

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 700]

RATIONING CONTINGENCY PLAN

Notice of Proposed Rulemaking and Public Hearings to Establish Contingency Gasoline and Diesel Fuel Rationing Regulations

The Federal Energy Administration (FEA) hereby gives notice that, as required by sections 201, 203 and 523 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), it will hold public hearings and receive written comments with respect to its proposed contingency gasoline and diesel fuel rationing regulations and plan.

Section 203 of the EPCA requires the President to transmit to the Congress a rationing contingency plan. Any rationing contingency plan submitted to the Congress must be approved by each House of Congress. The plan would then remain in standby status until the President finds that putting the plan into effect is required by a severe energy supply interruption or in order to fulfill obligations of the United States under the international energy program and transmits such finding to the Congress, together with a statement of the effective date and manner for exercise of such plan. Pursuant to section 203(b) of EPCA, the President would also be required in order to implement a standby rationing plan to find that such plan is necessary to attain, to the maximum extent practicable, the objectives specified in section 4(b) (1) of the Emergency Petroleum Allocation Act

of 1973 (Pub. L. 94-163), as amended, and the purposes of the EPCA. For the rationing contingency plan to become effective and be converted from standby status, the President's request to the Congress to put the plan into effect must not be disapproved by either House of Congress. After these steps are completed, the rationing contingency plan would be implemented for the period specified in the plan but for not more than nine months.

As directed by Section 4(a) of Executive Order No. 11912 (41 FR 15825, April 15, 1976), FEA, in consultation with other appropriate agencies, has developed a proposed rationing contingency plan. By this notice FEA is soliciting comments on the proposed rationing plan and the proposed contingency gasoline and diesel fuel rationing regulations. In developing this plan, FEA has considered a wide variety of rationing alternatives, especially regarding the number and type of end-user priority classes, feasibility, costs, the maintenance of essential public services and the avoidance of extreme hardship for any group or region. In this plan FEA has attempted to avoid unnecessary complexity while still meeting the requirements of the EPCA and the Emergency Petroleum Allocation Act. FEA would welcome comments on all aspects of the proposed plan to assist it in preparing a final rationing contingency plan for the President's consideration. In particular, FEA would appreciate comments which suggest alternatives to the proposed plan or parts of the plan which would assist FEA in designing a more efficient, equitable means of rationing gasoline and diesel fuels in the event of a future shortage.

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THE CONTINGENCY GASOLINE AND
DIESEL FUEL RATIONING REGULATIONS

Section 203(a) (1) of the EPCA provides that:

The President shall prescribe, by rule in accordance with section 523(a) of this Act, a rationing contingency plan which shall, for purposes of enforcement under section 5 of the Emergency Petroleum Allocation Act of 1973, be deemed a part of the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 and which shall provide, consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b) (1) of such Act --

(A) for the establishment of a program for the 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 proposed contingency rationing regulations are intended to satisfy these provisions of the EPCA. Mandatory rationing would be implemented only if all other options for managing a petroleum shortfall proved inadequate, including the conservation contingency plans proposed in the companion notice issued today. In developing its proposed rationing plan and these proposed regulations, FEA has assumed that any supply interruption severe enough to occasion implementation

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the rationing plan would cause FEA to continue or to reimpose, as the case may be, in whole or in part the current Mandatory Petroleum Allocation and Price Regulations, or regulations very closely resembling them in concept. With respect to gasoline, however, the rationing and allocation programs would be merged so that distribution of gasoline for all uses (motor vehicles, power equipment, marine engines, etc.) would be contained in one set of regulations (proposed part 700). However, the distribution of gasoline to wholesale purchaser-resellers (including retail sales outlets) would conform to the current allocation program in providing these purchasers with access to a pro-rata share of available gasoline supplies provided they subsequently provide their suppliers with redemption checks equal to the volume of gasoline their suppliers allocate to them.

With respect to the rationing of diesel fuel, FEA believes that the current allocation regulations affecting all middle distillates would provide an adequate means of rationing approximately 70 percent of all diesel fuel and that, therefore, a less comprehensive rationing plan for diesel fuel would be more appropriate. Consequently, the

proposed regulations, which apply to sales of diesel fuel at retail only, should be reviewed with the understanding that sales of diesel fuel, other than at retail, would be regulated in accordance with current subpart G of the Mandatory Petroleum Allocation Regulations.

I. Gasoline Allocation and Rationing

A. Gasoline Rationing to Consumers.

FEA's gasoline rationing plan controls the sale of gasoline to ultimate consumers by requiring that each consumer present to its gasoline supplier ration coupons or ration credit checks according to the quantity of gasoline purchased. These documents or "ration rights" would be periodically distributed to consumers of gasoline according to end-use priority classifications, and according to the estimated total quantity of gasoline available for sale within the United States during a ration period.

The proposed rationing plan is not a system to reduce national demand or to increase supply. Rationing is an attempt to spread the available gasoline supply equitably among all gasoline users, giving priority to certain activities which are considered essential to public health, safety, and welfare, and preventing hardship from falling disproportionately on any region or on any class of gasoline consumers.

FEA's rationing plan also assumes that gasoline prices would be subject to price controls during a period of

rationing; otherwise, rapid price increases may occur which would not necessarily provide for the equitable distribution of severely limited supplies in the best interests of the nation.

Under FEA's proposed rationing plan, FEA would issue ration rights for each ration period equal to the total estimated available supply of gasoline for the ration period. FEA would then distribute these ration rights through four basic programs. First, FEA would provide ration coupons to all eligible individuals (generally, persons holding valid driving permits). Second, FEA would provide ration credits to all firms (defined to include individuals, government units, corporations, partnerships, etc.) which are engaged in priority activities for which a ration credit level has been established. These ration credits would be in addition to any ration coupons received by a person as an eligible individual. Third, FEA would distribute three percent of all ration rights (the "State Hardship Reserves") issued for a ration period to State Rationing Offices which would be authorized to distribute these ration rights through local boards to handicapped persons and certain other classes of consumers. Fourth, FEA would reserve one percent of the issued ration rights to distribute itself (the "National Ration Reserve") under certain circumstances and to adjust deficiencies in the distribution of ration rights under the other three programs.

Persons to whom ration rights are issued would redeem their ration rights for gasoline or could sell or give them away. This provision for a ration rights exchange market ("white market") for exchanging ration rights should assure the efficient use of all available gasoline.

Each supplier (including a retail sales outlet) of gasoline would be required (a) to collect and redeem ration coupons or ration credit checks for all gasoline sold (or make arrangements to do so within ten days of the transaction) and (b) to deposit redeemed ration coupons or ration credit checks in the supplier's special redemption account. Retail sales outlets could agree to supply gasoline to a consumer without ration rights provided the retail sales outlet itself obtained ration rights to cover the transaction within ten days of the transaction.

Ration periods for coupons would vary in length depending on projected supply conditions and other factors and would be announced by FEA's publication of a notice in the Federal Register at least ten days in advance of the ration period. FEA could announce more than one ration period at a time. Calculations would be performed in advance of each ration period to equate the total amount of gasoline estimated to be available for that ration period with the total ration rights to be issued. On the basis of these calculations, FEA would determine the length of the particular ration period.

The total number of ration credits to be issued to firms entitled to a ration credit level under the proposed plan would be determined without regard to the available supply of gasoline. By lengthening or shortening the term of a future ration period for coupons, FEA would match the ration rights remaining after giving firms their ration credit allotments with the number of ration coupons issued to eligible individuals for that ration period, taking into account the number of ration rights to be distributed to the State Hardship Reserves and the National Ration Reserve.

The anticipated calculations leading to a determination of the length of a ration period may be summarized in four steps as follows:

- (1) FEA would estimate the total amount of available gasoline supplies during the coming ration period.
- (2) Next FEA would compute the number of ration credits to be issued to firms entitled to a ration credit level.
- (3) FEA then would compute the number of ration rights to be issued for the National Ration Reserve and the State Hardship Reserves by multiplying four percent by the total available supply of gasoline.

(4) FEA would then subtract the total number of ration credits to be issued to firms entitled to a ration credit level (Step 2) and the ration rights to be issued for the National Ration Reserve and the State Hardship Reserves (Step 3) from the total amount of gasoline supplies for the coming ration period (Step 1). The remaining gasoline would be for use by eligible individuals. Since their basic allotment would have been set by the ration coupons previously issued to each eligible individual, the available gasoline would be matched with the total of eligible individual allotments by adjusting the length of the ration period. The final allotment computation, therefore, is to determine the exact length of the ration period based on the supply of gasoline available for eligible individuals.

Ration rights exchange market. Under the proposed ration plan, anyone could enter the ration rights exchange market and function as a trader or broker of ration rights following their issuance by FEA. Thus, ration rights could be traded on a "white market" rather than a "black market." FEA would not impose any monetary or administrative barriers

to entry. Any trader or broker could open a secondary ration credit account with a participating bank to handle his or her transactions.

There would be a free market in the trading of all ration rights in the form of coupons and ration credits transferred by checks drawn on appropriate ration credit accounts. Prices for ration rights would be determined by supply and demand, with the amount, form, and timing of payment determined by mutual agreement between the buyer and seller without interference by FEA. FEA does not expect to prohibit short selling, future sales, and trading in unissued series. However, such practices may be restricted if FEA were to determine that they were harmful to the stable operation of the exchange market.

Penalties. The provisions of FEA's Administrative Procedures and Sanctions regulations (Part 205 of 10 CFR), including the provisions on civil and criminal penalties, would apply to any violations of the gasoline and diesel fuel rationing regulations.

B. Eligible individuals.

Under the proposed plan, an eligible individual is a natural person having a valid driver's permit, other than a learner's license, or any other person whom FEA designates as an eligible individual. Eligible individuals would receive the same basic allotment of ration coupons for each ration period. However, since FEA could vary the length of a ration period, those persons receiving these coupons would need to carefully monitor their use of ration coupons to

match their need for gasoline with the number of coupons available for a current ration period. Unless declared invalid, however, unused ration coupons for a ration period which has ended could be used in subsequent ration periods.

Assuming a 15-25% shortfall in gasoline supply, FEA currently estimates that the average ration period would be four to six weeks and that each eligible individual would receive eight ration coupons for each ration period with a total value of forty (40) gallons.

Eligible individuals would apply for ration coupons at issuance points to be designated by FEA, on days designated by FEA. For the first three ration periods, an eligible individual would submit an application form and his or her valid driver's license at an issuance point in order to receive a ration coupon allotment. The clerk at the issuance point would make an indelible mark on the license (for paper licenses) or punch a hole in it (for plastic and laminated licenses) to indicate that the license has been used to secure the eligible individual's initial allotments of ration coupons. Each eligible individual would be issued ration coupons for the first three ration periods. The application forms submitted to obtain ration coupons for the first three ration periods would be forwarded to FEA for audit and for detection of multiple applications.

FEA currently plans to contract with savings and loan associations and credit unions to act as issuing points for ration coupons for eligible individuals. However, it would

consider contracting with other institutions to perform this function, including the U.S. Postal Service. A final decision would depend on concluding acceptable arrangements at reasonable cost. FEA would appreciate comments on this aspect of the plan in terms of what agency or organizations should act as issuance points, and what procedures should be followed to assure efficient, equitable distribution of ration coupons to eligible individuals.

Before the fourth ration period, most eligible individuals would receive authorization cards issued by their State departments of motor vehicles for subsequent series of ration coupons. FEA would enter into arrangements with each State for the issuance of authorization cards to each licensed individual in the State. (For any State which is unable to issue authorization cards prior to the fourth ration period, FEA would permit residents of that State to use procedures similar to those for the first three ration periods to obtain their ration coupons for the fourth, fifth and sixth ration periods.) An authorization card, when presented with other personal identification, would be surrendered to obtain ration coupons for eligible individuals for the ration periods for which it is issued. FEA solicits comments as to whether State agencies should be authorized to perform this function and as to the procedures to be followed in distributing authorization cards in a timely, efficient manner.

Individuals who qualify as eligible individuals after the start of any ration period would receive no allotment for that period, but would be issued authorization cards to obtain ration coupons for subsequent ration periods.

Indians living on reservations under the jurisdiction of the Bureau of Indian Affairs (BIA) would receive their basic allotments by applying to BIA. BIA offices would serve as ordinary issuance points for Indians with State driver's licenses; BIA would also provide special allotments to Indians who may drive on reservations but who do not have State-issued driver's licenses. BIA offices would also administer Local Rationing Boards to meet the hardship needs of Indians living on reservations.

Foreign nationals living in or visiting the United States would be provided allotments of ration coupons only if they hold driver's licenses issued by a State. Foreign visitors without State driver's licenses would receive no allotment, but would be provided information on rationing as they enter the United States, including information on using the exchange market for ration rights to meet their gasoline requirements.

C. Ration credit allotments.

Under FEA's proposed ration plan, certain consumers would receive (in addition to any ration coupons issued to them as eligible individuals) ration credits based upon their being engaged in certain priority activities. These consumers could be individuals, corporations, trusts, government

units, partnerships, etc. However, the right to receive these ration rights would depend on whether the consumer is engaged in an activity for which these ration rights would be issued.

