The modifications that have been made result from shifting the deduction of priority allotments of ration rights for agriculture from each State's share of ration rights to the national total of ration rights (before allotment among the States). To accommodate this change, it is necessary not only to specify that supplemental allotments for agriculture come "off the top," but it also is necessary to subtract agricultural usage from all of the base period gasoline use figures so that they reflect only non-agricultural consumption data in determining each State's proportional share of ration rights.

Thus, for each ration period, DOE will project the available supply of gasoline and, based on this projection, will determine the national total number of ration rights (NTR) to be distributed. The computation of allotments then will be made as follows.

(a) National Net Base Period Use (NNBPU).

For the base period, the national net base period use of gasoline (NNBPU) is computed by subtracting from the national gross base period use (NGBPU) the national base period use of gasoline for agriculture (NBPUA).

$$\text{NNBPU} = \text{NGBPU} - \text{NBPUA}$$

This simply is subtraction of base period agricultural use from total national gasoline consumption.

(b) National Net Number of Rights (NNR).

Some commenters suggested that certain supplemental allotments, like those for priority activities, should not be subtracted from the State net rights (SNR), but instead should be subtracted from the national total number of rights (NTR) in determining the national net rights (NNR). DOE has adopted this recommended approach for the supplemental allotments to be provided for agriculture (AG), which under the plan is a priority activity.

In the December 7 proposed rule, all supplemental allotments would have been subtracted from each State's allotment of ration rights, including the supplemental allotments for priority activities. We noted then that "the effect of this is that the greater the number of supplemental allotments made for these special classes of end-users in a State, the lesser the number of rights available to ordinary motorists and other end-users." We have concluded that such an inequitable result is not required by EPCA.

To the contrary, it would conflict with the intent of Congress as reflected in the Conference Report on EECA which states that coupons must be "distributed in a manner which results in motorists in each State incurring the same percentage reduction in gasoline. . . ." S. Rep. No. 96-366, 96th Cong., 1st Sess. 29 (1979).

Subsection 203(a)(3)(A) specifically references the "end-user rights specified in paragraph (1)." Paragraph (1), in turn, refers to end-user rights being ordered in priorities among classes of end-users. Accordingly, we believe that the language in subsection 203(a)(3) that the degree of shortfall "from the base period use" be equally shared among the various States refers to the base period use by each class of end-user separately considered. This reading is consistent with the Conference Report because it ensures that ordinary motorists, as well as other classes of end-users, in each State will bear the same percentage reduction from base period gasoline use.

The focus of this issue is gasoline use for agriculture, a priority activity, which constitutes a significant portion of gasoline use in some States. By way of illustration, during certain calendar quarters gasoline consumption for farming in several farm States ranges from 15 to 50 percent of total consumption. Additional amounts of gasoline are used in these States for distribution and processing of agricultural products. In other jurisdictions, gasoline use for agriculture is much less significant. If, as proposed

in the notice of proposed rulemaking, the supplemental allotments for agriculture were deducted from each State's distribution of the total available ration rights, and assuming that the agriculture priority class is provided 90 percent of its base period gasoline use, then in a 20 percent shortfall the average non-farm motorist in a State with 50 percent base period agricultural use would receive about 68 percent of his base period use. This is to be compared with 78 percent of base period use for the average motorist in a State where agriculture consumed only 10 percent of the base period supply of gasoline.

In order to cure this disparity and assure that the average motorist class of end-user in a State with substantial gasoline use for agriculture does not suffer a disproportionate burden of the shortfall, we have made an adjustment to the calculation formula. Under this adjustment, supplemental allotments for the agriculture priority are taken from the national supply of ration rights before calculating each State's allotment, rather than being taken from each State's allotment. The effect is that agriculture receives exactly the same amount as it would have had its ration rights been taken from the State's allotment, but the ordinary motorist class of end-user will not suffer a disproportionate burden in a highly agricultural State. Such an adjustment is not necessary with respect to other priorities because there is no evidence that gasoline

usage by any other priority class of end-user will disproportionately affect in any material way the gasoline available to the ordinary motorist class of end-user. Thus, under the plan, each class of end-user within a State will share the shortfall equally (as measured against historical use) with the corresponding class of end-user in other States.

The national net number of rights, which is the total of all ration rights to be distributed proportionally among the States, therefore will be computed by subtracting from the national total number of rights (NTR) the National Ration Reserve (NRR) and the supplemental allotments for agriculture (AG) which are determined pursuant to Subpart D of the regulations.

$$\text{NNR} = \text{NTR} - \text{NRR} - \text{AG}$$

(c) State Net Base Period Use (SNBPU).

For each ration period, the State net base period use of gasoline (SNBPU) for any State is computed by subtracting from the State gross base period use (SGBPU) the State base period use of gasoline for agriculture.

$$\text{SNBPU} = \text{SGBPU} - \text{SBPUA}$$

This is the same calculation done on a State-by-State basis as was done for national consumption in subsection (a).

(d) State Total Rights (STR).

Section 104 of the EECA requires that ration rights "be distributed on a State-to-State basis that results in the degree of shortfall from the base period use being equally shared among the various States, considering the most recent base period use data available." This requirement means that the net amount of ration rights distributed to ration recipients in any State will depend in part on the historical use of gasoline in that State vis-a-vis other States.

The regulations provide for this historical use factor by separately calculating each State's share of the NNR. To determine a given State's allotment, the NNR will be multiplied by the ratio of the State net base period gasoline use (SNBPU) to national net base period gasoline use (NNBPU).

$$STR = \frac{SNBPU}{NNBPU}$$

The State and national net base period figures used in this calculation already have been adjusted to subtract gasoline used for agriculture. As explained above, the proportion of State to national net use provides the truest reflection of historical consumption as a class by non-farm motorists within each State.

(e) State net rights (SNR).

The State net rights (SNR) for each State is computed by subtracting from the State total rights (STR) the number of rights in the State Ration Reserve (SRR). As is more fully explained in a later section, the size of the State Ration Reserve will be subject to two variables. First, as noted, the total number of ration rights available to a State will vary among States depending upon each State's historical use. Thus, even if the percentage to be reserved as a SRR were the same for each State, the number of rights reserved will vary. Second, the regulations give DOE the authority to vary from State to State the percentage of such rights to be reserved as a SRR.

$$\text{SNR} = \text{STR} - \text{SRR}$$

(f) State basic rights (SBR).

After a percentage of the ration rights available to a State has been reserved for the State Ration Reserve, the remaining State net rights (SNR) will be distributed to ration recipients. The first calculation will be to subtract from the SNR the total amount of ration rights to be allotted within each State to priority class activities (except for the priority allotments for agriculture which already were subtracted in determining the national net number of rights (NNR)), business firms and others as supplemental allotments (SA).

As more fully explained in a following section on supplemental allotments, DOE will designate firms to receive supplemental allotments as a percentage of base period gasoline use. The remaining rights, which are the amount to be distributed to all vehicle registrants on a per-vehicle basis, are the State basic rights (SBR).

$$\text{SBR} = \text{SNR} - \text{SA}$$

(g) State basic allotment.

Once the supplemental allotments for firms, priority activities and other designated persons have been deducted, the supply of ration rights remaining (the SBR) will be allotted to registrants.

As proposed in the notice of proposed rulemaking, under the Standby Gasoline Rationing Plan the basic eligibility for ration allotments will be determined by vehicle registration records maintained in the individual States' departments of motor vehicles (DMV's). Prior to any decision to implement gasoline rationing, DOE will attempt to develop and maintain a national vehicle registration file. This file will contain all of the vehicle registration records provided by the States from their own motor vehicle registration files, but revised and in the proper format to meet the requirements of the rationing plan.

The national vehicle registration file will be updated periodically from information provided by the States and other sources as appropriate. Where duplicate registrations are found for a single vehicle, such as will commonly occur when a used vehicle is sold, DOE will use only the most current registration.

Records in the file will be grouped according to vehicle type. Each record will contain a vehicle category identifier from which DOE will establish the correct allotment index. Registered vehicles which are not eligible for ration rights, such as trailers, will be excluded from the file.

The individual or firm named on the registration record (the registrant) maintained in the national vehicle registration file will be eligible for an allotment of ration rights if the corresponding registered vehicle is gasoline-powered, and was either already registered on a specified date prior to the effective date of the rationing program or is a new car purchased during the rationing program. The actual cut-off date for vehicle registrations will be determined by DOE when rationing is implemented. By imposing a vehicle registration cut-off date for all but newly purchased vehicles, the chances for registrations of "junked" or fictitious vehicles will be significantly reduced. Under certain circumstances, DOE may permit vehicles with lapsed

registrations to become eligible for ration allotments, if it can be demonstrated that these vehicles are operable and are not being registered for the principal purpose of receiving ration rights.

We proposed in the December 7 notice of proposed rulemaking to establish different allotments for different types of vehicles. Indices would be keyed to the passenger automobile which would be assigned an index value of 1.0. Larger vehicles, such as trucks, would have a higher index; smaller vehicles, such as motorcycles, would have a lower index. The higher the index, the greater the allotment of ration rights. Several commenters were concerned that these indices would not fairly reflect vehicles used intensively for business purposes.

As is more fully explained in a later section on supplemental allotments, it is DOE's intention to provide vehicles used for business purposes with supplemental ration allotments based upon historic use of gasoline. As a result, the allotment index diminishes in significance since few large trucks, etc. are used extensively for non-business related transportation. DOE therefore intends to establish an index of 1.0 for all vehicles, except motorcycles and mopeds which would receive a lower index, one-fourth of an allotment for motorcycles and one-tenth of an allotment for mopeds. Any persons who suffer an extraordinary hardship as

a result of the 1.0 index for all vehicles will be able to seek additional ration rights from the State Ration Reserve.

Many commenters urged that motorcycles and mopeds be provided with the same allotments as passenger cars to reward use of the more fuel efficient two-wheeled vehicles. We have not been persuaded by this argument. First, many people may be tempted by such a proposal to buy a relatively inexpensive moped to receive an extra allotment of coupons for their car. Second, owners of motorcycles and mopeds would not benefit by being able to drive more because of their increased allotments. Our analysis shows that allotments for motorcycles and mopeds which are in amounts less than allotments for automobiles still would allow the more fuel efficient motorcycles and mopeds to be driven significantly more than the average mileage for such vehicles. Therefore, full allotments more likely would result in only a monetary windfall since the excess coupons would be sold on the exchange market. Motorcycles and mopeds therefore will receive an allotment index less than 1.0.

All vehicles (except motorcycles and mopeds) will have the same index number and therefore will receive the same ration allotment (in a given State), regardless of fuel efficiency. This will give a significant advantage to fuel efficient vehicles.