For each calendar month, the proposed rationing contingency plan calls for these consumers to receive ration credits equal to their base period use or current requirements for gasoline multiplied by their ration credit level. An alternative method, which may result in a reduction in the cost of the rationing program by approximately \$500 million, would be to distribute all ration credits through competitive bidding in a "white market." FEA would appreciate comments addressed specifically to whether such a bidding system is feasible and would comply with the requirements of section 203 of the EPCA.

A ration credit would be redeemable for one gallon of gasoline. Under the proposed regulations, a firm with a base period use of 1000 gallons of gasoline for the calendar month of September and entitled to a ration credit level of 90 percent of its base period use would receive 900 ration credits for the calendar month of September.

Rather than being issued ration coupons, a firm's allotment of ration credits for a calendar month would be deposited by FEA on the first day of each month in the firm's primary ration account maintained with an FEA regional processing center. The firm could then withdraw its ration credits by issuing a ration credit check drawn on its primary

ration account to the order of its gasoline supplier. The supplier would then redeem the ration credits represented by the check.

A firm could qualify for one of three gasoline ration credit levels depending on its end use of gasoline. These ration credit levels are:

- (1) One hundred percent of current requirements for:
 - Department of Defense use
 - Emergency services
 - Passenger transportation services
 - Agricultural production
- (2) One hundred percent of base period use for:
 - Sanitation services
 - Energy production
 - Telecommunications services
- (3) Ninety percent of base period use for:
 - All other government uses
 - All other uses by firms which report gasoline purchases as an expense to the Internal Revenue Service on Schedules C or F or on Forms 1065, 1120, 1120S, 990 or 990PF
 - All uses for religious, charitable, educational or other eleemosynary purposes not otherwise accorded a ration credit level

the desirability of according ration credit levels to other types of firms not specifically included within the proposed plan. FEA is particularly interested in whether its limited definitions of "Department of Defense use" and "agricultural production" contained in proposed § 700.4 are too restrictive or too broad.

FEA would also appreciate receiving comments addressed to the need for establishing a ration credit level of 100 percent of current requirements, a concept which originated in the allocation program. Since firms may purchase additional ration rights in the "white market" or, in the case of emergencies or hardships, may obtain extra ration rights through the State Rationing Offices, the benefits associated with creating a ration credit level of 100 percent of current requirements may be more than offset by the attendant administrative problems of estimating current needs, filing and certifying forms with FEA in time for the regional processing centers to make monthly allotments based on these estimates and auditing by FEA to guard against abuses. In view of the complexity and expense of a system for providing current requirements during a short-term rationing program, which

FEA invites specific comments on the ration credit level definitions which are included in the regulations and

may be in force for a maximum of nine months under the EPCA, FEA requests specific comments addressed to this issue.

In order to receive monthly ration credits, firms (a term which includes individuals, corporations, partnerships, government units, etc.) entitled to a ration credit level would establish primary ration credit accounts with an FEA regional processing center. FEA would contract with local banks (defined as "participating banks") to act as FEA's agents to accept applications to establish primary ration credit accounts. The participating banks would probably be commercial banks (rather than the savings and loan associations and credit unions which may serve as issuance points for distributing ration coupons to eligible individuals). Although FEA has proposed that it contract with commercial banks to serve as participating banks, FEA would appreciate comments as to whether and how other institutions (including governmental agencies) might perform the same function.

In addition to providing certain other required information, a firm seeking to open a primary ration credit account would certify its base period use or estimated

current requirements for gasoline, as appropriate, for each calendar month of the year. This would, of course, be only for its activities for which there is an established ration credit level. Any firm having multiple uses for gasoline subject to different ration credit levels would indicate its base period volumes for each end use separately in its application to establish its primary ration credit account.

The local participating bank would forward the application to the appropriate FEA regional processing center. At the beginning of a month, FEA would then deposit a firm's ration credit allotment for that month into the firm's primary ration credit account. Applications and their supporting documentation would be subject to audit and verification by FEA subsequent to the opening of a firm's account.

Since allotments would only be deposited in a firm's primary ration credit account by FEA, the opening of such an account would be a prerequisite to obtaining a ration credit allotment. Fees would be charged to all firms with primary ration credit accounts to cover the costs of maintaining these accounts.

All primary account owners would make withdrawals from their accounts by writing gasoline ration credit checks. These checks could be redeemed for gasoline, or could be cashed for coupons at specified coupon issuance points. An account holder could also sell his ration credits by drawing a ration credit check to the order of the firm purchasing the ration credits.

Firms would be able to open secondary ration credit accounts as necessary to meet their business needs, but FEA would only deposit a firm's monthly ration credit allotment into its primary ration account. Firms could then distribute their ration credit allotments among their secondary ration credit accounts. Thus, a large company headquartered in New York with a subsidiary in Atlanta might receive its ration credits in its primary ration credit account maintained at FEA's New York regional processing center and then distribute a portion of this allotment for the subsidiary's convenience to the subsidiary's secondary ration credit account maintained with FEA's Atlanta regional processing center.

Ration credit checks drawn on ration credit accounts would be redeemed or deposited in a ration credit account by the payee; the plan prohibits the endorsement of a ration credit check to third parties. However, having deposited a ration credit check in the payee's own ration credit account, the payee could then issue its own ration credit check to another payee.

Any firm that was not in operation during a base period would apply to FEA for assignment of a base period use and ration credit allotment. FEA would determine the appropriate base period use, taking into account the typical gasoline consumption patterns of similar firms.

Any firm whose average gasoline consumption for any three preceding months decreases by 25 percent or more from

the corresponding period of the base year would be required to report the amount of the decrease to FEA. Allotments for succeeding months would be adjusted by FEA according to the circumstances of each case.

Firms whose growth or altered business practices since the base year require them in any month to use greater than 25 percent more gasoline than during the corresponding month of the base year could apply to FEA for an increase in the size of their ration credit allotments. FEA would process these requests on a case by case basis to relieve severe hardship or gross inequity.

All organizations receiving ration credit allotments would be required to maintain records of gasoline purchased during the rationing program.

Sales organizations using commissioned direct sales representatives would be allowed to include in their base period use that amount of gasoline used in the selling activities of their sales representatives, even if such gasoline was not paid for by the firm. These sales representatives would then receive their ration credit allotments from these firms, rather than from FEA. FEA solicits comment as to the types of firms which should be included in this category and alternative methods of determining allotments.

Vehicle rental companies would be allowed to include in their base period uses only that gasoline used by the rental company itself. Customers' usage of gasoline in rental vehicles would be excluded from the rental company's base period use and included in the customer's base period use if the customer is a firm. This method would avoid discrimination against rental companies whose customers normally buy their own gasoline, and would prevent distortions in rental vehicle use compared to owned-vehicle use for all individuals and firms.

D. Redemption and clearing.

FEA would maintain regional processing centers to perform automated account posting activities in support of the majority of FEA's ration banking activities.

FEA would determine the number and location of these centers, which would serve as the sole processing facilities for all ration credit and redemption accounts within a given geographic region. In general, the regional processing centers would function in much the same way that commercial banks do in processing demand deposit accounts.

The regional processing centers would establish a check file for each ration credit account. The center would supply the necessary ration credit checks and deposit forms to account owners.

Ration credits would be posted automatically by the regional processing centers to primary ration credit accounts of firms entitled to a ration credit level.

On a daily basis, participating banks would forward deposited gasoline ration credit checks and their accompanying deposit tickets to the appropriate regional processing centers where the checks would be counted and proofed back to deposit tickets. Clearance of gasoline ration credit checks between the regional processing centers would be similar to the clearance procedure for monetary checks by the commercial banking system.

Each regional processing center would also supervise the collection, verification and storage of redeemed, cancelled and void ration coupons deposited at participating banks in its service area.

In connection with FEA's banking function under the plan, FEA would appreciate comments as to how transactions and reconciliation of accounts could best be performed in order to coordinate transfers and redemptions of ration rights. Furthermore, FEA would appreciate comments as to the type of records and reporting requirements which would be necessary to provide a basis for testing compliance with the rationing plan and to assure all persons of the integrity of the rationing program.

E. State Rationing Offices and Local Rationing Boards.

The States would be given an allotment each ration period, called the State Hardship Reserves, for use in meeting the hardship needs of firms and persons. The size

of the State Hardship Reserves for each ration period would be three percent of the total available supply of gasoline, apportioned among the States according to population and other relevant factors. A State Hardship Reserve would be administered by a State Rationing Office. This office could be the same as the current State Energy Office. The State Rationing Office would in turn provide hardship allotments for distribution by Local Rationing Boards. Local Rationing Boards would receive petitions from persons requesting a greater number of ration rights than they would be entitled to receive under the regular allotment program for such individuals. The Local Rationing Board would determine if an applicant should be granted additional ration rights by reason of the applicant's hardship status. The Local Rationing Board would also be empowered to reclassify or modify a hardship applicant's entitlement to additional ration rights and to issue or deny such rights during the course of the Mandatory Gasoline Allocation and Rationing Program.

Hardship allotments could be made by Local Rationing Boards to the following classes of individuals:

- Handicapped persons whose gasoline needs exceed their basic allotment, if any, for reasons related to their handicaps. A handicapped person would be any individual who, by

reason of disease, injury, age, congenital malfunction, or other permanent incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services and who has a substantial, permanent impediment to mobility.

Low-income, long-distance commuters who without a supplemental allotment would be forced to spend over five percent of their adjusted gross incomes purchasing ration rights for travel to and from their place of employment, and for whom carpooling or public transportation is not a reasonable alternative. (A table would be provided to compute the supplemental allotment according to each applicant's adjusted gross income, number of dependents, commute distance, and the prevailing price of coupons on the ration rights exchange market.)

Migrant workers who hold a driver's license issued by a State and who own motor vehicles used for travel from one agricultural work

site to another. These workers would apply for supplemental allotments according to the distance between their current work sites and their new work sites. Migrant workers would apply for supplemental allotments at the Local Rationing Board serving the community in which the current work site is located. The Local Rationing Board would verify previous allotments, and record any new allotment. Vehicle registration must be shown with the applicant's driver's license when applying.

Other recurring or one-time hardship needs which a Local Rationing Board considers to be consistent with the spirit and intent of the hardship priority classification.

The State Rationing Office would hear appeals from decisions of Local Rationing Panels and would decide hardship applications filed by firms (including individuals) which have been assigned ration credit levels.

The State Rationing Office would not make an adjustment of a firm's base period use since the State Hardship Reserves

are intended to be a means of meeting hardship needs caused by unusual circumstances. Firms which seek adjustments of their base period uses may petition the appropriate FEA regional office in accordance with forms and instructions to be issued by FEA.

As proposed, the Local Rationing Board would be headed by a volunteer panel (Local Rationing Panel) to be chosen by the local government (city or county council, town meeting, etc.) in accordance with FEA guidelines designed to ensure that the panel reflects the community as a whole. A paid Local Rationing Board Manager would be appointed by the Chief Executive of the State and would be primarily responsible for carrying out the day-to-day operations of the board. The manager would hire a paid staff to perform the various duties assigned to the local board, which would include assisting applicants in filing for hardship assistance and screening applications within general guidelines established by FEA and the local panel. The administrative staff could make routine hardship allotments for certain classes of applicants, especially when the allotment is a recurring grant to an applicant whose needs are constant from one ration period to the next.

An alternative approach to the Local Rationing Board organization would be to have the Local Rationing Panel appointed by the Chief Executive of the State in conformity

with general guidelines. The panel would select the manager and either select the staff or permit the manager to select the staff. FEA would appreciate specific comments on these alternative methods of establishing the Local Rationing Boards. Alternatives other than the two outlined will also be considered by FEA.

Summary activity reports would be sent by the Local Rationing Boards to their State Rationing Offices. States in turn would send activity reports to FEA to permit FEA monitoring of hardship allotment distribution, and to support any State's emergency request for an increased hardship allotment from the National Ration Reserve.

Local Rationing Boards would also distribute certain FEA rationing materials, including pamphlets and explanatory manuals, and would respond to general public inquiries about gasoline rationing and gasoline availability.

The EPCA requires that within 30 days of the date the rationing contingency plan is approved by Congress, FEA must propose a rule establishing the criteria for delegation of FEA's functions under EPCA, in whole or in part, with respect to the rationing plan to officers or local boards (of balanced composition reflecting the community as a whole) of States or political subdivisions of States. The

proposed rule must also prescribe procedures for petitioning for the receipt of such delegated authority. At present, FEA believes the delegation procedures currently utilized in recognizing State Energy Offices under the Emergency Petroleum Allocation Act would suffice for petitioning by the States. However, FEA would like to receive specific suggestions as to the criteria FEA should establish for delegating any of its functions to State officers. These comments would guide FEA in formulating a future proposal for public comment following any Congressional approval of the rationing contingency plan submitted to Congress by FEA.