No allotment index will be provided for "dealer plate" registrations since these registrations are not issued to specific vehicles. Trailers and other non-powered vehicles

registered with State DMV's will not receive an allotment index. Diesel-powered vehicles also will not receive an allotment index, as diesel fuel will not be subject to rationing under this plan. No allotment index will be provided for any non-registered vehicle.

Once the allotment indices have been established for all eligible vehicles, the State basic allotment for vehicles in each State can be computed. The sum of all vehicles in the State in a given vehicle classification (VC) will be multiplied by the allotment index (AI) for that classification to yield a classification vehicle point (CVP).

$$CVP = VC \times AI$$

The sum of the CVP's for all vehicle classifications will equal the total vehicle points (TVP) in the State.

$$TVP = CVP_1 + CVP_2 + CVP_n$$

A State basic allotment (SBA) will be computed by dividing the State basic rights (SBR) by the total vehicle points (TVP) in the State.

$$SBA = \frac{SBR}{TVP}$$

For example, assume the total vehicle points in a State equals three million, and the State basic rights for a three month ration period totals 360 million gallons. The State basic allotment will be determined as follows:

$$\frac{360,000,000 \text{ (SBR)}}{3,000,000 \text{ (TVP)}} = 120 \text{ gallons (SBA)}$$

(h) Distributed basic allotment (DBA).

Once the State basic allotment is calculated for each State, the number of ration rights, in gallons, distributed to the registrant of a given vehicle for a ration period will equal the State basic allotment (SBA) multiplied by the allotment index calculated by DOE for that vehicle. This distributed basic allotment (DBA) will be rounded by DOE, where necessary.

$$DBA = SBA \times AI$$

In the calculation example used in subsection (e), the SBA was 120 gallons for a three month ration period. A passenger vehicle in this example, with an allotment index of 1.0, will receive 120 gallons in ration coupons. A motorcycle with an allotment index of 0.25 will receive 30 gallons in ration coupons for that same ration period.

(i) Length of the ration period.

The length of each ration period is expected to be three months. However, § 570.22(g) provides DOE with the flexibility to modify the length of the ration period.

3. § 570.23 Ration Rights Purchases and Sales.

In addition to distributing ration rights in accordance with the calculations described in section 2 above, DOE proposed the authority in § 570.23 to issue and distribute (by

auction, sale, etc.) additional rights, or alternatively to purchase ration rights. Some commenters agreed with the concept as proposed because it provided DOE with necessary flexibility to oversee the exchange market, which is an integral part of the rationing plan. But, a number of commenters urged DOE not to adopt this proposal because of the potential impact on the exchange market. It was argued that the free market system should not be interfered with and that such a buy/sell program is administratively unworkable. These commenters offered no alternative, however, to adjust the number of ration rights issued to the actual gasoline supply.

Since the supply of gasoline for a ration period will have to be projected several months in advance, it is likely that the actual gasoline supply will either exceed or fall short of the projected supply, possibly by a wide margin. In such a case, to reconcile the number of ration rights with the actual supply of gasoline, DOE needs authority to buy or sell ration rights.

DOE also might find, once rationing is implemented, that the ration rights market is not operating satisfactorily to transfer ration rights. In such an event we might find it necessary to sell additional ration coupons, provided that it shall not result in the issuance of more total ration rights than the estimated actual supply of gasoline.

Section 570.23 provides DOE with the requisite authority to buy or sell ration rights. Subsection (a) authorizes DOE

to sell ration rights where necessary (1) to establish a market for ration rights; (2) to equilibrate the number of ration rights issued with the actual supply of gasoline, or (3) for such other purposes to assure that adequate ration rights are available to carry out the purposes of the Standby Gasoline Rationing Plan. This latter provision is reflective of EECA sec. 104, which amends EPCA sec. 203(a), requiring that adequate end-user rights be available to carry out EPCA's purposes for a gasoline rationing plan. The total number of ration rights distributed by DOE cannot exceed the estimated actual supply of gasoline.

Subsection (b) of § 570.23 authorizes DOE, to the extent appropriations are available, to purchase ration rights to (1) equilibrate the number of ration rights issued with the actual supply of gasoline, or (2) otherwise carry out the same purposes as subsection (a).

In addition, § 570.23(c) provides that DOE may take such other actions as may be necessary to equilibrate the number of ration rights issued with the actual supply of gasoline, including making more or less ration rights available in the next ration period by adjusting as necessary the "national total number of ration rights" (NTR) used in § 570.22. DOE also may opt to use this method to equilibrate the issued ration rights with the supply of gasoline even if funds are

available to purchase coupons under § 570.23(b). Section 570.23(c) has been modified slightly from the proposal so as to make this possibility clear.

The issue of purchases and sales of ration rights by DOE to equilibrate the market is very complex and will be the subject of intensive study and analysis during the pre-implementation period. We specifically encourage further comments from the public on this issue.

4. § 570.24 Limitation on Distribution of Ration Rights.

One of the recurring comments on the issue of whether ration coupons should be allotted to licensed drivers or registered vehicles was that the per vehicle system disproportionately favors persons who already own more cars or who can afford to purchase additional cars. Another popular comment was that people will buy several "junkers" in order to receive extra ration rights.

In response to these comments, DOE has incorporated a new § 570.24 in the final regulations which provides authority to limit the number of allotments distributed to any person or household. As a matter of policy, it is desirable to impose a reasonable limit on the total number of allotments given to persons or households that have several registered vehicles, not all of which are used intensively. DOE has not yet arrived at a practical mechanism that would accomplish that objective, so the plan does not provide for any specific limitation. During pre-implementation, however, an equitable and enforceable means of imposing a limitation on allotments will be developed.

The allotment limitation would not be intended to preclude the distribution to a person or members of a household of additional ration rights granted from the State Ration Reserve. Thus a person or household with a bona fide need for more than the prescribed limit of allotments would have the opportunity to recoup lost allotments from the State Ration Reserve. Section 570.24(b) provides that ration rights that would be distributed to a person or members of a household but for the limitation in subsection (a) will go to the State Ration Reserve so that the State would not in any way lose ration rights as a result of the limitation.

For purposes of this section, household is defined in § 570.24(c) as persons related by blood or marriage who live together in a single residence.

D. Supplemental Allotments

1. § 570.31 Priority Class Activities.

This section has been changed significantly from the proposal in the December 7 notice. Priority class firms still will receive supplemental allotments equal in amount to a percentage of their base period gasoline consumption, such percentage to be determined by DOE at the time rationing is implemented, less any allotments already received under the provisions of the regulations relating to per-vehicle distribution. Thus, a priority firm will receive allotments like all other firms and individuals on the basis of its vehicle ownership. To the extent such allotments are less

than the firm's base period use multiplied by the percentage of base period use allowed for such priority firms, the firm may receive supplemental allotments to make up the difference.

It is our intention that priority class firms will receive a percentage of base period usage generally greater than that received by other firms receiving supplemental allotments under Subpart D, but in most cases will likely receive less than 100 percent of their base period usage, since even high priority firms can cut back on gasoline use in a severe shortage without seriously affecting the performance of their priority activities. However, § 570.31(a) permits DOE to provide for greater than 100 percent of base period usage for any priority class activity if such an adjustment proves necessary. This may be required, for example, to allow mass public transportation to accommodate increased demand during an energy supply emergency.

All of the priority activities which were included in the proposed rule have been retained in the final rule. More comments were received on the priority issue than any other. A broad range of firms and activities sought to be added to the list of priorities, including, for example, United Parcel Service (UPS), courier companies, armored car companies, home health care, hospital employees, rental cars, search and rescue activities, airline ground support vehicles, private security firms, newspaper circulation activities, gas and electric utilities, clergy and the agricultural production and distribution industry.

DOE has added some of these firms and activities to the list of priority activities eligible to receive supplemental allotments. Search and rescue activities and utilities services have been added to the definition of emergency services. The definition of telecommunications services also has been expanded. The priority activities now encompassed by these definitional changes are discussed above in the section by section analysis of § 570.2.

Short-term vehicle rental has been added to the list of priority activities in § 570.31. This includes both rental of passenger vehicles and trucks. During a gasoline supply shortfall, people will rely upon forms of transportation for travel other than their car, for example airplanes and trains. When they reach the airport or train station, rental vehicles often are the only means of reaching their ultimate destinations.

The priority classifications will provide the rental company only with additional ration rights needed to refill a vehicle with gasoline once it has been returned by the customer. A customer who fills the vehicle with gasoline himself will have to provide his own coupons. Rental companies will not be provided with additional ration rights to provide gasoline to customers during the rental term.

The priority also is limited to short-term rentals as distinguished from leases, which are of longer duration. DOE will provide further guidance during pre-implementation as to which firms qualify for the priority classifications.

Priority status also has been provided to for hire mail and small parcel transportation and delivery, which includes firms such as United Parcel Service, couriers and armored couriers. Mail and small parcel transportation and delivery must be the principal activity of the firm, thereby excluding firms which transport primarily large parcels, such as furniture, and only a few small parcels of the size handled by, for example, the U.S. Postal Service.

Many commenters urged the adoption of this priority since their business was dependent upon timely pick-up and delivery of commercial documents and materials and equipment. Commenters included industrial and manufacturing firms, pharmaceutical companies, financial institutions and a variety of other business concerns. It was argued that many businesses and individuals would suffer if services by transport and delivery service companies were severely curtailed. In addition, during gasoline shortages more firms will rely upon the more efficient transport service companies rather than using their own vehicles, thereby conserving gasoline.

The priority classification is limited to for hire mail and small parcel transportation firms. Therefore, a company which has its own trucks for mail and parcel transportation would not be included. However, since all firms will be provided with supplemental allotments equal to a percentage of historical gasoline use to be prescribed by DOE, the discrepancy in allotments between priority and non-priority firms likely will not be large.

Newspaper distribution has been added as a priority activity. It was determined that in an energy emergency situation severe enough to require rationing, newspapers would play a vital role in disseminating current information to the public. In addition, the public will need to be informed on the operation of the gasoline rationing plan itself. The priority for newspapers is limited to newspaper distribution, and does not include newsgathering, advertising sales or other administrative activities. The definition of newspapers included within the priority will be determined in a rulemaking during pre-implementation.

Also included as a priority activity in § 570.31 is agriculture, defined in § 570.2 as having the same meaning as agricultural production in 10 CFR Part 211, and related distribution of agricultural products. We determined in response to numerous comments that agriculture is an essential activity, and further that distribution of agricultural products to consumers also is required so that shortages and spoilage of products can be avoided. Commercial fishing is included within this definition.