F. The National Ration Reserve.

A National Ration Reserve (initially one percent of estimated supply) would be established as a special allotment which could be used by FEA to meet national disaster relief needs, or for interim replenishment of any State Hardship Reserves faced with unusually heavy demand. The National Ration Reserve would also be used by FEA to provide any special allotments deemed necessary for any reason during any ration period.

G. Suppliers and wholesale purchaser-resellers.

The proposed gasoline rationing plan provides that suppliers would allocate gasoline to their wholesale purchaser-reseller customers (including retail sales outlets) in much

the same fashion that they do under the current allocation program. That is, suppliers would calculate an allocation fraction each month to provide these customers with their pro-rata share of the supplier's gasoline supplies available for resale to customers. Suppliers would have an obligation to allocate supplies only to those wholesale purchaser-reseller customers which they supplied in the corresponding month of the base year. However, as a condition to receiving all or any portion of its allocation, a wholesale purchaser-reseller would be required to account for gasoline supplies it receives by issuing a redemption check drawn on its redemption account maintained with FEA. The redemption check would be drawn to the order of the wholesale purchaser-reseller's supplier for redeemed ration rights equal to the amounts of gasoline received from the supplier.

The base periods would be designated at the time that FEA determines that rationing would be necessary. Under the current allocation program, the base period is the calendar month of 1972 which corresponds to the current month. In the event the rationing program is implemented, however, it may be that a period such as 1975 would be more appropriate to reflect current consumption patterns, population shifts, distribution systems, etc.

The wholesale purchaser-reseller would generally sell gasoline to customers who would surrender ration rights or redemption checks to the wholesale purchaser-reseller equal to the amount of gasoline purchased. The wholesale purchaser-reseller would redeem the ration rights and redemption checks and deposit them in its redemption account. Although the redemption account would be maintained at FEA regional processing centers, participating banks would act as authorized agents of FEA to accept deposits into the wholesale purchaser-reseller's redemption account. The wholesale purchaser-reseller's local participating bank would then forward the wholesale purchaser-reseller's deposit slip and redeemed ration rights and redemption checks to FEA for posting to the wholesale purchaser-reseller's redemption account.

The wholesale purchaser-reseller would then issue a redemption check drawn on its redemption account to its supplier to account for gasoline delivered by its supplier and sold by the wholesale purchaser-reseller.

A retail sales outlet could supply customers without receiving ration rights provided that it acquired ration rights in the ration rights exchange market and deposited them in its redemption account within ten days of the transaction.

A retail sales outlet could, at its option, issue scrip for any unused value of a ration coupon transferred for purchase of gasoline. The type and form of such scrip would be within the retail sales outlet's discretion. Scrip could be redeemable for gasoline not only at the retail sales outlet which issued the scrip but also at other retail sales outlets if the outlets agree to accept scrip issued by each other.

H. Gasoline rationing costs.

The annual operating cost of the total gasoline rationing program is estimated to be just under \$2 billion. The following tables summarize these costs by function and by agency or industry initially bearing the cost.

Cost by Function

Coupon Printing and Distribution	\$513 Million
Ration Banking Accounts	340 Million
Oil Industry Processing and Reporting	401 Million
State and Local Rationing Offices	291 Million
Audit and Enforcement	247 Million
Adjustments and Appeals	78 Million
Data Processing, Public Education, Misc.	<u>55 Million</u>
TOTAL	\$1.925 Billion

Cost by Agency or Industry

FEA Direct Costs	\$294 Million
Other Federal Agencies	124 Million
State and Local Governments	453 Million
Oil Industry	401 Million
All Others (Banks, etc.)	<u>653 Million</u>
TOTAL	\$1.925 Billion

In addition, start-up costs are estimated to total \$398 million for the 90-day implementation period immediately preceding the commencement of ration operations.

FEA would reimburse the cost of gasoline rationing borne by the issuance points, commercial banks and other organizations which it authorizes to participate in the

program. State and Local Rationing Boards' costs would also be reimbursed by FEA, according to a per-capita or per-transaction formula, to distinguish costs associated with rationing from costs connected with unrelated State and local services.

User fees would be collected or authorized by FEA to recover the total cost of gasoline rationing. The following are illustrative of expected types and ranges of such fees:

- (1) A user fee of between 1.6¢ and 1.9¢ per gallon of all gasoline sold, depending on (a) the total gasoline supply available during a gasoline shortage, (b) the actual operating costs of rationing (other than costs to gasoline marketers), and (c) the amortization arrangements made to recover start-up costs of rationing. This fee would be collected through the same Internal Revenue Service (IRS) procedures that are used to collect the Federal excise tax on gasoline.
- (2) Fees to cover the cost of opening and using gasoline checking accounts.

In addition to the fees described above, a mark-up estimated to total approximately 0.4¢ per gallon of gasoline would be permitted for suppliers to recover their direct costs associated with the handling, cancelling and depositing

of ration coupons, ration credit checks and redemption checks.

FEA would collect no gasoline taxes, and the total amount of fees collected would not exceed the cost of the gasoline rationing program. In connection with any comments upon the proposed gasoline contingency rationing plan, FEA will be particularly interested in comments which suggest more efficient procedures than those suggested and which indicate a means of lowering the costs of the plan consistent with the requirements and objectives of EPCA and the Emergency Petroleum Allocation Act.

II. Diesel Fuel Allocation and Rationing

A. Introduction.

In the event of a severe interruption in supplies of imported crude oil, it is anticipated that shortages of diesel fuel would not be as severe as gasoline shortages, principally because refinery yield would probably be altered to increase middle distillate production and reduce gasoline production. It is unlikely that the shortage of middle distillate fuels, including diesel fuel, would ever exceed ten percent of normal consumption. Comparable gasoline statistics suggest that a 15 to 25 percent shortfall of gasoline is likely. Although diesel fuel rationing may not be necessary, even if gasoline rationing is imposed, FEA is proposing a simplified rationing program to carry out the mandate of EPCA.

Unlike the rationing plan designed for all gasoline sales, FEA's diesel fuel rationing plan would be achieved through controls on sales of diesel fuel at retail sales outlets only, leaving all other purchases of diesel fuel under the control of the middle distillate allocation program (subpart G of part 211 of 10 CFR). There are two basic reasons for this different approach for diesel fuel:

- (1) Diesel fuels are very similar or identical to other middle distillates, especially heating oils, and a rationing program aimed at all diesel fuel would be extremely difficult to enforce, due to product substitutability.
- (2) Whereas most gasoline is purchased at retail sales outlets, only 30 percent of all diesel fuel is purchased at retail sales outlets, which means that 70 percent of the diesel fuel market could be controlled by the middle distillate allocation program.

B. Summary of Plan Operation.

All retail sales of diesel fuel would take place as follows:

- (1) Eligible individuals would use their allotments of gasoline ration coupons for their diesel fuel

requirements. This would assure equity between drivers of gasoline-powered and diesel-powered automobiles.

- (2) Firms having an allocation level under the middle distillate allocation program and which operate diesel-powered vehicles would be issued a diesel fuel entitlement card for each such vehicle, to be used at the time of purchase of diesel fuel at a retail pump. This entitlement card would be evidence of ration rights only -- it would not include the monetary cost of the fuel. Buyers of retail diesel fuel would make monetary payment in their usual way, separate from the entitlement card transaction. The entitlement card would be linked to a ration credit account maintained by FEA for all firms purchasing diesel fuel at retail sales outlets. FEA would post ration credits each month to each diesel fuel ration credit account, representing the account owner's retail ration entitlement for that month. Each retail purchase of diesel would generate an entitlement card purchase slip, one copy of which would be sent by the retailer to FEA to be charged against the account owner's ration credit balance.

Retail sales outlets would be required to submit to FEA each month the ration coupons and entitlement card slips received from diesel fuel customers, accompanied by monthly reports balancing total diesel sales with the total value of the accompanying ration rights.

C. Diesel fuel ration allotments.

Eligible individuals.

Eligible individuals would not be assigned ration allotments for diesel fuel. They may use gasoline ration rights to purchase diesel fuel.

Firms

Firms will be given a ration credit level for purchases at retail sales outlets comparable to what they would be entitled to receive under 10 CFR 211.123 if they were purchasing from a supplier as wholesale purchaser-consumers or end-users.

D. Allotments.

Each eligible individual purchasing diesel fuel at retail sales outlets would use ration coupons provided to each such individual under the gasoline rationing system.

Individuals could apply to the Local Rationing Board for hardship allotments, exactly as if they were requesting gasoline hardship allotments, and subject to the same decision criteria as for gasoline users.

Each firm which wishes to purchase diesel fuel at retail sales outlets would be required to fill out a form showing total base period purchases of diesel fuel and the volume purchased at retail sales outlets.

FEA would establish a ration credit account for each firm and would credit to each account the amount of diesel fuel purchased at retail sales outlets in the base period multiplied by the appropriate allocation level then applicable under the middle distillate allocation regulations.

E. Diesel fuel entitlement cards.

FEA would prepare and mail to each qualified firm one or more diesel fuel entitlement cards. A separate card would be issued for each of the firm's vehicles which uses diesel fuel purchased at retail sales outlets.

All retail sales outlets of diesel fuel would be supplied by FEA with three-part purchaser's forms to be used with the entitlement cards. These forms would be designed to fit into common credit card imprinting equipment.

Each purchase of diesel fuel at retail would be accompanied either by the transfer of ration coupons or by the imprinting of a three-part form using the purchaser's diesel fuel entitlement card.

The three-part form, once imprinted, would be distributed as follows:

Copy 1 to the purchaser as a receipt.

Copy 2 to FEA regional processing center for rationing control accounting.

Copy 3 held by the retail sales outlet owner for his records, and for possible FEA audit.

f. Redemption.

Each retail sales outlet would be required periodically to aggregate all ration coupons and second-copies of all imprinted diesel purchase forms and forward them with a transmittal form to be issued by FEA to a specified FEA regional processing center for review and audit. Diesel fuel ration rights would be freely transferrable, using the ration rights exchange market.

g. Diesel fuel rationing costs.

The total cost of the diesel fuel rationing system is estimated to be less than \$50 million per year. This relatively low cost (compared with gasoline rationing) is due in large part to the fact that many of the supporting functions for diesel fuel rationing at retail sales outlets would be carried out by either the gasoline rationing system (e.g., State Rationing Offices and Local Rationing Boards, ration coupon issuance for eligible individual use, etc.) or by the middle distillate allocation program (e.g., audit of suppliers, etc.).

The collection of fees incident to administration of the diesel fuel rationing program would be through mechanisms

similar to those established for gasoline rationing. As with gasoline rationing fees, the retail diesel rationing fees would be adjusted from time to time to equal, but not to exceed actual program costs.

III. Economic analysis and inflationary impact

The EPCA requires that any rationing contingency plan submitted to Congress be based upon a consideration of the potential economic impacts of such plan, including an analysis of--

- (1) any effects of such plan on--(A) vital industrial sectors of the economy; (B) employment (on a national and regional basis); (C) the economic vitality of States and regional areas; (D) the availability and price of consumer goods and services; and (E) the gross national product; and
- (2) any potential anticompetitive effects.

Accordingly, FEA would appreciate any comments which address these potential effects to assist FEA in preparing its analysis for submission to Congress.

As part of its economic analysis, FEA is also reviewing the inflationary impact of the proposed regulation pursuant to Executive Order 11821, issued November 27, 1974. The inflationary assessment will be included in the final rationing plan submitted to Congress.

IV. Environmental assessment

FEA is preparing an environmental assessment of the proposed rationing plan as required by 10 CFR 208.4. It is

anticipated that a negative determination will be made with respect to the effect of the plan, if implemented, on the quality of the human environment. Copies of this assessment will be furnished to the Council on Environmental Quality and the Environmental Protection Agency. As a result of the anticipated negative assessment, it is unlikely that an environmental impact statement will be required. However, FEA will be receptive to public comments and information concerning the environmental effects, if any, of the proposed rationing plan.

FEA will issue a subsequent notice regarding the completion of the environmental assessment. At that time copies of the environmental assessment will be made available.

Interested persons will be invited to submit data, views, or arguments with respect to the environmental impacts of the proposed rationing plan and the environmental assessment.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate by submitting written data, views, or arguments with respect to the subject matter set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box GN, Washington, D. C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA with the designation, "Gasoline and Diesel Fuel Rationing Plan." Fifteen copies should be submitted. All comments received by June 28, 1976, and all relevant information, will be considered by the Federal Energy Administration. Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

PUBLIC HEARINGS

FEA has determined that in addition to holding a public hearing on this proposal in Washington, D.C., it will hold regional hearings in Atlanta, Kansas City, San Francisco and Anchorage.

NATIONAL HEARING

The Washington, D.C. hearing (hereinafter referred to as the National hearing) will be held beginning at 9:30 a.m., June 24, 1976, at Room 2105, 2000 M Street, N.W., Washington, D.C. Any person who has an interest in this proceeding or who is a representative of a group or class of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, Box GN, Room 3309, Federal Building, 12th

and Pennsylvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., on June 16, 1976. A request may be hand delivered between the hours of 8 a.m. and 4:30 p.m. Monday through Friday. Requests should be submitted in accordance with the "Request Procedures" set forth below.

REGIONAL HEARINGS

The regional hearings in Atlanta, Kansas City, San Francisco and Anchorage will be held beginning at 9:30 a.m., local time, June 22, 1976, at the locations specified below. Any person who has an interest in this proceeding or who is representative of a group or class of persons that has an interest may make a written request for an opportunity to make an oral presentation. Such a request should be directed to FEA at the address given below for the appropriate Region, and in accordance with the "Request Procedures" set forth below. Requests must be received before 4:30 p.m., local time, on June 15, 1976.

FEA Office	Submit requests and questions to testify to	Hearing location
Atlanta, Georgia	FEA, 1655 Peachtree St., Atlanta, GA 30300	FEA, 1655 Peachtree St., 5th Floor Conference Room, Atlanta, Georgia
Kansas City, Missouri	FEA, Federal Office Bldg. 112 East 12th St., P.O. 2208, Kansas City, MO 64142	Federal Bldg., 911 Walnut St., Room 302, Kansas City, Missouri
San Francisco, California	FEA, 111 Pine St., San Francisco, CA 94111 ATTN: CIGR	Post Office and U.S. Court of Appeals Bldg., Court Room 14, 7th and Mission Streets, San Francisco, California
Anchorage, Alaska	FEA, Alaska Sub-regional Office, G-11 Federal Office Bldg., 605 West Fourth Avenue, Anchorage, Alaska 99501	Z. J. Loussac Library, 427 F St., Anchorage, Alaska

REQUEST PROCEDURES

The following request procedures are applicable to both the National and regional hearings. Persons requesting an opportunity to make an oral presentation should submit their written requests to the appropriate address for the region in which they wish to appear. Requests should be labeled both on the document and on the envelope "Gasoline and Diesel Fuel Rationing Plan."

The person making the request should briefly describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons that has such an interest; and to give a concise summary of

the proposed oral presentation and a phone number where he or she may be contacted through June 21, 1976 in the case of the regional hearings and through June 23, 1976 in the case of the National hearing. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., local time, June 17, 1976, in the case of the regional hearings, and by June 18, 1976, in the case of the National hearing. Fifty copies of his or her statement must be submitted to the Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461 before 9:00 a.m., e.s.t. on June 23, 1976, for the National hearing, and to the location of the hearing on the day the statement is scheduled to be presented, for the regional hearings.

HEARING PROCEDURES

The FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA

with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the National hearing, to Executive Communications, FEA, Room 3309, Box GN, Federal Building, 12th and Pennsylvania Avenue N.W., Washington, D.C. before 4:30 p.m., e.s.t., June 22, 1976. Questions to be asked of persons making statements at the Regional hearings should be submitted to the appropriate FEA region by June 21, 1976. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Administrator's Reception Area, Room 3400, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase copies of the transcripts from the reporter.

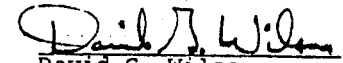
As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposal on the quality of the environment. The Administrator's comments were as follows:

EPA intends to review the environmental assessment to be prepared by FEA for this rationing program. Should our review identify environmental impacts associated with the program, we will provide comments during the public review period indicated in this draft notice. We request that FEA provide EPA with copies of the environmental assessment once it is available.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275; Energy Policy and Conservation Act, Pub. L. 94-163; E.O. 11790 (39 FR 23185); E.O. 11912 (41 FR 15825)).

In consideration of the foregoing, it is proposed that Chapter II, Title 10 of the Code of Federal Regulations be amended as set forth below.

Issued in Washington, D.C., May 25, 1976.


David G. Wilson
Acting General Counsel
Federal Energy Administration

10 CFR Chapter II is amended by adding a new Part 700,
reading as follows:

**PART 700 - MANDATORY GASOLINE ALLOCATION AND RATIONING
REGULATIONS AND DIESEL FUEL RATIONING REGULATIONS**

Subpart A -- General Provisions

Section

- 700.1 Scope.
- 700.2 Relationship of subparts.
- 700.3 Limitation on suppliers and purchasers of rationed products.
- 700.4 General definitions.
- 700.5 Ration coupons as obligations of the United States, crimes and offenses.

**Subpart B -- Allocation of Gasoline to Wholesale
Purchaser-Resellers**

- 700.31 Supplier/wholesale purchaser-reseller relationship.
- 700.32 Supplier's method of allocation.
- 700.33 Retail sales outlets.
- 700.34 Procedures and reporting requirements.

Subpart C -- Rationing of Gasoline

- 700.41 General.
- 700.42 Ration rights.
- 700.43 Validity of ration rights.
- 700.44 Issuance of ration rights to eligible individuals.
- 700.45 Issuance of ration rights to firms entitled to a ration credit level.
- 700.46 Calculations.
- 700.47 Recordkeeping requirements.

**Subpart D -- Redemption, Transfer and Invalidation
of Ration Rights**

- 700.51 Transfer of ration rights.
- 700.52 Invalidated ration rights.
- 700.53 Cancelled ration rights.
- 700.54 Redeemed ration rights.
- 700.55 Scrip.
- 700.56 Restriction on endorsements.

Subpart E -- Ration Credit and Redemption Accounts

- 700.61 General.
- 700.62 Primary ration credit accounts.
- 700.63 Secondary ration credit accounts.
- 700.64 Redemption accounts.
- 700.65 Recordkeeping requirements and reports.

Subpart F -- National Ration Reserve

- 700.71 National Ration Reserve.

**Subpart G -- State Rationing Offices
and Local Rationing Boards**

- 700.81 State Rationing Office.
- 700.82 Local Rationing Board.
- 700.83 Hardship applications.
- 700.84 Selection of Local Rationing Panel and Local Rationing Board Manager.
- 700.85 State Hardship Reserves.
- 700.86 Timeliness.
- 700.87 Appeals.

Subpart H -- Diesel Fuel Rationing

- 700.91 General.
- 700.92 Issuance of ration rights.
- 700.93 Redemption.

Subpart A -- General Provisions

§ 700.1 (a) Scope. This part applies to the mandatory allocation of gasoline and end-use rationing of gasoline and diesel fuel produced in or imported into the United States.

(b) Effective date. The subparts of this part shall become effective severally or in toto on a date or dates to be specified by the Federal Energy Administration and published in the Federal Register, subject to the provisions of § 201(b) and (c) of the Energy Policy and Conservation Act (Pub. L. 94-163).

(c) Relationship to other parts. Unless otherwise specified, the provisions of parts 205 and 210 of this chapter shall apply to this part. The pricing provisions applicable to this part are provided in part 212 of this chapter. The provisions of part 211 of this chapter shall not apply to this part except as specifically indicated.

(d) Nothing in this part is intended to exclude or supersede exchange or borrow/payback operations which are normal operating procedures provided these procedures are not used to circumvent the intent of this part.

§ 700.2 Relationship of subparts. Unless otherwise specified in a particular subpart, the general provisions set forth in this subpart apply.

§ 700.3 Limitation on suppliers and purchasers of rationed products. (a) No supplier (including a retail sales outlet) shall supply a rationed product to any firm without redeeming ration rights or receiving redemption checks at the time the rationed product is transferred to such firm equal on a volume basis to the rationed product transferred; Provided, That a retail sales outlet may supply gasoline to a purchaser without redeeming ration rights if the retail sales outlet agrees to obtain ration rights to cover the transaction and does so within ten (10) days of the transaction.

(b) Notwithstanding any other provisions of this part, no supplier shall supply and no firm (including an individual) shall purchase or accept gasoline or diesel fuel in excess of one hundred (100) percent of its current requirements.

§ 700.4 General definitions. For purposes of this part -

"Agricultural production" means:

(a) all the activities classified under the industry code numbers specified below, as set forth in the Standard Industrial Classification Manual, 1972 edition:

- 011 Cash Grains.
- 0133 Sugar crops.
- 0134 Irish potatoes.
- 016 Vegetables and Melons.
- 017 Fruits and Tree Nuts.
- 0182 Food crops grown under cover.
- 021 Livestock, excluding Dairy, Poultry, etc.
- 024 Dairy Farms.
- 025 Poultry and Eggs.
- 091 Commercial Fishing.
- 201 Meat Products.
- 202 Dairy Products.
- 203 Preserved Fruits and Vegetables.
- 204 Grain Mill Products (except 2047, Dog, cat, and other pet food, which is excluded from the definition).
- 205 Bakery Products.
- 2061 Raw cane sugar.
- 2062 Cane sugar refining.
- 2063 Beet sugar.
- 209 Miscellaneous Foods and Kindred Products (except 2095, Roasted coffee, which is excluded from the definition).

(b) The following activities classified in the industry code numbers specified below, but only to the extent that they relate directly to food for human consumption:

- 0139 Field crops, except cash grains, not elsewhere classified.
- 0191 General farms, primarily crop.

0271 Fur-bearing animals and rabbits.
0272 Horses and other equines.
0279 Animal specialties, not elsewhere classified.
0291 General farms, primarily livestock.
071 Soil Preparation Services.
072 Crop Services (except 0724, Cotton ginning, which is excluded from the definition).
092 Fish Hatcheries and Preserves.
207 Fats and Oils.
2097 Manufactured ice (when used for preserving food for human consumption).
4212 Local trucking, without storage (only trucking from farm to market or to processing plant).
4971 Irrigation systems.

"Allocated product" means gasoline distributed pursuant to subpart B of this part.

"Allotment" means the value in gallons of gasoline or diesel fuel of the ration rights issued to an eligible individual or any firm.

"Base period" means the calendar month in the base year corresponding to the current calendar month.

"Base period use" means base period use as defined in §§ 700.32 and 700.45 of this part.

"Base year" means a calendar year to be determined by FEA and published in the Federal Register.

"Branded independent marketer" means a firm which is engaged in the marketing or distributing of an allocated product pursuant to -

(a) An agreement or contract with a refiner (or a firm which controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such firm), or

(b) An agreement or contract under which any such firm engaged in the marketing or distributing of an allocated product is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or firm which controls, is controlled by, or is under common control with such refiner), but which is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in paragraph (a) or (b) of this definition), and which does not control such refiner.

"Current requirements" means the amount of gasoline or diesel fuel needed by a firm to meet its present supply

requirements for a particular use of those products, but does not include any amounts which the firm (a) purchases or obtains for resale, (b) accumulates as an inventory in excess of that firm's customary inventory maintained in the conduct of its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21 of part 211 of this chapter.

"Department of Defense use" means those activities of the United States armed forces directly connected with and essential to strategic defense operations (excluding administrative activities).

"Diesel fuel" means No. 2-D diesel fuel as defined in American Society of Testing and Materials (ASTM) D975-71 and No. 1-D diesel fuel as defined in ASTM D975-71. Excluded from the definition is No. 4-D diesel fuel as defined in ASTM D975-71.

"Eligible individual" means a natural person having a valid motor vehicle operator's permit, other than a learner's permit, issued by a State in his or her name or any natural person designated as an eligible individual by the FEA. An Indian residing on a reservation under the jurisdiction of the Bureau of Indian Affairs of the Department

of the Interior who has no State driver's permit but who is permitted by the Bureau of Indian Affairs to drive a motor vehicle on the reservation is included within the definition.

"Emergency services" means law enforcement, fire fighting, and emergency medical services.

"End-user" means any firm which is an ultimate consumer of gasoline or diesel fuel other than a wholesale purchaser-consumer.

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition is synthetic natural gas manufacturing.

"FEA" means the Federal Energy Administration.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including a charitable, educational, or other eleemosynary institution, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The FEA may, in regulations and forms issued in 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 a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties. Excluded from the definition is aviation fuel as defined in § 211.142 of part 211 of this chapter.

"Independent marketer" means either a branded independent marketer or a non-branded independent marketer.

"Individual" means a natural person.

"Local Rationing Board" means the group consisting of the Local Rationing Panel, the Local Rationing Board Manager and the Local Rationing Board Staff.

"National Ration Reserve" means the ration rights reserved by FEA for each ration period for distribution to meet special or urgent needs during that ration period pursuant to subpart F of this part.

"Nonbranded independent marketer" means a firm which is engaged in the marketing or distribution of an allocated

product, but which (a) is not a refiner, (b) is not a firm which controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (c) is not a branded independent marketer.

"Passenger transportation services" means (a) surface facilities and services, excluding water and rail, which serve the general public for carrying passengers whether publicly or privately owned, including taxicabs; and (b) bus transportation of pupils to and from school.

"Rationed product" means gasoline distributed pursuant to subparts C and G of this part and diesel fuel distributed pursuant to subparts G and H of this part.

"Ration period" means the time span between the date one ration coupon series becomes valid and the date the immediately following ration coupon series becomes valid.

"Ration rights" means ration coupons and ration credits made available pursuant to subparts C, G, and H of this part which shall be evidence of an eligible individual's or firm's right to purchase specified volumes of gasoline and diesel fuels.