Firms which are not designated as priority firms still will receive allotments according to base period gasoline use. Extra ration rights will be obtainable on the exchange market so that firms may elect to purchase additional gasoline. And, in addition, State Ration Reserves will be available to provide for hardship and other cases.

The fact that certain activities have not been included for priority treatment in this plan is not conclusive. The regulations provide that DOE will be able to designate other

persons or firms as priority classes. This provision will permit us to include other essential public services as priority class firms if such additions prove necessary.

We also anticipate that it will be necessary to further define and clarify the scope of activities included within emergency services either before or at the time rationing is implemented.

Section 570.31 of the final regulations makes it clear that a firm will receive priority class treatment only with respect to its activities attributable to a priority classification. In applying for supplemental allotments for priority class activities, firms engaged in priority and non-priority activities will be required to report total gasoline consumption for the base period, as well as that portion of total base period consumption attributable to a priority class activity, and the number and types of vehicles engaged in a priority class activity.

2. § 570.32 Commercial Firm Allotments

In the December 7 notice we stated that it was our intention to use the authority of this section to provide supplemental allotments to most business firms on a basis which reflects historical use of gasoline. We did note, however, that since the information on base period use for each firm may not be available to DOE at the beginning of rationing, we would issue ration rights based on vehicle registrations in the initial ration period, and switch to a base period system as soon as practicable.

A significant percentage of the commenters urged DOE to implement a percentage of base period system for firms at the beginning of rationing. They argued that a per vehicle allotment could provide them with as little as 25 percent of their monthly gasoline needs. When asked during the public hearings whether they would be willing to report regularly to DOE on their use of gasoline before rationing is implemented, all firms responded affirmatively, if it meant they could receive supplemental allotments at the initiation of gasoline rationing.

In light of all the comments, we have decided to establish procedures so that any firm may receive supplemental allotments at the beginning of rationing so as to raise the value of their total allotment (including ration rights received for registered vehicles) to a designated percentage of historical gasoline use. Of course, DOE only can establish the mechanism for firms to report gasoline use data, and it will be incumbent upon each firm to report the data to DOE. Any firm which does not report historical use data will be provided with per vehicle allotments until such time as DOE can receive and process the data necessary to issue supplemental allotments to that firm.

Many commenters were concerned whether the regulations would provide supplemental allotments not only to businesses which owned vehicles but to persons who used their own cars for business, whether self-employed or working for a firm which reimburses the individual for his vehicle use. Some examples are salesmen, real estate agents, doctors and lawyers. To the extent that a vehicle is used for business purposes as determined by DOE, it would be entitled to supplemental allotments based on historical usage of gasoline for the business activity. Generally, if the mileage driven and gasoline used would be deductible as a business expense for Federal income tax purposes, it would be eligible for supplemental allotments. DOE will establish procedures during pre-implementation for determining business use of vehicles.

We specifically asked for comments on the question of whether business should receive a higher ration level than individuals. Most businesses which commented supported this concept, agreeing that individuals can conserve by eliminating discretionary driving. We will continue to assess this issue and we specifically encourage additional comment.

3. § 570.33 Other Supplemental Allotments

Since all business and commercial firms now can apply to receive supplemental allotments under new § 570.32(a), proposed section 570.33, which provided supplemental allotments for off-highway vehicles, has been eliminated from the final rule. Any persons who are not business or commercial firms and which own off-highway vehicles still may apply for

supplemental allotments under new § 570.33, "Other Supplemental Allotments". This section provides that DOE will establish criteria so that any person or class of persons, including eligible individuals (defined in § 570.2) may apply to DOE for supplemental allotments. This general provision allows DOE to provide for any persons not otherwise provided for under other sections of the regulations but who have significant levels of gasoline use.

4. § 570.34 Application Procedures

The regulations in § 570.34 provide that DOE will establish forms and procedures for supplemental allotment applications. In addition, establishing and carrying out procedures for determining firms' supplemental allotments prior to implementation of rationing will substantially increase preimplementation costs. In order to offset such increased costs, DOE is authorized by § 570.34 to collect a fee from persons requesting supplemental allotments to cover the cost of processing their applications.

5. Precedence of Delivery

Section 570.36 of the proposed regulations established the right of precedence of delivery for priority class firms which were supplied by a supplier during the base period. This section has been eliminated from the final rule because it in effect created a dual priority class in that priority firms with a base period supplier would have received supply in precedence to a firm which did not have a base period supplier.

E. Purchase of Gasoline

1. § 570.41 Retail Purchases of Gasoline

The gasoline purchase provisions of the Standby Gasoline Rationing Plan have been modified from the proposal, although the fundamental concepts governing purchase of gasoline are essentially the same as proposed.

This section now provides that no supplier may sell gasoline at a retail sales outlet (the definition of which was discussed earlier) without obtaining from the purchaser at the time of sale ration rights equal to the amount of gasoline purchased. A limited exception to the requirement of ration rights transfer at the time of sale may be provided in regulations issued pursuant to § 570.42 for certain purchasers. This basic principal is the same as was proposed in the December 7 notice although it is more straightforward. This provision applies only to purchases from a retail pump located at, for example, gasoline stations and marinas.

We have eliminated the provision in the proposal permitting a retailer to sell gasoline without receiving a coupon and to cover that transaction by purchasing a coupon within a specified time period. It was determined that the potential for abuse was too great if a retailer was not required to demand from its retail customers a coupon at the time of sale.

2. § 570.42 Other Purchases of Gasoline

Subsection(a) of this section governs purchasers of gasoline not governed by § 570.41, i.e. those who do not purchase gasoline at retail sales outlets. These purchasers,

including wholesale purchaser-consumers and bulk purchasers, also are required to provide ration rights to their suppliers equal on a gallon basis to the amount of gasoline sold, but when these purchases are made at other than a retail sales outlet, there is no requirement that the ration rights be supplied at the time of sale. Similarly, suppliers may not receive resupply of gasoline from their suppliers without providing to the suppliers a redemption check or redeemed ration rights equal on a gallon basis to the amount of gasoline transferred, again, not necessarily at the time of transfer. These two substantive requirements of § 570.42(a) and the requirements on purchasers at retail sales outlets in § 570.41 govern all gasoline purchase transactions in a simpler and more straightforward method than in the proposal.

In the proposed regulations, suppliers, bulk purchasers and wholesale purchaser-consumers were required to transfer to their suppliers ration rights or redeemed ration rights, as applicable, by the close of the first business day following the date of sale or transfer of gasoline. The purpose of this provision was to prevent a purchaser who was short on redeemed ration rights or ration rights from having additional time to, for example, sell some of the new gasoline shipment so as to acquire enough redeemed rights. Many persons commented that this one-day provision was unworkable. Companies and governmental units have internal administrative requirements which make issuance of a ration check or redemption check within one day very difficult. Also, some retailers commented that often they do not know how much gasoline was delivered by a supplier until they receive an invoice.

In response to these comments, we have deleted the one day requirement. Instead, we have provided in § 570.42(b) that we will establish by rule the terms and conditions by which suppliers, bulk purchasers and wholesale purchaser-consumers, and such other classes of end-user as designated by DOE, shall transfer ration rights. In developing such a rule, we will consider factors such as the need to limit fraud and abuse, administrative ease, and consistency with standard business practices governing payments for gasoline.

3. § 570.43 Other Gasoline Purchase Provisions

Section 570.43(a) specifies that ration coupons of a given series designation cannot be used for the purchase of gasoline prior to their effective date.

Section 570.43(b) of the regulations provides that unredeemed ration rights are freely transferable. This provision constitutes the authority for a ration rights exchange market, which should promote a more efficient use of available gasoline. We do not anticipate regulating the ration rights market through price controls or any other mechanism. However, in order to prevent abuses in the market that might arise, § 570.43(b) gives DOE authority to regulate the market if necessary. Furthermore, as noted in earlier sections, DOE will be authorized by the proposed regulations to buy and sell coupons.

Sections 570.43(c) and (d) are intended to protect the rights of purchasers and sellers of gasoline. Section 570.43(c) prohibits any supplier from requiring any purchaser to purchase ration rights from any firm including itself as a condition of transferring gasoline. Section 570.43(d) prohibits any seller of gasoline from discriminating against any purchaser offering valid ration coupons at the time of sale, by, for example, selling gasoline only to regular customers. A supplier will be allowed to accept a Government ration check for the purchase of gasoline, but will not be required to do so. A supplier also will be permitted to accept a ration check drawn on a ration rights account, but, as in ordinary commercial transactions, the supplier/payee would incur the risk that such a check is invalid, and, if it is, his recourse would be against the purchaser/payor.

A new subsection (e) has been added to § 570.43 which provides that a purchaser of gasohol or similar blends of gasoline and non-petroleum products only need transfer to its supplier ration rights or redeemed ration rights, as applicable, equal in amount to the gasoline component. Thus, a retail/purchaser of 11.1 gallons of gasohol which is 90 percent gasoline only needs to provide 10 gallons worth of ration rights. Suppliers would compute transfers of redeemed ration rights to their suppliers similarly.

4. § 570.44 Supplier Disposition of Ration Rights and Ration Checks

Section 570.44(a) requires suppliers (including retailers) which receive unredeemed ration coupons in exchange for the sale of gasoline to "redeem" such coupons by indelibly marking them with the supplier's name, its redemption account number, if any, and the legend "redeemed." Similarly, suppliers will be required to redeem all unredeemed ration checks received.

5. § 570.45 Principal Suppliers' Obligations to DOE

Under § 570.45, refiners and importers, defined as principal suppliers, will be required to submit periodically a report to DOE certifying the volume of gasoline sold during the reporting period and to submit a redemption check equal on a gallon basis to the volume of gasoline sold during the reporting period. In this manner, the distribution system will be "cleared," and DOE will be able to ensure that the volume of gasoline sold is in balance with the number of ration rights that have been issued.

6. § 570.46 Redemption Advances

Section § 570.46 provides that each supplier other than a principal supplier will receive an initial redemption advance under a formula that will be established by DOE and published prior to the implementation of rationing. This provision will enable suppliers to obtain initial deliveries at the commencement of rationing before they have accumulated sufficient ration rights. Also, since a retailer cannot

accumulate redeemed ration rights for resupply in excess of the sum of gasoline he has to sell at the beginning of rationing plus any redemption advance, this section will allow additional redemption advances to enable a supplier to obtain additional gasoline as more supplies become available.

Several commenters provided suggested formulas for determining redemption advances, but the final regulations do not incorporate a specific formula. We will continue to analyze the comments during pre-implementation and work with retailers and their representatives to assess whether any of the proposed formulas may be workable.

Many comments from retailers and jobbers expressed concern about losses of gasoline, and thereby ration rights to be used for resupply, due to spillage, evaporation and shrinkage. A spillage loss could be very small or an entire truckload. A new § 570.46(d) will allow DOE to make redemption advances to account for such losses. However, so as not to unbalance the system by having in circulation too many redeemed ration rights, DOE will establish criteria for the determination of such advances so that the total of redeemed ration rights does not exceed the total amount of gasoline sold by principal suppliers.

7. § 570.47 Inventory Changes

Section 570.47 requires each supplier to measure his inventory at the beginning and end of the rationing program,

or at such other times as designated by DOE. DOE also will require suppliers to repay their initial redemption advance. Section 570.47 provides that each supplier (including retailers) account for inventory drawdown at the end of the rationing program by submitting to DOE a redemption check or redeemed ration rights equal on a gallon basis to the amount of inventory drawdown, less a specified amount for losses due to spillage and evaporation.

F. Allocation of Gasoline

1. § 570.51 Relationship to Parts 210 and 211

The proposed regulations were based upon continuation of gasoline allocation controls during rationing. Many commenters, particularly refiners, suggested that the gasoline rationing program would operate more efficiently if gasoline allocation regulations were discontinued. They were concerned that the allocation regulations in 10 CFR Part 211 may not respond to demand shifts that might occur during a supply shortfall severe enough to require rationing. In addition, the surplus product rules were said to be cumbersome, perhaps leaving retailers with extra redeemed ration rights and no gasoline available for purchase.

Also, it is possible that by the time rationing ever is implemented, the allocation regulations no longer may be in effect or may be significantly modified. As was noted in an earlier section of this preamble, the Energy Secretary's authority to continue in effect some or all of the gasoline

allocation controls in 10 CFR Parts 210 and 211 is not dependent upon this regulation. Gasoline allocation authority derives from the Emergency Petroleum Allocation Act (Pub. L. 93-159, EPAA), and pursuant to sec. 18 of that Act such controls are now discretionary.

Thus, the Standby Gasoline Rationing Plan regulations have been designed so that they may function concurrently with or independent of the gasoline allocation regulations. Section 570.2, discussed above, does provide, however, that in the event any provisions of these regulations are inconsistent with any provisions of Part 210 or 211 that would be in effect when the Plan is implemented, the provisions of the Plan shall control.

Section 570.51 provides that if § 211.103 of 10 CFR Part 211 is in effect, § 211.103(b) shall not apply when Part 570 is in effect. Section 211.103(b) lists those priority activities which receive 100 percent of base period use not subject to an allocation fraction. In the absence of § 211.103(b), the activities listed in § 211.103(b) will be covered by § 211.103(c) and will receive 100 percent of base period use subject to an allocation fraction. Authority is provided in § 570.51(a) for firms that receive supplemental allotments or with priority classification under the rationing regulations to receive different allocation levels under the allocation regulations commensurate with their ration allotments.

If the provisions of 10 CFR Part 211 are not in effect during rationing, transfer of ration rights by gasoline users and redeemed ration rights by suppliers will be the sole determinant of resupply.

Section 570.51(b) is essentially the same as proposed and imposes an important limitation on allocation rights. A firm's allocation rights under the allocation system will be limited by its ability to exchange ration rights or redeemed ration rights, as applicable, at the time of purchase. Thus, although a supplier will have the obligation to distribute product under a uniform allocation fraction to all of its customers, its obligation to supply any particular firm would be reduced if that firm does not have adequate ration rights or redemption rights to exchange for the gasoline.

The State set-aside program was an effective tool to relieve the effects of shortages during the past summer. It therefore is our intention to retain the State set-aside program if allocation controls are in effect during rationing. A State's authority to redirect product should complement its authority under the State Ration Reserve to provide additional coupons to alleviate hardships. Most commenters concurred in the decision to retain the State set-aside.

To prevent abuses and predatory acts by suppliers, § 570.51(c) provides that the Secretary of Energy may prohibit a supplier from increasing above a specified level the amount of gasoline sold to a purchaser or class of purchasers where such supplier owns, operates or otherwise controls such purchasers. If allocation controls are not in effect, the Secretary of Energy could use this provision to prevent a supplier from increasing the market share of its company-owned and operated retail stations at the expense of independent retailers. By way of illustration, jobbers could be required to maintain, to the extent practicable, their base period proportion of supplies to the class of independent retailers, although no supply obligation would be established for each purchaser in that class. Thus if a jobber sold 40 percent of its supplies to independents in the base period, it would be required to sell a similar proportion during rationing, though not necessarily to the same purchasers.

G. Ration Banking

1. § 570.61 Coupon Issuance Points and Participating Banks

This section is unchanged from the proposal, except that proposed § 570.61(a) has been eliminated because it was superfluous. DOE will authorize a variety of financial

institutions and other firms to act as coupon issuance points or participating banks. Coupon issuance points (CIP's) will exchange ration coupons for ration checks. Participating banks (which may or may not also be coupon issuance points) will accept applications for and establish ration rights accounts and redemption accounts. Holders of Government ration checks can exchange such checks for ration coupons at coupon issuance points. Ration recipients will receive Government ration checks through the mail generally on a quarterly basis. The ration coupons received for each Government ration check will bear a separate series designator so that they will not become effective until the first day of the ration period or periods applicable to that Government ration check. Coupons also will become effective separately for each month in the ration period so that, for example, the entire period's allotment cannot be used in the first month. It is our intention that subject to terms and conditions to be established by DOE, coupon issuance points will be required to accept Government ration checks presented by the payee in exchange for ration coupons.

During the pre-implementation period, we will explore the feasibility of expanding the number of coupon issuance points to include such organizations as commercial banks and savings and loan associations, major employers, credit

unions, Post Offices, State and local governmental agency offices, and major retail establishments such as supermarkets and department stores.

2. § 570.62 Ration Rights Accounts.

Section 570.62 provides that any firm or individual may open a ration rights account at a participating bank. We will have authority under the regulations to establish such terms and conditions governing the operation and maintenance of ration rights accounts as are deemed to be necessary. We also may establish a schedule of allowable fees which can be collected by ration banks to defray their costs of providing services in connection with the rationing program. We also will have authority to issue forms and instructions for the opening of such accounts.

Ration rights accounts will operate in much the same manner as monetary checking accounts. Holders of ration rights accounts will be able to deposit ration coupons and ration checks in their account and write ration checks drawn against their accounts. Section 570.62(b) provides that no

individual or firm can issue a ration check drawn upon a ration rights account in which there are insufficient ration rights to cover that ration check and other outstanding ration checks drawn on that account. It is intended that rules analogous to those governing normal commercial practices will govern in determining which party bears the burden of loss with respect to overdrawn ration checks. Fraud or forgery in the issuance of a ration check will in addition to being a violation of other applicable Federal or State law, be a violation of the rationing regulations and subject to the penalties for willful violation. Specific rules governing ration rights accounts will be issued for public comment during the pre-implementation period.

3. § 570.63 Redemption Accounts.

Redemption accounts will be used by suppliers for the deposit of ration rights they have received and redeemed for gasoline sales to end-users, and for the deposit of redemption checks they have received for gasoline sales, if any, to other suppliers. Suppliers also will deposit initial redemption advances in their redemption accounts.

Section 570.63(a) allows suppliers, including retailers, to open a redemption account at any participating bank. Section 570.63(b) permits DOE to require some or all suppliers to open and maintain redemption accounts.

Participating banks will service redemption accounts in the same manner as ration rights accounts. DOE will establish forms and instructions for the opening of such accounts.

Redemption account holders will be prohibited under § 570.63(d) from writing a redemption check drawn upon an account in which there are insufficient deposits to cover that redemption check and other outstanding redemption checks drawn on that account. Because redemption checks represent deposits of redeemed ration rights, § 570.63(e) provides that redemption checks will not be valid for deposit in a ration rights account. Since redemption accounts and redemption checks are intended for use solely by suppliers, as a further safeguard against misuse § 570.63(e) provides that redemption checks will not be valid for the purchase of gasoline by wholesale purchaser-consumers, bulk purchasers and other ultimate consumers.

A new subsection (f) has been added which provides that DOE may impose limitations on the sale or transfer of redeemed ration rights if necessary to prevent fraud or abuse. Such a limitation may be necessary to prevent suppliers from shifting redemption amounts to circumvent these regulations or to gain a competitive advantage.

4. § 570.64 Restrictions on Endorsements.

As proposed, § 570.64 will permit DOE to establish restrictions on endorsements of ration checks (including Government ration checks) and redemption checks.

H. National Ration Reserve.

Section 570.71 provides that the National Ration Reserve will be used to meet national disaster relief or other national emergency needs or for any other purpose which DOE may deem necessary. Additionally, in order to establish a market for the sale of ration rights, § 570.71 provides that DOE may auction some ration rights from the National Ration Reserve to the public. DOE will provide allotments from the National Ration Reserve to Canadian and Mexican firms that drive vehicles across the border for the purpose of doing business in the United States.

I. State Ration Reserves.

1. § 570.81 State Ration Reserves

As was proposed in the December 7 notice, DOE will establish for each State a percentage of that State's total number of ration rights (which will be determined in the manner described in Part C of the preamble) as a State Ration Reserve (SRR). The ration rights in the SRR will be used to meet hardship needs of persons in the State and to provide for the mobility needs of the handicapped.

We proposed in § 570.81(b) to use five percent in the initial ration period as the amount of State total number of ration rights to be reserved for the SRR. There was little

opposition to this approach in the public comments so we are adopting five percent as a minimum level for the SRR. A State can apply to DOE at any time to reduce or increase the amount of ration rights to be included in the SRR. A State which elects to have a larger or smaller SRR will not gain or lose ration rights. The difference will be included in the number of ration rights available for distribution generally to registrants, firms and others within that State.

DOE is providing flexibility to States in determining the size of their SRR since some States may be unwilling or unable to assume the additional paperwork and administrative costs of a large SRR. However, judging by the positive reactions we have received from the States, we expect that many States will assume an active role in administering the SRR since it will be the most effective tool for responding to the unique needs of persons within the State. Generally, States will be given broad discretion and flexibility in the disposition of the SRR.

A new subsection (d) has been added to § 570.81 prohibiting any State from selling or otherwise transferring for consideration ration rights provided to such States as a State Ration Reserve. Ration rights are to be distributed by the States free of charge. However, the prohibition on sales is not intended to preclude sales specifically authorized by DOE pursuant to § 570.82(i).

As noted above, § 570.5 provides DOE with authority to reimburse the States for the costs of operating the SRR and otherwise implementing the rationing plan.

2. § 570.82 Establishment of State Rationing
Offices and Local Boards.