"Refiner" means refiner as defined in § 211.62 of part 211 of this chapter.

"Retail sales outlet" means a site on which a supplier maintains an ongoing business of selling any rationed product to eligible individuals, wholesale purchaser-consumers or end-users.

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

"Scrip" means any certificate, writing or token which represents less than five (5) gallons of a rationed product, and which a retail sales outlet may offer to any firm (including an individual) which has accepted less rationed product than the gallon amount of the ration rights surrendered to the retail sales outlet.

"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 by the Chief Executive of each State to carry out the authorities delegated to that office by FEA pursuant to subpart G of this part.

"State Hardship Reserves" means the ration rights provided to the State Rationing Offices by FEA for distribution within the States to meet the hardship needs of firms (including individuals) having needs for rationed products in addition to the amounts, if any, allotted to such firms pursuant to subparts C and H of this part.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated or rationed product to wholesale purchasers or end-users, including, but not limited to, refiners, importers, resellers, jobbers, and retailers.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, during periods of substantial disruption of normal service.

"Vehicle rental company" means a firm which rents or leases motor vehicles to other firms (including individuals) who are bailees of the motor vehicles for the period of the rental or lease.

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

"Wholesale purchaser-consumer" means any firm that is an ultimate consumer of a rationed product which, as part of its normal business practices, purchases or obtains a rationed product 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 that product for its own use in agricultural production in any completed calendar year subsequent to the year prior to the base year; or (b) purchased or obtained more than 84,000 gallons of that product in any completed calendar year subsequent to the year prior to the base year.

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

§ 700.5 Ration coupons as obligations of the United States, crimes and offenses.

(a) Ration coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to ration coupons.

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

Subpart B -- Allocation of Gasoline to Wholesale Purchaser-Resellers

§ 700.31 Supplier/wholesale purchaser-reseller relationship.

(a) Each supplier of gasoline shall supply all wholesale purchaser-resellers which purchased or obtained gasoline from that supplier during the base period.

(b) Unless otherwise provided in this part or directed by FEA, the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Gasoline Allocation and Rationing Program and may not be waived or otherwise terminated without the express written approval of FEA.

§ 700.32 Supplier's method of allocation.

(a) General. (1) Suppliers of gasoline shall allocate all their allocable supply in accordance with the provisions of this section. Each supplier shall determine its allocation fraction pursuant to the provisions of paragraph (b) of this section. Suppliers shall then allocate to wholesale purchaser-resellers with whom they have a supplier/purchaser relationship in accordance with the provisions of paragraph (c) of this section. The method of allocation for new suppliers is specified in paragraph (d) of this section. Suppliers with allocation fractions less than one (1.0) must act in accordance with the provisions of paragraph (e) of this section,

while suppliers with allocation fractions in excess of one (1.0) must act in accordance with the provisions of paragraph (f) of this section.

(2) Except as provided in § 700.33 of this subpart, for purposes of defining a supplier in this subpart, a firm shall mean the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(b) Allocation fraction. Each supplier shall determine an allocation fraction prior to making any allocation. A supplier's allocation fraction for any period shall be equal to its allocable supply of gasoline, which is defined in paragraph (b) (1) of this section, for that period, divided by its supply obligation for all levels of distribution, which is defined in paragraph (b) (2) of this section. Suppliers shall adjust their allocation fractions for each such period to reflect adjustments in their supply obligation and in their allocable supply. Each supplier shall only have a single allocation fraction for an allocation period for all wholesale purchaser-resellers except to the extent permitted or required by order of the FEA. Suppliers with two or more distribution subsystems or regions independent of one another may apply to the FEA National Office, in accordance with subpart G of part 205 of this chapter, for permission to use multiple allocation fractions whenever use

of a single allocation fraction would be impracticable or inconsistent with the objectives of the program.

(1) Allocable supply. Each supplier's allocable supply of gasoline for a period which corresponds to a base period shall be equal to its total supply for that period, which is the sum of its estimated production, including amounts received under processing and exchange agreements, imports (except to the extent imports may be excluded pursuant to § 211.12(g) of part 211 of this chapter), purchases and any reduction in inventory of gasoline made pursuant to § 211.22 of part 211 of this chapter except as otherwise ordered by FEA less (i) any amounts supplied to customers through exchange agreements and (ii) any amounts of gasoline supplied directly to firms other than wholesale purchaser-resellers. Any existing inventory, or production, importation or purchase of gasoline used to increase that inventory consistent with the provisions of § 211.22 of part 211 of this chapter shall not be included in the allocable supply of gasoline.

(2) Supply obligation--(i) General. A supplier's supply obligation of gasoline is the sum of (A) the amounts of its wholesale purchaser-resellers' base period volumes as adjusted which were supplied by the supplier during the appropriate base period provided that the wholesale purchaser-reseller is still in business; and (B) the amounts of base period uses of new wholesale purchaser-resellers assigned to the supplier by FEA.

(ii) Base period use. A wholesale purchaser-reseller's base period use is its base period volume or adjusted base period volume, as appropriate. A wholesale purchaser-reseller's base period volume of gasoline is the volume of gasoline purchased or obtained during the appropriate base period. In the case of a new wholesale purchaser-reseller, base period volume means the volume assigned pursuant to § 211.12(e) of part 211 of this chapter. Base period volume, however, does not include any amounts of gasoline obtained pursuant to in kind exchange agreements of gasoline which are normal business operating procedures except the difference between the total amounts received under exchange agreements and the total amounts supplied to customers through exchange agreements. Suppliers do not have a base period volume except when acting in the capacity of wholesale purchaser-resellers.

(c) Allocation by suppliers to wholesale purchaser-resellers. Each supplier shall allocate to each wholesale purchaser-reseller a volume of gasoline equal to the product of that supplier's allocation fraction multiplied by the amount equal to that wholesale purchaser-reseller's base period use; Provided, That, the wholesale purchaser-reseller has presented to the supplier redemption checks drawn upon the wholesale purchaser-reseller's redemption account in amounts equal to the supplier's deliveries to the wholesale purchaser-reseller made more than ten (10) days prior to a

contemplated delivery by the supplier to the wholesale purchaser-reseller.

(d) A supplier which was not a supplier prior to a date to be determined by FEA and published in the Federal Register shall be considered to have no supply obligation and shall not allocate supplies to any wholesale purchaser-reseller without FEA approval.

(e) Allocation fractions less than one.

(1) When a supplier's allocation fraction is less than one (1.0), a supplier shall reduce, on a pro-rata basis, the amounts of gasoline to be supplied to wholesale purchaser-resellers.

(2) Any supplier whose allocation fraction is equal to or less than one (1.0) and whose wholesale purchaser-resellers (other than retail sales outlets of gasoline owned and operated by that supplier) entitled to receive an allocation from that supplier either have not purchased or have notified the supplier of their intent not to purchase their allocation entitlement by the end of the allocation period may report and dispose of such volumes in accordance with the provisions of paragraph (f) of this section.

(f) Allocation fractions greater than one.

(1) General. In allocating allocable supplies of gasoline among wholesale purchasers and end-users, no supplier may use an allocation fraction greater than one (1.0) except as provided herein.

(2) Non-reporting suppliers. Any wholesale purchaser-reseller which is a retail sales outlet or any other supplier not subject to subparagraph (3) of this paragraph and which has an allocable supply of sufficient magnitude that its allocation fraction will exceed one (1.0) shall distribute its surplus product as provided by subparagraph (5) of this paragraph. There is no requirement that such a wholesale purchaser-reseller report its surplus product to FEA.

(3) Surplus product reports. A supplier which is a refiner or importer, and which is not a retail sales outlet and which has an allocable supply of sufficient magnitude that its allocation fraction computed pursuant to paragraph (b) of this section will exceed one (1.0) for a period corresponding to a base period, shall make allocations based on an allocation fraction of one (1.0) and shall report the volume, location, price, availability of transportation and significant specifications of surplus gasoline available. The surplus gasoline report shall be submitted in writing to the FEA National Office, with a copy to the appropriate FEA Regional Office, within five (5) days of the supplier's determination that its allocation fraction will exceed one (1.0). The report must be clearly labeled "Surplus Gasoline Report" both on the document and on the outside of the envelope in which the document is transmitted and shall be addressed to: Federal Energy Administration, Surplus Gasoline

Report, Post Office Box 19407, Washington, D.C. 20036. The FEA shall provide written notification to each supplier submitting a surplus gasoline report of the exact time of receipt of the report.

(4) Redirection. The National or Regional FEA (whenever authorized by the National FEA) may within ten (10) days after actual receipt of notification made pursuant to subparagraph (3) above direct that the gasoline so reported be distributed among other suppliers, sold to designated wholesale purchasers or end-users, be distributed to the reporting supplier's purchasers on a pro-rata basis, such as using an allocation fraction greater than one (1.0), or be accumulated in inventory.

(5) Distribution of surplus gasoline. Any supplier subject to subparagraph (2) or any supplier which reports pursuant to subparagraph (3) of this paragraph and which is not notified to the contrary within ten (10) days of receipt by FEA of the supplier's notification under subparagraph (3) of this paragraph, may distribute its surplus gasoline at its discretion except that (i) the supplier shall supply, in the aggregate, to all purchasers in the category of (A) wholesale purchaser-resellers which are entitled to receive an allocation from that supplier and which are branded independent marketers, to the extent that such category of purchaser is willing to accept it, at least the same proportion of the supplier's surplus gasoline as the total base

period volumes (prior to any adjustments) of branded independent marketers which are entitled to receive an allocation from that supplier bear to the total base period volumes (prior to any adjustments) of all purchasers, including those assigned by FEA, which are entitled to receive an allocation from that supplier; and (B) wholesale purchaser-resellers which are entitled to receive an allocation from that supplier and which are nonbranded independent marketers, to the extent that such category of purchasers is willing to accept it, at least the same proportion of the supplier's surplus product as the total base period volumes (prior to any adjustments) of nonbranded independent marketers which are entitled to receive an allocation from that supplier bear to the total base period volumes (prior to any adjustments) of all purchasers including those assigned by FEA, which are entitled to receive an allocation from that supplier; and (ii) the supplier may not supply to retail sales outlets owned and operated by the supplier, in the aggregate, a greater proportion of the supplier's surplus gasoline than the total base period volumes (prior to any adjustments) of all such retail sales outlets bear to the total base period volumes (prior to any adjustments) of all purchasers, including those assigned by FEA, which are entitled to receive an allocation from that supplier unless the supplier first offers surplus gasoline to and meets all requests for surplus

gasoline from all independent marketers which are entitled to receive an allocation from that supplier to the extent required in clause (i) of this subparagraph; Provided, That a supplier shall not be required to offer surplus gasoline available for distribution during a period corresponding to a base period to any purchaser which has refused to lift all of its allocation entitlement in that same period corresponding to a base period; and Provided Further That a supplier shall distribute its surplus product consistent with subpart C of this part.

(6) Records of disposition of surplus gasoline. Any supplier which reported surplus gasoline for a period corresponding to a base period as required by subparagraph (3) above shall maintain adequate records to allow FEA, upon request, to ascertain the disposition of the surplus gasoline.

(7) Purchaser's rights. Any wholesale purchaser or end-user may purchase gasoline from any supplier which certifies that it has surplus gasoline to distribute and that it has complied with the provisions of this paragraph; Provided, That the purchaser shall comply with the provision of subpart C of this part with respect to such purchases.

§ 700.33 Retail sales outlets.

(a) General. Notwithstanding any other provisions of this part, the provisions of this section shall apply to retail sales outlets which sell gasoline.

(b) Retail sales outlets as a firm. (1) Each firm or part of a firm which operates an ongoing business at a retail sales outlet shall be considered a separate firm with respect to each such outlet for purposes of this part and, therefore, shall be a separate wholesale purchaser-reseller. The entity which merely holds a real property interest in a retail sales outlet on which another entity operates the ongoing business shall not be considered the wholesale purchaser-reseller with respect to that outlet.

(2) An independent marketer, or a small or independent refiner, which operates two or more retail sales outlets may apply to the FEA for treatment of some or all of such outlets as a single firm in accordance with the procedures established in Subpart G of Part 205 of this chapter. The FEA may allow such treatment to the extent that the petitioner can demonstrate that treatment of each outlet as a separate firm would tend to lessen its competitive market position and that allowance of the petition would not result in an inequitable distribution of gasoline in the market areas served by that marketer.

(3) (i) A supplier's obligation to provide gasoline shall be determined separately for each retail sales outlet for which it has a supply obligation without distinguishing between retail sales outlets operated by the supplier and retail sales outlets not operated by the supplier. A supplier

may not reassign all or part of an allocation entitlement from one retail sales outlet to another, including reassignments among its own retail sales outlets, without the express written permission of FEA except as provided by paragraph (b) (3) (ii) of this section unless an application for treatment as a single firm of some or all of such supplier's retail sales outlets has been granted pursuant to paragraph (b) (2) of this section.