Section 203(d)(2) of the EPCA, as amended, prescribes that any rationing plan must set forth:

(A) criteria for delegation of the President's functions, in whole or part, under this Act with respect to such rationing contingency plan to officers or local boards (of balanced composition reflecting the community as a whole) of States or political subdivisions thereof; and

(B) procedures for petitioning for receipt of such delegation.

In accordance with this requirement, DOE has provided for delegation of the President's authority in a manner which substantially involves States in the planning effort for gasoline rationing. Subsection (b) provides that, within 60 days after DOE establishes appropriate procedures, States may submit to DOE plans to receive delegations of authority and to administer the SRR. The plans must include such information as DOE may request, but specifically must include the following: (i) how the State proposes to establish a State Rationing Office and local boards to meet hardship needs and to provide for the mobility needs of the handicapped; (ii) efforts to be undertaken during the effective period of the Standby Gasoline Rationing Plan to meet the needs of those persons in suburban and rural areas, particularly mid-sized cities, small towns and rural communities not adequately served by any public transportation system; (iii) the percentage of the State total number of ration rights requested by the State to be reserved as a State Ration Reserve; and (iv) procedures to prohibit recipients of hardship allotments

from selling or otherwise transferring for consideration ration rights received as part of such allotments. This last provision has been added so that only persons with bona fide needs for additional gasoline will apply for hardship allotments, and those who are seeking extra coupons solely for the purpose of selling them for money will be discouraged.

DOE will review the State plans, and if a plan is approved, DOE will delegate appropriate authority to administer the SRR allotted to that State and will inform the State of the percentage of the SRR.

In an effort to encourage States to begin their planning efforts early, § 570.81(d) provides that no SRR will be reserved for States which do not have an approved plan.

The ration rights for the SRR will be distributed by DOE to the States by transmitting a Government ration check. State Rationing Offices will be required to report to DOE each month regarding administration of the SRR.

A State Rationing Office can redelegate its authorities to local rationing boards, provided the local boards are of balanced composition reflecting the community as a whole. Many commenters from local governments and citizens groups

were concerned that the States will not actively solicit the cooperation of local governments. It is our expectation that the States will strive to work with local governments in administering the State Ration Reserve. We also expect that consumer groups will be represented on State and local boards.

No State will be allowed to issue a ration check drawn upon a ration rights account if there are insufficient ration rights to cover that ration check and other outstanding ration checks drawn on that account.

DOE can authorize the States to sell to the public a portion of the ration rights from the SRR to increase the availability of ration rights.

Section 570.82(j) authorizes DOE to establish procedures whereby all or a portion of the ration rights allotted to a SRR may be distributed by DOE, or by DOE in accordance with instructions provided by the State. Certain States may not have the capability to administer a SRR, or may have accumulated a large surplus of ration rights. In such circumstances, the State may request DOE not to reserve any of the State total number of ration rights for the SRR in the next ration period and to distribute those ration rights directly to persons in the State.

3. § 570.83 Hardship Applications and Guidelines.

As required by EPCA sec. 203(a)(2)(A), § 570.83(a) directs State Rationing Offices, in their administration of the SRR, to consider the mobility needs of the handicapped. Further, State Rationing Offices will be required to consider the hardship needs of other individuals and firms, such as

low-income, long distance commuters, migrant workers, persons engaged in household moves, and other recurring or one-time hardship needs. States will also be required to consider the needs of persons in suburban and rural areas, particularly mid-sized cities, small towns and rural communities not adequately served by any public transportation system.

It should be emphasized that firms as well as individuals may apply to States for hardship allotments. Furthermore, firms and persons experiencing hardship would not be precluded from seeking relief from the State Ration Reserve notwithstanding that they have applied for or received supplemental allotments directly from DOE.

VI. Discussion of Other Comments

A. Allotments based on registered vehicles versus drivers' licenses

The issue of whether allotments to individuals ought to be determined on the basis of drivers' licenses or registered vehicles was the subject of many comments. The final regulations adopted the approach of using vehicle registrations.

Section 102 of the Emergency Energy Conservation Act of 1979 requires the President to report to Congress on a number of issues related to rationing, including the drivers' license versus vehicle registration issue. This report will be submitted to Congress simultaneously with the Standby Gasoline Rationing Plan and is attached to this notice of final rulemaking as Appendix A. Our reasoning for adopting vehicle registrations as the method to allot ration rights is explained fully therein.

Several consumer and other groups advocated a broader based distribution of ration rights to all persons over 18 years of age, or perhaps to registered voters. The practical problems of implementing such a system are even more serious than the problems of using drivers' licenses as the basis of ration allotments. They would also require massive transfers of income, since initial distribution would bear little correlation to the use of gasoline.

B. Other Gasoline Uses

The final regulations do not include specific provisions for allotments to a number of non-commercial gasoline uses. Examples are motorized marine craft used for recreation, snowmobiles and gasoline-powered generators. Persons are not precluded from diverting ration coupons received for other vehicles to buying gasoline for these purposes, or from purchasing coupons on the exchange market. It is our intention that any further assistance for such persons would have to come from the State Ration Reserve.

C. Diesel Fuel Rationing

Section 203 of the EPCA requires the submission to Congress of a rationing plan not just for gasoline but also for "diesel fuel used in motor vehicles." In the December 7 notice, we requested comment on the problems of implementing a diesel fuel rationing plan, and particularly on the problem of the interchangeability of diesel fuel with home heating oil. Commenters generally agreed that fuel interchangeability was a serious problem.

We will continue to evaluate the comments received, and we request further comment on the issues concerning diesel

fuel rationing. We currently anticipate that we will address further the issue of a diesel fuel rationing plan following submission of this gasoline rationing plan to Congress.

VII. Procedures for Promulgating the Standby Gasoline Rationing Plan Rule

Section 203(a) of the EPCA, as amended, requires the President to prescribe the rationing plan by rule. In section 4 of Executive Order 11912 (41 F.R. 15825, April 15, 1976), as amended by Executive Order 12038 (43 F.R. 4957, February 7, 1978) the President has delegated to the Secretary of Energy only the responsibility to develop for the President's consideration such a rationing plan. As a result, the authority to prescribe the rule remains with the President. Publication of this final rule by DOE is being performed as a ministerial function at the direction of the President.

VIII. Comment Procedures

Written comment on the issues identified in this preamble or on any other aspect of this rationing plan should be submitted by 4:30 p.m. on July 15, 1980, to the address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on the document with the designation: "Standby Gasoline Rationing Plan." Fifteen copies should be submitted.

Any information submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information and to treat it according to our determination.

IX. Regulatory Analysis

The requirement in sec. 201(f) of the EPCA that a rationing contingency plan must be accompanied by an evaluation of its potential economic impacts was eliminated by an amendment to that section in EECA sec. 103(c). An economic analysis was prepared for the final contingency rationing rule issued in February 1979, and this analysis will be updated and modified so as to provide a useful discussion of the new plan's economic impacts. Copies of the February 1979 analysis are available at the DOE Freedom of Information Reading Room, GA-152, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C.

The President has not delegated to DOE the authority to issue the Standby Gasoline Rationing Plan rule. This rule is being published as a ministerial duty by the DOE at the direction of the President. As a result, the authority to issue the rule remains with the President and the provisions of Executive Order 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), regarding a regulatory analysis, are not applicable to this rule.

EECA sec. 102 requires a report to Congress on many issues related to the development of a rationing plan. This report, which will be submitted to Congress simultaneously with this plan, is attached to this rule as Appendix A. This explanatory material will be useful in understanding the final Standby Gasoline Rationing Plan.

X. Environmental Report

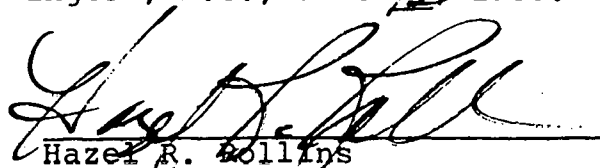
As more fully explained in Part VII above, the authority to issue this rule has not been delegated to DOE and thus remains with the President. The provisions of the National Environmental Policy Act (NEPA, 32 U.S.C. 4321 et. seq.) do not apply to actions taken by the President. As a result, no environmental analysis in accordance with NEPA is required for this rule.

DOE did prepare an environmental report for the rationing plan issued in February 1979. Since the fundamental rationing concepts which could be considered to have an environmental impact have not been changed substantially from that plan, its analysis still is useful. In the Conference Report on EECA (125 Cong. Rec. H9142, H9150 (Oct. 12, 1979)), Congress also stated its belief that the existing environmental report is adequate for the new plan. The environmental report is available for public review in the DOE Freedom of Information Reading Room, GA-152, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 96-102; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; E.O. 11912; Emergency Energy Conservation Act of 1979, Pub. L. 96-102; Executive Order 11912 (41 FR 15825, April 15, 1976), as amended by Executive Order 12038 (43 FR 4957, February 7, 1978)).

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations, is amended to add a new Part 570, as set forth below, unless disapproved by Congress in accordance with the procedures specified in sections 201 and 552 of the Energy Policy and Conservation Act (Pub. L. 94-163), said Part 570 to become effective only as provided in section 201 of that Act.

Issued pursuant to the express direction of the President of the United States, in Washington, D.C., June 12, 1980.



Hazel R. Hollins
Administrator
Economic Regulatory Administration

Chapter II, Title 10 of the Code of Federal Regulations is amended to add a new Part 570, to read as follows:

Part 570 - STANDBY GASOLINE RATIONING PLAN REGULATIONS

Subpart A -- General Provisions

- 570.1 Scope.
- 570.2 General definitions.
- 570.3 Penalties and violations.
- 570.4 Reporting requirements.
- 570.5 User fees and reimbursement for costs.
- 570.6 Authority to contract or delegate.
- 570.7 Authority to issue regulations, rules, orders and guidelines.

Subpart B -- Ration Rights: General Provisions

- 570.11 Distribution of ration rights.
- 570.12 Disposition of Government ration checks.
- 570.13 Ration rights.
- 570.14 Mandatory transfers of ration allotments.

Subpart C -- Computation of Reserves and Allotments

- 570.21 Definitions.
- 570.22 Calculations.
- 570.23 Ration rights purchases and sales.
- 570.24 Limitation on distribution of ration rights.

Subpart D -- Supplemental Allotments

- 570.31 Priority class activities.
- 570.32 Commercial firm allotments.
- 570.33 Other supplemental allotments.
- 570.34 Application procedures.

Subpart E -- Purchase of Gasoline

- 570.41 Purchases of gasoline at retail sales outlets
- 570.42 Other purchases of gasoline.
- 570.43 Other gasoline purchase provisions.
- 570.44 Supplier disposition of ration rights and ration checks.
- 570.45 Principal suppliers' obligations to DOE.
- 570.46 Redemption advances.
- 570.47 Inventory changes.

Subpart F -- Allocation of Gasoline

- 570.51 Relationship to Parts 210 and 211.

Subpart G -- Ration Banking

- 570.61 Coupon issuance points and participating banks.
- 570.62 Ration rights accounts.
- 570.63 Redemption accounts.
- 570.64 Restrictions on endorsements.

Subpart -- National Ration Reserve

- 570.71 National Ration Reserve.

Subpart I -- State Ration Reserves

- 570.81 State Ration Reserves.
- 570.82 Establishment of State Rationing Offices and local boards.
- 570.83 Hardship applications and guidelines.

AUTHORITY: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70 and Pub. L. 96-102; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; E.O. 11912; Emergency Energy Conservation Act of 1979, Pub. L. 96-102; Executive Order 11912 (41 FR 15825, April 15, 1976), as amended by Executive Order 12038 (43 FR 4957, February 7, 1978).

Subpart A -- General Provisions

§ 570.1 Scope.

(a) This Part applies, in all or such parts of the United States as shall be specified by DOE, to the distribution of gasoline refined in or imported into the United States. DOE may exempt any region of the United States from the application of this Part if it finds that such exemption would provide for more equitable and efficient distribution of gasoline.

(b) Effective date. These regulations shall become effective severally or in toto on a date or dates to be specified and published by DOE, subject to the provisions of sec. 201(d) of the Energy Policy and Conservation Act (Pub. L. 94-163, EPCA), as amended by the Emergency Energy Conservation Act of 1979 (Pub. L. 96-102).

(c) Relationship to other Parts. The provisions of Part 205 of this Chapter shall be applicable to this Part, except as modified by the Secretary of Energy by rulemaking to reflect the specialized needs of gasoline rationing. Such provisions of Parts 210, 211 and 212 of this Chapter as are in effect at the time this Part is in effect shall apply to this Part unless otherwise specified by DOE. In the event any provisions of this Part or any regulations adopted to implement this Part are inconsistent with any provisions of any other Part of this Chapter, the provisions of this Part or the regulations adopted to implement this Part shall control.

(d) Title. This Part shall be entitled the Standby Gasoline Rationing Plan.

§ 570.2 General definitions.

For purposes of this Part--

"Agriculture" means agricultural production as defined in 10 CFR Part 211, and related distribution of agricultural products.

"Allotment" means the value, in gallons of gasoline, of the ration rights issued to a ration recipient.

"Base period" means a period in the base year corresponding to the current calendar month or quarter, or current ration period, as appropriate.

"Base year" means the period designated by DOE as the most recent 12 calendar month period for which accurate and reliable gasoline use data are available.

"Bulk purchaser" means bulk purchaser as that term is defined in § 211.102 of 10 CFR Part 211.

"DOE" means the Department of Energy or the Secretary of Energy.

"Eligible individual" means a natural person designated by DOE as eligible to receive ration rights on the same basis as a registrant of a specified vehicle classification.

"Emergency services" means law enforcement, fire fighting, United States Postal Service, snow removal, emergency medical services, search and rescue activities, telecommunications services and utilities services.

"Energy production" means energy production as that term is defined in § 211.51 of Part 211 of this Chapter.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship, or any other entity however organized,

including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The DOE may, in regulations and orders issued under this Part, treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"Gasoline" means motor gasoline as defined in § 211.51 of Part 211 of this Chapter excluding, however, aviation fuels as defined in § 211.142 of Part 211 of this Chapter.

"Government ration check" means a ration check issued by DOE to a ration recipient.

"Governor" means the chief executive officer of a State.

"National Ration Reserve" means the ration rights reserved by DOE each ration period pursuant to Subpart H of this Part.

"Person" means any individual, corporation, partnership, association or any other organized group and includes any agency of the United States Government or any other government.

"Principal supplier" means a supplier which refines gasoline in or imports gasoline into the United States.

"Public passenger transportation" means (a) facilities and services for surface public transportation whether publicly or privately owned, including water, rail, bus and van transportation, and taxicabs; and (b) bus and van transportation of pupils to and from school.

"Ration check" means a negotiable document issued pursuant to the authority of this Part, other than a ration coupon or redemption check, evidencing the right to purchase specified volumes of gasoline.

"Ration coupon" means a coupon issued by DOE entitling the bearer to purchase a specified volume of gasoline.

"Ration period" means that period of time for which DOE calculates the projected available supply of gasoline and determines ration right allotments for ration recipients.

"Ration recipient" means a registrant, eligible individual, firm or other person allotted ration rights under the provisions of this Part.

"Ration rights" means ration coupons and ration checks or any other documents authorized by this Part that shall be evidence of or establish rights to purchase specified volumes of gasoline.

"Ration rights account" means an account opened pursuant to the provisions of § 570.62 of this Part for the deposit and withdrawal of ration rights.

"Redeemed ration rights" means ration rights accepted by a supplier in exchange for the sale of gasoline, and cancelled by that supplier pursuant to § 570.44 of this Part.

"Redemption account" means an account opened by a supplier pursuant to the provisions of § 570.63 of this Part for the deposit of ration rights received and redeemed in exchange for the sale of gasoline, and for the deposit of redemption checks received from other suppliers in exchange for the sale of gasoline.

"Redemption check" means a check drawn on a redemption account by a supplier who is the holder of that account.

"Registrant" means the person or persons with the most recent valid vehicle registration for a vehicle which has been determined by DOE as eligible for an allotment.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling gasoline to end-users into other than a gasoline storage tank at a fixed location.

"Sanitation services" means the collection and disposal for the public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

"Secretary" or "Secretary of Energy" means the Secretary of Energy or his delegate.

"State" means any one of the fifty States, the District of Columbia, Puerto Rico or any territory or possession of the United States.

"State Rationing Office" means the office established or designated by each State to carry out the authorities delegated to that office by DOE pursuant to Subpart I of this Part.

"State Ration Reserves" means the ration rights provided to the State Rationing Offices by DOE for distribution within the States.

"Supplemental allotment" means the allotment distributed to a firm, priority class activity or other person pursuant to Subpart D of this Part.

"Supplier" means any firm or any part or subsidiary of any firm, other than the Department of Defense, that supplies, sells, transfers or otherwise furnishes (as by consignment) gasoline to wholesale purchasers or end-users. Suppliers include, but are not limited to, refiners, importers, resellers, jobbers, and retailers.

"Telecommunications services" means the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communications common carrier, excluding sales and routine administrative activities.

"United States" means the fifty States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

"Utilities services" means the repair, operation and maintenance of electric and gas services for the public by a public utility, excluding sales and routine administrative services.

"Wholesale purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer, or both.

"Wholesale purchaser-consumer" means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains gasoline from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of gasoline for its own use in agricultural production in the base year, or (b) purchased or obtained more than 84,000 gallons of gasoline in the base year. Firms engaged in short-term vehicle rental, and similar firms as determined by DOE, shall be deemed to be wholesale purchaser-consumers for purposes of this Part.

"Wholesale purchaser-reseller" means any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) gasoline and resells or otherwise transfers it to other purchasers without substantially changing its form.

§ 570.3 Penalties and violations.

(a) Any person who violates any provision of these regulations or any order or rule issued pursuant thereto shall be subject to the penalties as set forth in section 5 of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), in sections 524 and 525 of the Energy Policy and Conservation Act (Pub. L. 94-163), and in Subpart P of Part 205 of this Chapter.

(b) Any firm having custody, care or control of ration coupons, Government ration checks or other ration rights shall at all times, in receiving, storing, transmitting, or otherwise handling ration rights, take all reasonable precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit ration coupons, Government ration checks or other ration rights, and to avoid any unauthorized transfer, negotiation, or use of ration coupons, Government ration checks or other ration rights. Such firms shall also safeguard ration coupons, Government ration checks or other ration rights from theft, embezzlement, loss, damage, or unauthorized destruction.

(c) No person shall, with intent to defraud, falsely make, forge, counterfeit, or alter any ration check, ration coupon or other ration right or redemption check.

(d) No person shall, with intent to defraud, pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or keep in possession

or conceal any falsely made, forged, counterfeited, or altered ration check, ration coupon or other ration right or redemption check.

(e) No person shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeit, or altered ration check, ration coupon or other ration right or redemption check, with the intent that the same be passed, published, or used as true and genuine.

(f) A ration right or any other evidence of right prepared by or on behalf of the United States for use in connection with a rationing contingency plan shall be considered to be an obligation or other security of the United States for purposes of Title 18, United States Code.

§ 570.4 Reporting requirements.

DOE shall require the filing of such information or reports as it deems necessary to administer the Standby Gasoline Rationing Plan.

§ 570.5 User fees and reimbursement for costs.

(a) DOE may impose a uniform fee on each gallon of gasoline sold during the period for which these regulations are in effect solely to defray the expenses of administering and operating the Standby Gasoline Rationing Plan.

(b) DOE shall establish procedures to provide for reimbursement of some or all administrative and related costs incurred by coupon issuance points, State and local governments and such other firms and governmental units as

shall be called upon to implement the Standby Gasoline Rationing Plan.

§ 570.6 Authority to contract or delegate.

DOE may delegate to any other governmental agency at the Federal, State or local level all or any part of its functions under this Part and may contract for goods or services necessary to implement this Part.

§ 570.7 Authority to issue regulations, rules, orders, and guidelines.

DOE may issue such additional regulations, rules, orders, and guidelines, and may make such adjustments, as are necessary to administer and implement the provisions of these regulations. Such regulations, rules, orders, guidelines and adjustments shall be issued in accordance with applicable procedural requirements and, to the extent possible, only after an adequate opportunity for public comment.

Subpart B -- Ration Rights: General Provisions

§ 570.11 Distribution of ration rights.

(a) Ration rights will be issued in the form of Government ration checks distributed to ration recipients. DOE in its discretion also may deposit ration rights directly into ration rights accounts, or may otherwise provide for the distribution of allotments determined in accordance with the provisions of Subpart C.

(b) DOE may establish procedures whereby all or a portion of the ration rights allotted to a State Ration Reserve may be distributed by DOE in accordance with instructions

provided by the State Rationing Office in that State, or by DOE without such instructions if it determines that a State is not administering its State Ration Reserve in accordance with a State plan approved under § 570.82 of this Part.

§ 570.12 Disposition of Government ration checks.

Government ration checks may be disposed of as follows:

(a) Government ration checks may be exchanged for ration coupons at coupon issuance points pursuant to Subpart G of this Part.

(b) Government ration checks may be deposited in a ration rights account and may be subsequently withdrawn as ration rights pursuant to § 570.62 of this Part.