(ii) Each entity which operates two or more retail sales outlets which are supplied by a common supplier may reassign up to thirty (30) percent of the allocation entitlement of a retail sales outlet which it operates to another retail sales outlet which it operates provided that no retail sales outlet may have its allocation entitlement increased by more than thirty (30) percent pursuant to any reassignment permitted by this paragraph (b) (3) (ii).

(c) Loss of allocation entitlement for going out of business. (1) A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet if it vacates the site on which it conducts such business. Notwithstanding the foregoing, an independent marketer shall not be deemed to have gone out of business if (i) the independent marketer vacates the site on which it formerly operated a retail

sales outlet, (ii) the former site is closed as a retail sales outlet or is operated as such by a firm that is not an independent marketer, and (iii) the independent marketer that occupied the former site, within a reasonable period of time, as determined by FEA, reestablishes another retail sales outlet at another location serving substantially the same customers or market that was served by the former site.

(2) Closings of retail sales outlets. An entity which operates more than one retail sales outlet and which intends to go or goes out of business at one or more such retail sales outlets may apply to FEA for an adjustment to the base period volumes of its retail sales outlets which will remain in business. FEA may allow such adjustments to the extent that the vacating of business at a particular retail sales outlet does not result in an inequitable distribution of motor gasoline in the market areas served by the entity and that such an adjustment would not otherwise be inconsistent with the objectives of the Mandatory Gasoline Allocation and Rationing Program. Pending FEA action on an application, FEA may provide adjustments to the base period volume of the pertinent retail sales outlets, which will remain in business.

(d) Suppliers of retail sales outlets. (1) The supplier of a retail sales outlet shall be that part of a firm which actually furnishes or physically delivers the gasoline to

the retail sales outlet. The operator of one or more retail sales outlets shall not be considered the supplier of its own retail sales outlets unless it operates a terminal facility from which it furnishes a product to each outlet or unless it otherwise physically delivers the gasoline to each outlet.

(2) Whenever an operator of a retail sales outlet goes out of business with respect to that retail sales outlet under paragraph (c) of this section, the supplier of that outlet shall, in calculating its allocation fraction, remove the amount of the allocation entitlement of that retail sales outlet from its supply obligation, unless the right to such allocation has transferred to a successor wholesale purchaser-reseller under paragraph (e) of this section.

(3) Any supplier which supplies its own operated retail sales outlets shall report to the National and appropriate regional FEA and to the appropriate State office whenever it ceases to supply any retail sales outlet, without regard to whether such retail sales outlet is operated by the supplier.

(e) Transfer of entitlement. Whenever a wholesale purchaser-reseller is deemed to have gone out of business in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the

site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by FEA, after its predecessor vacates the premises.

§ 700.34 Procedures and reporting requirements.

(a) All applications by wholesale purchaser-resellers for adjustment of base period use or assignment of suppliers of gasoline shall be filed with the appropriate FEA Regional Office in accordance with subparts B and C of part 205, respectively, of this chapter. All other matters pertaining to the allocation of gasoline shall be addressed to the appropriate FEA Regional Office or State Rationing Office, as appropriate.

(b) The general reporting and recordkeeping requirements contained in subpart L of part 211 of this chapter shall apply to this subpart.

Subpart C -- Rationing of Gasoline

Section 700.41 General. (a) For the duration of the Mandatory Gasoline Allocation and Rationing Program, no firm shall obtain gasoline from any supplier without transferring to the supplier valid ration rights or redemption checks equal on a gallon basis to the amount of gasoline transferred; Provided, That any retail sales outlet may transfer gasoline to any firm (including an individual) other than a supplier without obtaining and redeeming ration rights from such firm if the retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons and ration credits issued pursuant to § 700.42 of this subpart.

§ 700.42 Ration rights. (a) For each ration period, FEA shall issue ration rights equal to the estimated total available supply of gasoline for that ration period, as follows:

(1) One (1) percent shall be reserved for distribution pursuant to subpart F of this part (the National Ration Reserve).

(2) Three (3) percent shall be reserved for distribution to the States based on population and other relevant factors pursuant to subpart G of this part.

(3) FEA shall issue ration credits to all firms each calendar month pursuant to § 700.45 of this subpart. The total amount of ration rights issued to firms in a ration period is determined by adding together the pro-rata shares of all firms' allotments for calendar months which fall wholly or partially within the ration period.

(4) The remaining ration rights not issued according to subparagraphs (a)(1) through (a)(3) above will be issued to eligible individuals pursuant to § 700.44 of this subpart.

(b) Ration rights issued to firms will be distributed in the form of ration credits in a primary ration credit

account for each firm. Ration rights issued to individuals will be distributed in the form of ration coupons. Ration credits may be used directly for gasoline or exchanged for coupons at coupon issuance points designated by FEA. Valid ration coupons may be deposited in ration credit accounts, and be subsequently withdrawn as ration credits.

§ 700.43 Validity of ration rights. (a) Ration credits. Unless withdrawn by FEA, ration credits are valid from the date of issuance by FEA through the end of the Mandatory Gasoline Allocation and Rationing Program. Ration credits may be accumulated in ration credit accounts or may be withdrawn at any time after their issuance.

(b) Coupons. Unless declared invalid by FEA or redeemed or cancelled pursuant to subpart D of this part, ration coupons of any series shall be valid from the first day of the ration period for which they are issued through the end of the Mandatory Gasoline Allocation and Rationing Program even though the ration period for which the ration coupons were issued has terminated. FEA may by public notice declare any series or any portion of a series of ration coupons to be invalid. By notice to any holder of particular ration coupons, FEA may declare any ration coupons held by that holder to be invalid and require that such invalid ration rights be immediately surrendered to FEA.

§ 700.44 Issuance of ration rights to eligible individuals.

(a) Ration periods. (1) A ration period shall be designated

by FEA at least ten (10) days prior to the first day of that ration period by notice published in the Federal Register. A notice designating a ration period may designate more than one ration period and shall establish the term of each ration period designated in the notice.

(2) FEA may by notice published in the Federal Register advance the commencement date of a previously designated ration period.

(b) Eligible individual's ration allotment. (1) For each ration period, FEA shall distribute ration rights to eligible individuals equal to the difference between the total ration rights issued for that ration period minus the ration rights to be distributed pursuant to subparts F and G of this part and § 700.45 of this subpart. Ration rights issued for eligible individuals will be distributed in the form of ration coupons.

(2) Each eligible individual shall be entitled to receive ration rights equal to the number of ration rights issued under subparagraph (1) above divided by the number of eligible individuals for that ration period. This number shall be an eligible individual's ration allotment for that ration period. FEA shall provide notice of the number of ration rights to be issued each eligible individual for a ration period at least ten (10) days prior to the commencement of the ration period.

(c) Ration coupons. A ration coupon shall be redeemable for five (5) gallons of gasoline.

(d) Distribution of ration rights to eligible individuals. (1) Each eligible individual may obtain his or her ration allotment at an issuance point designated by FEA. For the first three (3) ration periods, an eligible individual will be required to fill out an application form and present his or her State driver's license. Unless otherwise provided by notice published in the Federal Register, for ration periods subsequent to the first three (3) ration periods an eligible individual will be issued his or her ration allotment for three (3) ration periods upon surrender of an authorization card issued to that eligible individual which is valid for that ration period. FEA by notice will designate the day or days on which eligible individuals may apply for their ration allotments. Upon an eligible individual's presentation of a valid authorization card and delivery of his or her ration allotment for one or more designated ration periods, the issuance point shall retain and mark or cancel the eligible individual's authorization card for the series of ration rights issued.

(2) The procedures of subparagraph (1) may be followed by agents of eligible individuals unable to personally apply for ration rights. Such agents must present documents authorizing the agent to act on behalf of a particular eligible individual signed by the eligible individual in accordance with FEA forms and instructions.

(3) Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs who do not possess driver's licenses issued by a State may apply to the Bureau of Indian Affairs for their allotments.

(4) Any individual who becomes an eligible individual after the start of a ration period will be given an authorization card for allotments beginning with the next subsequent ration period.

(e) Authorization cards. (1) Any person who is an eligible individual shall be provided with valid authorization cards by the State agency authorized by FEA to issue and distribute authorization cards to licensed drivers holding driver's licenses from that State.

(2) Each eligible individual shall be issued one authorization card for designated ration periods by the appropriate State agency in accordance with notice given by FEA. No eligible individual shall accept or use more than one authorization card for any designated ration periods.

(3) An eligible individual shall receive authorization cards valid only for ration periods which commence after the date on which the authorization cards are issued and for which distribution of ration coupons has not commenced.

(4) Appropriate State agencies shall be authorized by FEA to issue and distribute authorization cards.

(5) State agencies which enter into agreements with FEA to issue and distribute authorization cards shall do so in accordance with forms and instructions issued by FEA.

(6) No firm (including a State agency) shall issue and distribute authorization cards which have not been approved by FEA in writing.

(7) Records and reports. Each State agency authorized by FEA to issue authorization cards shall keep records and submit such reports and other information as FEA may from time to time require.

(8) Retention of records. Each State agency shall retain all records and reports submitted to it for possible FEA audit for a period of three (3) years.

(9) Lost, stolen, or misplaced authorization cards. Any eligible individual whose authorization card is lost, stolen or misplaced shall immediately report such fact to the State agency. The State agency may issue to such eligible individual a new authorization card in accordance with procedures developed by the State agency and approved in writing by FEA. Within five (5) days of notification, the State agency must transmit the name and number of the lost, stolen, or misplaced authorization card to FEA.

(10) Appeals concerning authorization cards. Any individual aggrieved by any act or omission of the State agency with respect to any authorization card may file an

appeal in accordance with the provisions of subpart Q of part 205 of the chapter.

(11) Each State agency shall establish procedures approved by FEA to ensure timely distribution of authorization cards to existing and new eligible individuals.

§ 700.45 Issuance of ration rights to firms entitled to a ration credit level. (a) For each calendar month, FEA shall issue and distribute ration credits equal to the sum of the ration credit allotments of all firms entitled to a ration credit level and which have primary ration credit accounts with FEA.

(b) Allotments. Each firm entitled to a ration credit level and with a primary ration credit account shall receive from FEA ration credits on the first day of each calendar month equal to the firm's ration credit level multiplied by the firm's base period use or by the firm's estimated current requirements for those firms entitled to one hundred (100) percent of current requirements.

(c) Base period use. (1) Except as otherwise specified in subparagraphs (2) and (3) of this paragraph, base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser-consumer's or end-user's base period use is the volume of gasoline purchased or obtained in a base period for a use for which there is a ration credit level. In the case of a new wholesale purchaser-

consumer or new end-user, base period use means the volume assigned by FEA. Suppliers do not have a base period use for the purposes of this subpart except when acting as a wholesale purchaser-consumer or end-user.

(2) For vehicle rental companies, base period use means the base period volume or adjusted base period volume, as appropriate, used by employees or agents of the firm on firm business. Volumes of gasoline used by customers of the vehicle rental company are not included in the firm's base period use. In those instances where a vehicle rental company has not distinguished between gasoline used by customers and gasoline used by employees and agents of the firm, reasonable estimates based on actual mileage records may be used in establishing the firm's base period use.

(3) For a firm having commissioned direct sales representatives, the gasoline used in the sales activities of the representatives during a base period shall be considered part of the firm's base period use even though the cost of the gasoline was borne by the sales representatives and not reimbursed by the firm. Commissioned direct sales representatives shall not be eligible for a ration credit level based on their activities as commissioned direct sales representatives. These persons must apply to the firms which pay their commissions for the ration rights, if any, necessary for their sales activities.

(d) Ration credit levels. A ration credit level is the percentage of current requirements or of base period use of an end-user or wholesale purchaser-consumer that FEA shall use in computing the allotment for such firms each calendar month. The ration credit levels for gasoline are as follows:

(1) One hundred (100) percent of current requirements.

- (i) Department of Defense use;
- (ii) Agricultural production;
- (iii) Emergency services; and
- (vi) Passenger transportation services.

(2) One hundred (100) percent of base period use.

- (i) Telecommunication services;
- (ii) Sanitation services; and
- (iii) Energy production.

(3) Ninety (90) percent of base period use.

- (i) All other government uses;
- (ii) All other uses by firms which report gasoline as an expense to the Internal Revenue Service on Schedule C or F, or Forms 1065, 1120, 1120S, 990 or 990PF; and
- (iii) All uses for religious, charitable, educational or other eleemosynary purposes not otherwise accorded a ration credit level in this paragraph.

(e) Basis of entitlement to ration credits. A firm entitled to a ration credit level shall receive ration credits based on its conduct of an ongoing business or

maintenance of an established end-use for which there is a ration credit level.

(f) End-users and wholesale purchaser-consumers as firms.

For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls and which act as ultimate consumers, including all sites, storage tanks and other facilities or entities of the end-user or wholesaler purchaser-consumer that use or store gasoline.