(c) Government ration checks may be surrendered to a supplier when purchasing gasoline.

(d) Government ration checks may be transferred or sold to any individual or firm.

§ 570.13 Ration rights.

(a) Value of ration coupons. A ration coupon entitles the bearer to purchase the number of gallons indicated on the face of the coupon, or such other amount as shall be determined and announced by DOE.

(b) Validity of ration coupons. Unless declared invalid by DOE or redeemed pursuant to § 570.44, ration coupons of a given series designation shall be valid from a date specified in an Order published by DOE through the end of the Standby Gasoline Rationing Plan.

(c) Validity of ration rights. DOE may establish limitations on the period of time for which any ration right issued under the authority of this Part shall remain valid.

§ 570.14 Mandatory transfers of ration allotments.

DOE may, in order to prevent windfalls to the lessor of a registered vehicle receiving ration allotments, require such lessor to transfer such ration allotments to the lessee of such vehicle, according to terms and conditions established by DOE.

Subpart C -- Computation of Reserves and Allotments

§ 570.21 Definitions.

The following symbols have the following meanings:

<u>Symbol</u>	<u>Meaning</u>
NGBPU	The total of gasoline consumption in the United States during the base period.
NBPUA	The total of gasoline consumption in the United States during the base period for agriculture.
NNBPU	The total of gasoline consumption in the United States during the base period excluding gasoline used for agriculture.
NTR	The total number of ration rights to be distributed within the United States during a ration period.
NNR	The number of ration rights available for distribution within the States.
NRR	The number of ration rights to be reserved for use in the National Ration Reserve for the ration period.

AG The total number of ration rights allotted for agriculture priority activities.

SGBPU The total of gasoline consumption in a State during the base period.

SBPUA The total of gasoline consumption in a State during the base period for agriculture.

SNBPU The total of gasoline consumption in a State during the base period excluding gasoline used for agriculture.

STR The total number of ration rights available to each State for the ration period.

SNR The net number of ration rights available to a State for distribution as basic and supplemental allotments.

SRR The number of ration rights distributed to the States for the State Ration Reserves for the ration period.

- SA The projected number of supplemental allotments in a State to priority class activities and other persons or firms for the ration period.
- SBR The number of ration rights in a State available for distribution as basic allotments.
- VC Vehicle classification(s) to be established by DOE for all vehicles designated by DOE as eligible to receive allotments.
- AI The allotment index, which expresses the value of the allotment for any vehicle in a given vehicle classification in relation to the allotment for private automobiles (the allotment index for private automobiles will be 1.0).
- CVP The classification vehicle point, which is the sum of all vehicles in a given vehicle classification, multiplied by the allotment index for that vehicle classification.
- TVP The total vehicle points, which is the sum of the classification vehicle points (CVP's) for all vehicle classifications.
- SBA The State basic allotment for each private automobile or other vehicle with an allotment index (AI) of 1.0.
- DBA The distributed basic allotment, which is the number of ration rights in gallons allotted for a given type of vehicle.

570.22 Calculations.

For each ration period, DOE shall project the available supply of gasoline and, based on this projection, shall determine the national total number of ration rights (NTR) to be distributed. The computation of allotments shall be made as follows:

(a) National Net Base Period Use (NNBPU). The national net base period use of gasoline (NNBPU) is computed by subtracting from the national gross base period use (NGBPU) the national base period use of gasoline for agriculture (NBPUA).

$$N N B P U = N G B P U - N B P U A$$

(b) National Net Number of Rights (NNR). The national net number of rights (NNR) is computed by subtracting from the national total number of rights (NTR) the National Ration Reserve (NRR) and the total allotments for agriculture (AG) determined pursuant to Subpart D.

$$N N R = N T R - N R R - A G$$

(c) State Net Base Period Use (SNBPU). The State net base period use of gasoline (SNBPU) for any State is computed by subtracting from the State gross base period use (SGBPU) the State base period use of gasoline for agriculture (SBPUA).

$$S N B P U = S G B P U - S B P U A$$

(d) State Total Rights (STR). The total number of ration rights available to each State (STR) is determined by multiplying the national net rights (NNR) by the ratio of State net base period gasoline use (SNBPU) to national net base period gasoline use (NNBPU).

$$S T R = N N R \times \frac{S N B P U}{N N B P U}$$

(e) State Net Rights (SNR). The net number of rights in a State, available for distribution as basic and supplemental allotments, is computed by subtracting from the State total rights (STR) the number of rights in the State Ration Reserve (SRR).

$$S N R = S T R - S R R$$

(f) State Basic Rights (SBR). The number of rights in a State available for distribution as basic allotments (SBR) is computed by deducting from the State net rights (SNR) the projected number of supplemental allotments (SA) to be distributed as provided in Subpart D.

$$S B R = S N R - S A$$

(g) State Basic Allotment (SBA). The State basic allotment is computed as follows:

(1) The sum of all vehicles registered in the State in a given vehicle classification (VC) is multiplied by the allotment index (AI) for that classification to yield a classification vehicle point (CVP).

$$C V P = V C \times A I$$

(2) The sum of the CVP's for all vehicle classifications equals the total vehicle points (TVP).

$$T V P = C V P_1 + C V P_2 + C V P_n$$

where n = the number of classifications.

(3) The State basic allotment (SBA) equals the State basic rights (SBR) divided by the total vehicle points (TVP) within the State.

$$S B A = \frac{S B R}{T V P}$$

(h) Distributed Basic Allotment (DBA). For each State, the value of ration rights in gallons distributed to the registrant of a given vehicle for a ration period equals the State basic allotment (SBA) multiplied by the allotment index (AI) for that vehicle, such product to be rounded by DOE if necessary.

$$D B A = S B A \times A I$$

(i) Length of the ration period. The length of each ration period shall be three months or such other period as DOE may prescribe.

§ 570.23 Ration rights purchases and sales.

(a) DOE is authorized to issue and distribute by auction, sale or such other means as determined by DOE, additional ration rights where necessary:

- (1) to establish a market for ration rights;
- (2) to equilibrate the number of ration rights issued with the estimated actual supply of gasoline, or
- (3) for such other purposes as DOE may determine to be appropriate to assure that adequate ration rights are available to carry out the purposes of the Standby Gasoline Rationing Plan,

provided that DOE shall not issue or distribute more ration rights in total than the estimated actual supply of gasoline.

(b) To the extent that funds are appropriated, DOE is authorized to purchase ration rights where necessary:

- (1) to equilibrate the number of ration rights issued with the actual supply of gasoline; or
- (2) to carry out the purposes of subsection (a).

(c) DOE may take such other actions as may be necessary to equilibrate the number of ration rights issued with the estimated actual supply of gasoline, including making adjustments to the national total number of ration rights (NTR) in the next ration period pursuant to § 570.22.

§ 570.24 Limitation on distribution of ration rights.

(a) DOE may establish a limit on the number of ration rights issued to any person or household. This limitation shall not preclude the distribution to a person or to members of a household of additional ration rights granted from the State Ration Reserve.

(b) Ration rights that would be distributed to a person or to members of a household but for a limitation imposed in subsection (a) shall be distributed to the State Ration Reserve of the State from which such distribution would be made.

(c) For purposes of this section, household means persons related by blood or marriage who live together in a single residence.

Subpart D -- Supplemental Allotments

§ 570.31 Priority class activities.

(a) A firm with respect to its activities in any of the following classifications may apply to DOE for a supplemental allotment equal to the difference between the firm's per vehicle allotments determined pursuant to Subpart C and a percentage of such firm's consumption of gasoline attributable to its priority activities during the base period, such percentage to be determined by DOE for

each firm or classification of priority activity:

- (1) Emergency services;
- (2) Sanitation services;
- (3) Public passenger transportation;
- (4) Energy production;
- (5) The Department of Defense, with respect to its activities directly related to the maintenance of national security;
- (6) For hire mail and small parcel transportation and delivery;
- (7) Agriculture;
- (8) Short-term vehicle rental; and
- (9) Newspaper distribution.

(b) DOE may designate other activities as priority class activities, and firms engaged in such activities shall be eligible to apply for a supplemental allotment pursuant to paragraphs (a) and (c) of this section.

(c) Any firm applying for a supplemental allotment as a priority class activity shall submit an application to DOE according to forms and procedures to be established by DOE. In addition to reporting its total gasoline consumption for the base period, a firm applying for a supplemental allotment for a priority class activity shall report that portion of its total base period gasoline consumption attributable to a priority class activity, and the number and types of vehicles engaged in a priority class activity, and such other information as DOE may require.

(d) Notwithstanding any other provision of this Part, the supplemental allotments for agriculture priority activities issued pursuant to subsection (a) shall, for purposes of ration rights calculations in § 570.22, be included as ration rights allotted for agriculture (AG) in computing allotments of ration rights in § 570.22(b), and shall not be included as supplemental allotments (SA) in the computations in § 570.22(f).

§ 570.32 Commercial firm allotments.

A firm engaged in commerce or business, as determined by DOE, will receive supplemental allotments equal to the difference between the firm's per vehicle allotments determined pursuant to Subpart C and a percentage of such firm's consumption of gasoline during the base period, such percentage to be determined by DOE.

§ 570.33 Other supplemental allotments.

DOE may designate other classes of persons, including eligible individuals, to receive supplemental allotments in accordance with criteria to be established by DOE.

§ 570.34 Application procedures.

A firm or other person applying for a supplemental allotment shall submit an application to DOE according to forms and procedures to be established by DOE. Such application shall be accompanied by the payment of a fee in an amount to be determined by DOE to be necessary to cover the costs of processing the application.

Subpart E -- Purchase of Gasoline

§ 570.41 Purchases of gasoline at retail sales outlets.

Except as otherwise provided in regulations adopted pursuant to § 570.42, no supplier may sell or otherwise transfer gasoline at a retail sales outlet without obtaining from the purchaser at the time of sale or transfer ration rights equal on a gallon basis to the amount of gasoline transferred.

§ 570.42 Other purchases of gasoline.

(a) No supplier (including a wholesale purchaser-reseller) may receive gasoline from a supplier without providing to the supplier a redemption check or redeemed

ration rights equal on a gallon basis to the amount of gasoline transferred. No wholesale purchaser-consumer or bulk purchaser may receive gasoline from a supplier without providing to the supplier ration rights equal on a gallon basis to the amount of gasoline transferred.

(b) DOE shall establish by regulation the terms and conditions by which suppliers, bulk purchasers, wholesale purchaser-consumers and such other classes of end-users as designated by DOE, shall transfer to their suppliers (including retailers) ration rights or redeemed ration rights, as appropriate, taking into account:

- (1) limitation of fraud and abuse;
- (2) consistency with standard business practices governing payments for gasoline; and
- (3) administrative ease.