(g) Loss of ration credit entitlement for discontinued activities. A firm shall not be eligible to receive ration rights based upon discontinued activities and no firm shall accept or use ration rights issued or distributed to that firm or any other firm based upon discontinued activities.

(h) Downward adjustments to base period use. If a firm's average daily consumption during the three months immediately past has declined by twenty-five (25) percent or more as compared to the average daily consumption during the corresponding three (3) months of the base year, the firm must report the average daily consumption for both three-month periods to the appropriate FEA regional office and submit detailed information which will enable FEA to determine the amount of any downward adjustment, if any, in the firm's base period use which FEA should order.

(i) New wholesale purchaser-consumers and end-users.

Wholesale purchaser-consumers and end-users which did not purchase gasoline during any base period may apply to FEA for assignment of a base period use pursuant to this subpart and to the provisions of § 211.12(e) of part 211 of this chapter. In determining base period use for a firm which was not in operation during the base year, FEA shall among other things review the firm's gasoline purchases preceding the firm's application to FEA, the types of vehicles used, and the number of miles driven. FEA will also consider typical consumption patterns of similar firms.

(j) Adjustments to base period use. Any firm which

has substantially altered its business activities so that its needs for gasoline during a period corresponding to a base period are at least twenty-five (25) percent greater than during the base period may apply in accordance with subpart B of part 205 of this chapter to the appropriate FEA regional office for an adjustment to base period use. FEA may grant such adjustments in whole or in part upon a showing of extreme hardship or gross inequity.

§ 700.46 Calculations. (a) This section establishes the formulae for calculating a firm's ration credit allotments; the total available supply; the adjusting term; and the length of the ration period. A "computation period" is used

in these calculations initially, since the precise length of the ration period is not known until the final calculation is made. The first computation period will be 30 days; once rationing has begun the computation period will have the same number of days as the immediately preceding ration period.

(b) For purposes of paragraphs (c), (d), (e), and (f) of this section, the following symbols have the following meanings:

<u>Symbol</u>	<u>Units</u>	<u>Meaning</u>
REF	Gallons	Projected refinery output of gasoline during computation period.
IMP	Gallons	Projected imports of gasoline during computation period.
EXP	Gallons	Projected exports of gasoline during computation period.
LOS	Gallons	Projected losses of gasoline from spillage, evaporation, and casualty losses during computation period.
NEI	Persons	Number of eligible individuals (latest count from State motor vehicle department and Bureau of Indian Affairs).
BM _i V	Gallons	The base period volume for a firm in month i (or current requirements for firms entitled to one hundred (100) percent of current requirements).
DM _i	Days	Number of days in calendar month i.
DM _i C	Days	Number of days in calendar month i which fall within the computation period.

INV	Gallons	Amount of desired gasoline inventory drawdown during computation period from industry and any government-held (strategic) inventories.
NRR	Gallons	Amount of allotment to be reserved for use in the National Ration Reserve for the upcoming ration period.
ΣSHR	Gallons	Amount of allotment to be provided for the State Hardship Reserves for the upcoming ration period.
CP	Days	Length of the computation period.
BA	Gallons per individual per ration period	The basic allotment for each eligible individual in a ration period (equal to NCU x VCU).
NCU	Coupons per ration period	Number of coupons to be given to each eligible individual in a ration period.
VCU	Gallons per coupon	Gallon value of each coupon.
RCL	Fraction expressed as a decimal	Ration credit level for a firm (90% = 0.9; 100% = 1.0)
TAS	Gallons	The total available supply of gasoline to be rationed during a ration period.
ADJ	Gallons	An adjusting term representing errors, roundings, and unclaimed allotments in previous ration periods.

NAS	Gallons	The net available supply of gasoline during a computation period, equal to the TAS minus amounts necessary for the National Ration Reserve and the State Hardship Reserves.
NDAS	Gallons	The net daily available supply equal to the NAS divided by the number of days in the computation period.
FA _i	Gallons per month	The allotment for a firm in month i.
FD _{cp}	Gallons per month	The weighted average daily allotment for a firm in the computation period.
ΣFD _{cp}	Gallons per month	The total weighted average daily allotment for all firms in the computation period (computed by summing FD _{cp} for all firms).
RP	Days	The length of a ration period.

(c) Total available supply (TAS). The total available supply (TAS) of gasoline which can be sold during the computation period is determined from data available on the refining and importing of gasoline, adjusted for exports, losses, and inventory changes.

$$TAS = REF + IMP - EXP - LOS + ADJ + INV$$

(d) Adjusting term (ADJ). The adjusting term is the sum of adjustments required as a result of errors, rounding and unclaimed allotments from previous ration periods.

- ADJ = (TAS_{current est} - TAS_{prior est})
for all previous ration periods,
- + UNCLAIMED ALLOTMENTS from individuals, especially those with multiple licenses,
 - + RETURNED ALLOTMENTS from firms with reduced or eliminated activities,
 - + ROUNDING ADJUSTMENT in computing the prior ration period, where ROUNDING ADJUSTMENT equals

$$\frac{RP - RP \text{ Rounded}}{RP} \times BA \times NEI$$

(e) Net available supply (NAS). The net available supply is computed by subtracting from the TAS the allotments necessary to replenish or increase the National Ration Reserve and the State Hardship Reserves.

$$NAS = TAS - NRR - \sum SHR$$

(f) Net daily available supply (NDAS). The net daily available supply (NDAS) is computed by dividing the NAS by the number of days in the computation period.

$$NDAS = \frac{NAS}{CP}$$

(g) Allotment for each firm (FA_i). The monthly allotment for each firm is determined by multiplying the month's gasoline quantity on the application form (base period use or estimated current requirements) times the appropriate ration credit level.

$$FA_i = BM_i V \times RCL$$

(h) Average daily allotment for each firm (FD_{cp}). The average daily allotment for each firm during a computation

period is calculated using a weighted average to take into account the fact that a computation period will usually overlap two calendar months.

$$FD_{cp} = \left[\frac{FA_1}{DM_1} \times \frac{DM_1 C}{CP} \right] + \left[\frac{FA_2}{DM_2} \times \frac{DM_2 C}{CP} \right]$$

(i) Length of ration period. The length of the ration period is determined from the figures developed above and by summing FD_{cp} derived above for all firms.

$$RP = \frac{BA \times NEI}{NDAS - \sum FD_{cp}}$$

The ration period length computed above will be rounded down to the nearest whole day.

§ 700.47 Recordkeeping requirements. All firms must maintain at their principal business address records on gasoline purchased or obtained during each base period and each period corresponding to a base period. The records shall be subject to FEA audit and must be retained for three (3) years after the termination of the Mandatory Gasoline Allocation and Rationing Program.

Subpart D -- Redemption, Transfer and
Invalidation of Ration Rights

§ 700.51 Transfer of ration rights. (a) Ration rights may be freely transferred for or without consideration provided that such ration rights have not been redeemed, cancelled or invalidated by FEA.

(b) No supplier (including a retail sales outlet) shall require any purchaser to purchase ration rights from any firm (including itself) as a condition of transferring gasoline.

(c) No supplier (including a retail sales outlet) shall refuse to sell gasoline to any purchaser which tenders the lawful price of the gasoline with sufficient ration rights to cover the transaction except as permitted or required by the Mandatory Gasoline Allocation and Rationing Regulations.

§ 700.52 Invalidated ration rights. Ration rights which have been invalidated by FEA are not transferable for value and shall be surrendered to FEA.

§ 700.53 Cancelled ration rights. (a) Ration rights which have not been exchanged for gasoline may be deposited into a ration credit account. Such ration rights are cancelled when deposited.

(b) An owner of a ration credit account shall endorse ration rights to be deposited into that ration credit account with the account owner's name and account number.

(c) Participating banks shall indelibly mark deposited ration rights with the legend "cancelled" at the time of deposit.

§ 700.54 Redeemed ration rights. (a) Ration rights and redemption checks shall be redeemed by exchanging them for gasoline and shall be surrendered as provided by these regulations.

(b) A supplier (including a retail sales outlet) which accepts ration rights or redemption checks in exchange for gasoline shall redeem such ration rights and redemption checks by indelibly marking them at the time of the exchange with the supplier's name, its redemption account number and the legend "redeemed".

(c) A supplier (including a retail sales outlet) shall deposit redeemed ration coupons, ration credit checks and redemption checks in its redemption account.

(d) No supplier (including a retail sales outlet) shall accept from any firm ration coupons, ration credit checks or redemption checks marked "redeemed," "cancelled," or "specimen." No supplier shall deposit in its redemption account any redeemed ration right or redemption check which the supplier did not redeem for gasoline.

§ 700.55 Scrip. A retail sales outlet may issue scrip for any unused value on a ration coupon or ration credit check transferred for a purchase of gasoline. The type and form of the scrip are discretionary with the issuer. The

scrip must be redeemed upon demand by the retail sales outlet which issued it. Retail sales outlets may agree among themselves to accept scrip issued by other retail sales outlets.

§ 700.56 Restriction on endorsements. Ration credit checks must be deposited by the payee and may not be endorsed to third parties.

Subpart E -- Ration Credit and Redemption Accounts

§ 700.61 General. (a) FEA shall establish, maintain and administer primary ration credit accounts, secondary ration credit accounts, and redemption accounts at FEA regional processing centers.

(b) FEA may authorize certain firms to act as participating banks to accept applications to establish primary ration credit accounts, secondary ration credit accounts and redemption accounts, to accept deposits into such accounts and to perform such other duties and services as FEA may authorize.

(c) FEA shall establish reasonable fees that participating banks may charge holders of ration credit and redemption accounts and other users of rationing services performed by participating banks and authorized by FEA.

§ 700.62 Primary ration credit accounts. (a) Upon application by any firm (including an individual) entitled to a

ration credit level in accordance with forms and instructions to be issued by FEA, FEA shall establish a primary ration account for such firm.

(b) On the first day of each calendar month, FEA shall deposit ration credits for that calendar month in a firm's primary ration credit account in an amount equal to the firm's ration credit allotment.

(c) A firm may deposit additional ration rights in its primary ration credit account; Provided, That such ration rights have not been previously cancelled, redeemed or declared invalid.

(d) A firm may withdraw ration credits from its primary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration credits. Ration credit checks shall only be issued upon forms approved and distributed by FEA.

(e) No firm shall issue a ration credit check drawn upon a primary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

§ 700.63 Secondary ration credit accounts. (a) Upon application of any firm in accordance with forms and instructions to be issued by FEA, FEA shall establish secondary ration credit accounts for that firm.

(b) A firm may deposit ration rights in its secondary ration credit account; Provided, That such ration rights have not been previously cancelled, redeemed or declared invalid by FEA.

(c) A firm may withdraw ration credits from its secondary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration rights. Ration credit checks shall only be issued upon forms approved and distributed by FEA.

(d) No firm shall issue a ration credit check drawn upon a secondary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

§ 700.64 Redemption accounts.

(a) Every supplier including every retail sales outlet shall apply to FEA for the establishment of a redemption account in accordance with forms and instructions issued by FEA.

(b) Suppliers shall deposit in their redemption accounts all redeemed ration rights and redemption checks which they have accepted.

(c) A wholesale purchaser-reseller must issue a redemption check to its supplier drawn on its

redemption account in exchange for gasoline received for resale from that supplier. Redemption checks shall only be issued upon forms approved and provided by FEA.

(d) Participating banks shall accept redeemed ration rights and redemption checks on behalf of FEA for deposit in a supplier's redemption account.

§ 700.65 Recordkeeping requirements and reports. Participating banks shall maintain such records and issue such reports as may be required from time to time by FEA.

Subpart F -- National Ration Reserve

§ 700.71 National Ration Reserve. (a) The National Ration Reserve shall be used by FEA to meet national disaster relief needs or for emergency replenishment of a State Hardship Reserve or for any other emergency need at the discretion of the Administrator.

(b) Each ration period, one (1) percent of the ration rights issued by the FEA pursuant to subpart C of this part shall be reserved for distribution at the discretion of the FEA National Office through the National Ration Reserve. The percentage of ration rights to be retained in the National Ration Reserve may be increased or decreased during subsequent ration periods upon notice published in the Federal Register.

Subpart G-- State Rationing Offices
and Local Rationing Boards

§ 700.81 State Rationing Office. (a) Any State may apply to the FEA National Office to create a State Rationing Office within the State. The Bureau of Indian Affairs shall be treated as a State Rationing Office with respect to the Indian reservations under its jurisdiction.

(b) After FEA review of the criteria in paragraph (d) of this section and upon certification by FEA, such State Rationing Office will be delegated authority (1) to administer the State Hardship Reserve allotted by FEA to that State, (2) to receive petitions from any user of rationed products with respect to the priority and entitlement of such user under these regulations, and (3) consistent with these regulations and guidelines issued by FEA, to order a reclassification or modification of any prior determination made with respect to such user's rationing priority or rights specified in subparagraph (2) above subject to review by FEA.

(c) The State Rationing Office may redelegate the authority given to it by FEA to one or more Local Rationing Boards.

(d) Criteria for delegation of authority to State Rationing Offices.