§ 570.43 Other gasoline purchase provisions.

(a) No purchaser may tender, and no supplier may accept ration coupons of a given series designation in exchange for gasoline prior to the date for which such series designation has been declared valid by DOE pursuant to § 570.13(b) of this Part.

(b) Subject to the provisions of § 570.64 of Subpart G of this Part, and subject to such regulations as DOE may develop, unredeemed ration rights may be freely transferred for or without consideration.

(c) No supplier (including a retailer) shall require any purchaser to purchase ration rights from any firm (including itself) as a condition of transferring gasoline.

(d) No supplier (including a retailer) shall discriminate against any purchaser offering valid ration coupons as evidence of entitlement to purchase gasoline if such coupons are tendered by a customer at the time of sale. A supplier may accept ration checks, including Government ration checks, from a customer as evidence of entitlement to purchase gasoline, but if there are insufficient ration rights in the ration rights account on which the ration check (other than a Government ration check) is drawn, the payee shall be liable for the deficiency, with recourse against the payor.

(e) A supplier of gasohol and similar blends of gasoline and non-petroleum products shall require a purchaser to transfer ration rights or redeemed ration rights, as applicable, only for that portion of the gasohol or similar blend which is gasoline.

§ 570.44 Supplier disposition of ration rights and ration checks.

A supplier (including a retailer) which receives ration coupons or ration checks (including Government ration checks) in exchange for gasoline shall at the time of exchange redeem all such coupons or checks by indelibly marking them with the supplier's name, its redemption account number, if any, and the legend "redeemed." No supplier shall sell or otherwise transfer gasoline for consumption to a purchaser in exchange for ration coupons that have previously been redeemed.

§ 570.45 Principal suppliers' obligations to DOE.

Each principal supplier shall file with DOE in such form and for such period as shall be designated by DOE, a report certifying the volume of gasoline sold during the reporting period, and shall submit with such report a redemption check equal on a gallon basis to the volume of gasoline sold during the reporting period.

§ 570.46 Redemption advances.

(a) Suppliers shall be entitled to receive an initial redemption advance according to a formula to be established and published by DOE. Such formula shall take into account the needs, if any, of suppliers located in remote areas subject to infrequent or irregular delivery schedules and suppliers in areas subject to highly seasonal demand.

(b) DOE may provide for such additional redemption advances as it deems necessary.

(c) DOE shall require suppliers receiving redemption advances to repay such advances to DOE according to terms and conditions established and published by DOE.

(d) DOE shall make such redemption advances as are deemed necessary and appropriate to compensate suppliers for losses due to spillage, evaporation and shrinkage. DOE shall establish criteria for the determination of such advances so that the total of redeemed ration rights does not exceed the total amount of gasoline sold by principal suppliers.

§ 570.47 Inventory changes.

(a) Each supplier (including a retailer) shall report, according to forms and instructions to be issued by DOE, its inventory of gasoline measured on the first day of rationing before any sales of gasoline are made, measured at the end of the rationing program and measured at intervals to be specified by DOE.

(b) Any supplier (including a retailer) whose inventory at the close of the rationing program or at such other intervals as designated by DOE is less than its inventory measured on the first day of rationing may be required to submit a redemption check or redeemed ration rights to DOE equal on a gallon basis to the amount of inventory drawdown, less an amount to be specified by DOE for losses due to spillage, evaporation and shrinkage.

Subpart F -- Allocation of Gasoline

§ 570.51 Relationship to Parts 210 and 211.

(a) If the provisions of § 211.103 of 10 CFR Part 211 are in effect, § 211.103(b) shall not apply when this Part is in effect. DOE may change the allocation levels for firms receiving supplemental allotments or with priority classification.

(b) If the provisions of 10 CFR Part 211 are in effect at the time this Part is in effect, each purchaser's right to receive product shall be limited by the requirements under § 570.42 of this Part to provide either ration rights or redeemed ration rights to its supplier, as applicable.

(c) If the provisions of Part 211 are not in effect at the time this Part is in effect, the Secretary of Energy may prohibit a supplier from increasing above a specified level the amount of gasoline sold or otherwise transferred to a purchaser or class of purchasers, where such supplier owns, operates or otherwise controls such purchaser(s).

Subpart G -- Ration Banking

§ 570.61 Coupon issuance points and participating banks.

(a) Subject to terms and procedures to be established by DOE, DOE may authorize certain firms and institutions to act as (1) coupon issuance points to issue ration coupons in exchange for ration checks, and (2) participating banks to provide ration rights accounts and redemption accounts.

(b) Coupon issuance points and participating banks shall maintain such records and issue such reports as may be required from time to time by DOE.

§ 570.62 Ration rights accounts.

(a) Any firm or individual may establish a ration rights account. DOE may by order and notice establish a minimum initial deposit, allowable fees, and other forms, procedures, terms and conditions governing the operation and maintenance of ration rights accounts.

(b) No individual or firm shall issue a ration check for which no ration rights account has been established or drawn upon a ration rights account in which there are insufficient ration rights to cover that ration check and other outstanding ration checks drawn on that account.

§ 570.63 Redemption accounts.

(a) Pursuant to procedures to be established by DOE, suppliers, including retailers, may open redemption accounts at participating banks for the deposit of initial redemption advances, if any, redeemed ration rights, and redemption checks.

(b) DOE may require some or all suppliers to open and maintain redemption accounts.

(c) The opening of a redemption account and the receipt of deposits therefor shall be made at participating banks according to forms and procedures to be established by DOE.

(d) No individual or firm shall issue a redemption check for which no redemption account has been established or drawn upon a redemption account in which there are insufficient deposits to cover that redemption check and other outstanding redemption checks drawn on that account.

(e) Redemption checks shall not be valid for deposit in a ration rights account, nor shall redemption checks be valid for the purchase of gasoline by a wholesale purchaser-consumer, bulk purchaser or other ultimate consumer.

(f) DOE may impose limitations on the sale or transfer of redeemed ration rights if such a limitation is deemed to be necessary to prevent fraud or abuse.

§ 570.64 Restrictions on endorsements.

DOE may establish limitations on the endorsements of ration checks and redemption checks.

Subpart H -- National Ration Reserve

§ 570.71 National Ration Reserve.

(a) The National Ration Reserve shall be used by DOE to meet national disaster relief or other national emergency needs, to

provide ration rights for sale to the public in order to establish a market for ration rights, to provide allotments to meet the needs of Canadian and Mexican firms, or for any other purpose at the discretion of DOE.

(b) For each ration period, DOE shall determine a percentage of the national total number of ration rights for which ration rights shall be reserved by DOE for the National Ration Reserve.

Subpart I -- State Ration Reserves

§ 570.81 State Ration Reserves.

(a) For each ration period, DOE shall establish for each State which has been delegated authority pursuant to § 570.82, a percentage of that State's total number of ration rights (STR, as determined in Subpart C) for which ration rights shall be reserved by DOE for that State as a State Ration Reserve to meet the needs and hardships of end-users.

(b) For the initial ration period the State Ration Reserve shall be a minimum of five percent of the State total number of ration rights. A State may apply to DOE at any time to reduce or increase the amount of ration rights to be included in the State Ration Reserve.

(c) For each subsequent ration period, the State Ration Reserve allotment shall be determined by DOE after consultation with each State.

(d) Except as provided in § 570.82(i), no State may sell or otherwise transfer for consideration ration rights provided to such State as a State Ration Reserve.

§ 570.82 Establishment of State Rationing Offices and local boards.

(a) As soon as practicable after the Standby Gasoline Rationing Plan is approved by Congress in accordance with EPCA sec. 201(d), DOE will establish procedures for delegation of functions under this Part to a State Rationing Office and to officers or local boards (of balanced composition reflecting the community as a whole) of a State or political subdivision thereof.

(b) Within 60 days after DOE establishes procedures under subsection (a), each State may submit to DOE a plan to receive a delegation of authority from DOE and to administer the State Ration Reserve. The State plans shall include such information as DOE may request, including the following: (1) how the State proposes to establish a State Rationing Office and local boards to meet hardship needs and to provide for the mobility needs of the handicapped; (2) efforts to be undertaken during the effective period of the Standby Gasoline Rationing Plan to meet the needs of those persons in suburban and rural areas, particularly mid-sized cities,

small towns and rural communities not adequately served by any public transportation system; (3) the percentage of the State total number of ration rights requested by the State as a State Ration Reserve; and (4) procedures to prohibit recipients of hardship allotments from selling or otherwise transferring for consideration ration rights received as part of such allotments.

(c) DOE shall review the State plan submitted under subsection (b), and if approved DOE shall delegate appropriate authority to administer the State Ration Reserve allotted by DOE to that State. DOE also shall inform the State of the percentage of the State total number of ration rights to be allotted as a State Ration Reserve.

(d) Any State which does not have a State plan approved under subsection (c) shall not be provided any ration rights for a State Ration Reserve.

(e) The State Ration Reserves will be distributed by DOE to the State Rationing Offices by transmitting a Government ration check to each State.

(f) Each month the State Rationing Office shall report to DOE with respect to the preceding month: (1) the number of hardship petitions received by category of hardship alleged, (2) the disposition made of hardship applications, (3) the amount of ration rights issued from the State's Ration Reserve, and (4) such other information as DOE shall require.

(g) The State Rationing Office may redelegate the authority given to it by DOE to local rationing boards, provided they meet the balanced composition criteria set forth in paragraph (a).

(h) No State shall issue a ration check drawn upon a ration rights account if there are insufficient ration rights to cover that ration check and other outstanding ration checks drawn on that ration rights account.

(i) DOE may authorize the States to sell to the public a portion of the ration rights from the State Ration Reserves in order to establish a market for the sale of ration rights.

(j) DOE may establish procedures whereby all or a portion of the ration rights allotted to a State Ration Reserve may be distributed by DOE, or by DOE in accordance with instructions provided by the State Rationing Office in that State.

§ 570.83 Hardship applications and guidelines.

(a) Hardship applications will be received by the State Rationing Office or its delegate for review and determination. In its administration of the State Ration Reserve, a State Rationing Office or its delegate shall consider the mobility needs of handicapped persons. In addition, the State Rationing Office or its delegate shall consider the hardship needs of other individuals and firms,

such as low-income, long-distance commuters, migrant workers, persons engaged in household moves, and other recurring or one-time hardship needs, and the needs of persons in suburban and rural areas, particularly mid-sized cities, small towns and rural communities not adequately served by any public transportation system.

(b) For purposes of this section, the term "handicapped person" means any individual who, by reason of disease, injury, age, congenital malfunction, or other incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services and who has a substantial impediment to mobility.

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