[Reserved]

§ 700.82 Local Rationing Board.

(a) Local Rationing Boards may be established within a State by the State Rationing Office pursuant to § 700.81 of this subpart.

(b) Each Local Rationing Board shall include a Local Rationing Panel selected pursuant to § 700.84 of this subpart.

(c) The Local Rationing Board shall be allotted an equitable portion of the State Hardship Reserve by the State Rationing Office. The Local Rationing Board shall maintain a secondary ration credit account into which it shall deposit the portion of the State Hardship Reserve it receives from time to time. From this secondary account, the Local Rationing Board may issue ration rights to individuals other than firms entitled to a ration credit level determined pursuant to § 700.83 of this subpart to be experiencing hardships.

(d) Each Local Rationing Board shall accept hardship petitions pursuant to § 700.83 of this subpart and either approve or disapprove such petitions pursuant to instructions and guidelines to be issued by FEA.

(e) Each week the Local Rationing Board shall report to the State Rationing Office with respect to the preceding week (1) the number of hardship petitions received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued to individuals found to be experiencing hardships.

(f) The Local Rationing Panel shall review and decide all appeals of decisions made by the Local Rationing Board pursuant to § 700.83(d) of this subpart and in accordance with guidelines to be issued by FEA. The Local Rationing

Panel shall also review and decide appeals filed by any person aggrieved by a decision of the Local Rationing Board with respect to any matters redelegated to it by the State Rationing Office pursuant to § 700.81 of this subpart. Appeals from the decision of the Local Rationing Panel may be further appealed pursuant to § 700.87 of this subpart.

(g) The Bureau of Indian Affairs may establish Local Rationing Boards on Indian reservations under its jurisdiction. Such boards will carry out the duties and functions of Local Rationing Boards as set forth in this subpart.

§ 700.83 Hardship applications.

(a) An individual may file a hardship application for rationing rights in addition to any rationing rights he or she is entitled to receive pursuant to Subpart C of this part. The application shall be made in accordance with FEA forms and instructions and shall include the applicant's name; address; social security number; the specific hardship alleged; the total amount of ration rights sought in addition to the ration rights, if any, already provided to the applicant during the current ration period; certification that no other hardship application is now pending before any other Local Rationing Board, or if such an application is pending, the address of the Local Rationing Board in which the application was filed; a list of any previous hardship applications and

where filed; and the signature of the applicant or his or her authorized representative.

(b) Hardship applications will be received by the Local Rationing Board for review and determination if the applicant alleges any one or more of the following hardships:

(1) Handicapped persons. Any individual who, by reason of disease, injury, age, congenital malfunction, or other permanent incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services, who has a substantial, permanent impediment to mobility and whose needs for rationed products exceed the amount represented by the ration rights issued pursuant to subpart C of this part may file a hardship application.

(2) Low-income, long-distance commuters. Persons who without ration rights in addition to the amount allotted to them pursuant to subpart C of this part would be forced to spend over five (5) percent of their adjusted gross incomes purchasing ration rights for travel to and from their place of employment, and for whom carpooling or public transportation is not a reasonable alternative, may file a hardship application.

(3) Migrant workers. An individual who holds a drivers license issued by a State and who travels from one agricultural work site to another agricultural work site may file a hardship application with the Local Rationing Board which

serves the community in which the current work site is located. The applicant should be awarded sufficient ration rights to assist the individual in traveling to his or her next work site.

(4) Other recurring or one-time hardship needs. Any individual experiencing severe hardships on a recurring or one-time-only basis, who is not specified in subparagraphs (1), (2) and (3) above, may file a hardship application. The Local Rationing Panel must review and decide any application filed pursuant to this subparagraph (4) consistent with the objectives of the Mandatory Gasoline Allocation and Rationing Program.

(c) Processing of applications. (1) The Local Rationing Board may initiate an investigation of any statement in an application, whether written or verbal, and utilize in its evaluation any relevant facts obtained by such investigation. The Local Rationing Board may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the Local Rationing Board may consider any other source of information. The Local Rationing Board on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the Local Rationing Board determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Local Rationing Board may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Local Rationing Board may dismiss the application with prejudice.

(3) After processing, the Local Rationing Board or the Local Rationing Panel shall either grant or deny a hardship application. If the application is granted, the Local Rationing Panel or the Local Rationing Board shall determine the amount of ration rights to be granted, shall notify the applicant in writing of the amount determined, and shall issue ration rights to the applicant in that amount. If the Local Rationing Board or the Local Rationing Panel determines that the application is not to be granted, the applicant shall be notified in writing promptly upon such determination.

(d) An applicant who does not receive as many ration rights as he or she applied for or an applicant whose application is not granted may appeal to the Local Rationing Panel. The appeal must be filed within 15 calendar days of receipt of the notice of determination specified in paragraph (c)(3) of this section. There has not been an exhaustion of administrative remedies until an appeal has been filed and decided, and all further appellate proceedings provided in § 700.87¹ of this subpart have been completed.

§ 700.84 Selection of Local Rationing Panel and Local Rationing Board Manager.

The Local Rationing Panel shall consist of an odd number of volunteers selected by the local government in which the panel serves in accordance with FEA guidelines. The members of the Local Rationing Panel shall designate one of their members as the individual responsible for calling meetings of the panel to determine local procedures and to carry out the duties of the Local Rationing Panel. The Local Rationing Board Manager shall be selected by the Chief Executive of the State in which the Local Rationing Board is located.

§ 700.85 State Hardship Reserves.

(a) Pursuant to subpart C of this part, FEA shall distribute ration rights to each State Rationing Office to be utilized by Local Rationing Boards to meet the needs of approved individual hardship applicants pursuant to § 700.83 of this subpart and to meet the needs of approved hardship applications filed with the State Rationing Office by firms pursuant to paragraph (b) of this section.

(b) Application by firms experiencing severe hardships.

(1) A firm entitled to a ration credit level, other than as a supplier or a wholesale purchaser-reseller, may file an application with the State Rationing Office for rationing rights in addition to any rationing rights it is entitled to receive pursuant to subparts C and H of this part. The application shall be made in accordance with FEA

forms and instructions and shall indicate the firm's name; address; employer identification number; the facts alleged to support a finding of severe hardship; the total amount of ration rights sought in addition to any ration rights already provided to the firm during the current ration period; certification that no other application is now pending before any other State Rationing Office or if such an application is pending, the address of the State Rationing Office in which the application was filed; a list of any previous applications and where filed; and the signature of the chief executive officer of the firm or his or her authorized representative.

The State Rationing Office may initiate an investigation of any statement in an application, whether written or verbal, and utilize in its evaluation any relevant facts obtained by such investigation. The State Rationing Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Rationing Office may consider any other source of information. The State Rationing Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

If the State Rationing Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Rationing Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Rationing Office may dismiss the application with prejudice.

(2) The State Rationing Office shall notify the applying firm in writing of the decision made with respect to the application and the amount, if any, of ration rights the firm is to receive from the State Hardship Reserve.

(3) Any firm aggrieved by the decision of the State Rationing Office with respect to its application may appeal that decision pursuant to § 700.87(c) of this subpart.

(5) At the end of a ration period, any ration rights remaining in the State Hardship Reserve shall be reported to FEA and the balance frozen pending FEA direction. FEA may, among other courses of action, cancel the balance, add it to the State Hardship Reserve for the next ration period, transfer all or a portion of the balance to another State Hardship Reserve, or treat the balance as an advancement on the State Hardship Reserve for the next ration period.

§ 700.86 Timeliness. (a) If the Local Rationing Board or the State Rationing Office fails to take action on an individual's or a firm's application, respectively, within

ten (10) days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in § 700.87 of this subpart.

(b) Notwithstanding paragraph (a) of this section, the Local Rationing Board or the State Rationing Office may temporarily suspend the running of the 10-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Local Rationing Board or the State Rationing Office serves upon the individual or firm notice that the additional information has been received and accepted or that the application has been properly filed, as appropriate. Unless otherwise provided in writing, the 10-day period shall resume running on the first day that is not a Saturday, Sunday, or Federal legal holiday and that follows the day on which the Local Rationing Board or the State Rationing Office serves upon the person the notice described in this paragraph.

§ 700.87 Appeals. (a) Individuals aggrieved by a decision made by a Local Rationing Panel or a Local Rationing Board may appeal that decision to the Local Rationing Panel pursuant to § 700.83(d) of this part.

(b) Individuals aggrieved by an appeal decision of a Local Rationing Panel may appeal that decision to the State Rationing Office in accordance with the procedures established

by the State office. The appeal shall be filed within 15 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(c) Any person aggrieved by a decision made by a State Rationing Office with respect to any matters coming within the authority delegated to it pursuant to § 700.81 of this subpart, or relating to its decisions on applications for additional ration rights made pursuant to § 700.85 of this subpart, or on an appeal decision made pursuant to paragraph (b) of this section may file an appeal of that decision pursuant to subpart Q of part 205 of this chapter.

Subpart H -- Diesel Fuel Rationing

§ 700.91 General. (a) No firm shall obtain diesel fuel at retail sales outlets from any supplier without transferring to the supplier valid ration rights equal on a gallon basis to the amount of diesel fuel transferred and no supplier (including a retail sales outlet) shall transfer diesel fuel at retail sales outlets to any firm in its capacity as a wholesale purchaser-consumer or end-user, without obtaining and redeeming ration rights from such firms; Provided, That a supplier at a retail sales outlet may transfer diesel fuel to any firm other than a supplier without obtaining and redeeming ration rights from such firm if the supplier at a retail sales outlet agrees to obtain and redeem the appropriate

amount of ration rights from any source and does so within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons issued pursuant to subparts C and G of this part or charges against a diesel fuel entitlement card issued by FEA pursuant to § 700.92 of this subpart.

(c) In addition to the applicability of the parts specified in § 700.1(c) of this part, the provisions of part 211 of this chapter shall apply to this subpart.

§ 700.92 Issuance of ration rights. (a) Ration coupons issued for gasoline pursuant to the provisions of subparts C and G of this part may be utilized to purchase diesel fuel at retail sales outlets in lieu of gasoline at the option of the holder. However, no ration coupon may be used for both gasoline and diesel fuel.

(b) Ration coupons issued pursuant to subparts C and G of this part which the holder uses to purchase diesel fuel at retail sales outlets shall be valid in the same manner as specified in § 700.43 of this part.

(c) A firm which purchases diesel fuel at retail sales outlets may apply pursuant to paragraph (f) of this section for issuance of a diesel fuel entitlement card which shall enable the holder to purchase diesel fuel at retail sales outlets in an amount equal to that portion of its base

period use of diesel fuel purchased at retail sales outlets during the base period multiplied by the allocation levels specified in § 211.123 of part 211 of this chapter.

(d) Firms applying for a diesel fuel entitlement card shall be provided an account to which FEA will credit in each calendar month the amount of diesel fuel to which the firm is entitled pursuant to paragraph (c) above.

(e) A firm which wishes to purchase diesel fuel at retail sales outlets in excess of volumes purchased at retail sales outlets during the base period may petition FEA pursuant to subpart D of part 205 of this chapter to increase the amount of the firm's ration credits to be issued by FEA in a calendar month. A firm which did not purchase diesel fuel at retail sales outlets during a base period may apply for assignment of a base period use pursuant to subpart C of part 205 of this chapter.

(f) A firm may apply to FEA for a diesel fuel entitlement card in accordance with FEA forms and instructions. The applicant shall be required to determine its base period use of diesel fuel and to indicate for each period corresponding to a base period how much by volume of its base period use of diesel fuel was purchased at retail sales outlets.

(g) FEA may invalidate any diesel fuel entitlement card by notice to the firm to which it was issued if FEA

finds, among other things, that the card is being improperly used or is reported lost or stolen.

(h) Sales to holders of diesel fuel entitlement cards at retail sales outlets of diesel fuel shall be made by imprinting the information on the card on an FEA form which shall, among other information, indicate the volume of diesel fuel sold; the date of sale; the name of the retail sales outlet; and certification by the card holder that he or she is currently authorized by the firm (including an individual) to which the card was issued to use the card for purchases of diesel fuel at retail sales outlets. A copy of the completed form shall be provided to the holder; a second copy held for transmittal to the FEA regional processing center; and a third copy maintained by the retail sales outlet.

§ 700.93 Redemption. (a) The retail sales outlet of diesel fuel shall collect all ration rights exchanged for diesel fuel and after stamping any ration coupons redeemed for diesel fuel with the legend "redeemed for diesel," keep all such ration rights separate from ration rights exchanged for gasoline. Those ration rights exchanged for diesel fuel shall not be deposited in a wholesale purchaser-reseller's redemption account.

(b) From time to time and upon prior notification by FEA, retail sales outlets of diesel fuel may be required to

transmit to a FEA regional processing center all ration rights exchanged for diesel fuel including copies of the transaction forms used by holders of diesel fuel entitlement cards which the owner of the retail sales outlet retained at the time of sale pursuant to § 700.92(h) of this subpart.