

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT
[Fees for Federal Rice Inspection Services]

Service ¹	Regular workday (Monday-Saturday)	Nonregular workday (Sunday-Holiday)
Contract (per hour per Service representative)	\$42.80	\$59.60
Noncontract (per hour per Service representative)	52.40	72.40
Export Port Services (per hundredweight) ²052	.052

¹ Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

² Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service ^{1 3}	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, subplot, or sample inspection)	\$34.50	\$29.80	\$21.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	26.75	26.75	—
(b) All other factors (per factor)	12.70	12.70	12.70
Total oil and free fatty acid	—	42.00	42.00
Interpretive line samples: ²			
(a) Milling degree (per set)	—	—	89.20
(b) Parboiled light (per sample)	—	—	22.35
Extra copies of certificates (per copy)	3.00	3.00	3.00

¹ Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

² Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64153-1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250-3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

³ Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

Dated: March 21, 2000.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 905

RIN 1901-AA84

Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Final rule.

SUMMARY: The Western Area Power Administration (Western) is publishing this final rule to adopt revisions to current regulations that require customers to prepare integrated resource plans. These amendments allow customers more alternatives in meeting the integrated resource planning

requirements, thereby enhancing customer competitiveness through increased flexibility and reduced burdens in complying with this rule.

EFFECTIVE DATE: These regulations will become effective May 1, 2000.

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SUPPLEMENTARY INFORMATION:

- I. Introduction and Background
- II. Discussion of Comments
- III. Procedural Requirements
 - A. Executive Order 12866
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act
 - D. Review Under the National Environmental Policy Act
 - E. Review Under Executive Order 13132
 - F. Review Under the Unfunded Mandates Reform Act of 1995
 - G. Review Under Executive Order 12988
 - H. Treasury and General Government Appropriations Act, 1999
 - I. Review Under Executive Order 13084

J. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Introduction and Background

Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102-486, requires integrated resource planning (IRP) by Western's customers. Western implemented EPAct through the Energy Planning and Management Program (EPAMP) in October 1995. EPAMP was published in the Code of Federal Regulations at 10 CFR part 905.

Western's Administrator is required by EPAct to initiate a public process to review Western's IRP regulations within 1 year after January 1, 1999. The Administrator is authorized at that time to revise Western's criteria for approving integrated resource plans "to reflect changes, if any, in technology, needs, or other developments."

Both the wholesale and retail aspects of the electric utility industry are changing, and change is expected to continue. The 15 States within which Western markets power have taken very different approaches to deregulation with diverse schedules for implementing any changes to the status

quo. Additionally, the timing and scope of any Federal restructuring legislation is uncertain. Given the increasingly competitive and deregulated electricity marketplace, Western's IRP regulations, which were adopted under the traditional utility planning framework, have been reviewed through a formal public process and consequently revised.

Western is adopting an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches are (1) complying with a defined level of investment in demand-side management (DSM) and/or renewable energy, including a public benefits program, or (2) complying with mandated energy efficiency and/or renewable energy activities and related reporting requirements.

Only subparts A and B of the existing regulations are being revised.

Western published the notice of proposed rulemaking and public forum in the **Federal Register** at 64 FR 62604 on November 17, 1999. A formal public information and comment forum was held in Denver, Colorado, on November 30, 1999. Nine customer representatives attended, and formal transcripts were made available through Western's Corporate Services and Regional offices. The formal public comment period closed on December 30, 1999. Western received comments from 29 customers and other stakeholders. All comments were extensively reviewed and, where appropriate, incorporated into the Final Rule. The Discussion of Comments provides Western's response to all comments. Comments and related responses were consolidated where possible.

II. Discussion of Comments

General comments and discussion precede the comments relating to specific sections. Specific comments are grouped under the appropriate section heading and followed by Western's responses.

1. General

A. Comments

One commenter suggested that Western should continue to update the IRP process as the industry continues to restructure. Two commenters said that the proposed changes to the IRP rule seem to minimize requirements for small utilities while maintaining inflexible requirements for larger utilities. One commenter noted that

Western should capitalize words such as "Customer" and "Integrated Resource Planning" to match contractual language.

B. Response

Western will continue to evaluate the changing utility industry and the impacts of the changes on IRP regulations, and initiate a public process to review the regulations at appropriate intervals. As Section 114 EPart and § 905.24 of the final rule state, the regulations may be changed to reflect changes in technology, needs, or other developments.

It is not Western's intent to change the rule solely to benefit small customers. The rule has been revised to further accommodate multi-state entities, especially in the minimum investment report alternative (§ 905.16), and member-based associations (MBA) and IRP cooperatives. Western believes that large customers have considerable opportunities to perform streamlined IRP and alternative reporting based on the revised rule, especially in light of changes in the utility industry that impact large customers.

Western agrees that there is a strong relationship between contractual language and language incorporated into the IRP rule. However, the rule has been revised to comply with the President's initiative to use plain language in government writing. Capital letters for contractual terms are not used in this rule because their use does not meet plain language guidelines.

2. § 905.1 *What Are the Purposes of the Energy Planning and Management Program?*

A. Comments

One commenter suggested that the phrase "and to extend the long-term firm power resource commitments" be deleted from the first sentence. Another commenter said that Western should refer specifically to part 905 in the first paragraph.

B. Response

Section 905.1 describes the purposes of EPAMP, which includes both the IRP regulations in subpart B of part 905 (which is revised in this final rule) and the Power Marketing Initiative in subpart C of part 905 (which is not revised). It is inappropriate, therefore, to remove the phrase "and to extend the long-term firm power resource commitments" because the phrase describes the purpose of the Power Marketing Initiative.

The title of part 905, "Energy Planning and Management Program," is

now included in both the title of § 905.1 and in the text. This change more clearly identifies the content of the paragraph while meeting plain language guidelines. Western believes it is unnecessary to otherwise refer specifically to part 905 within the subpart.

3. § 905.2 *What Are the Key Definitions of This Part?*

A. Comment

One commenter suggested that the phrase "at the lowest system cost" should still be included in the definition of "integrated resource planning."

B. Response

The definition of "integrated resource planning" in § 905.2 was shortened to ensure a more concise and easily understood definition, while having the same intended meaning as before. Western removed "at the lowest system cost" because its meaning was interpreted as a mandate to select the energy resources that had the lowest dollar price. As a result, it actually became a barrier to pursuing DSM and renewable energy activities, which are usually more expensive than purchasing non-renewable resources. Although this was not the intent of EPart, Western has removed this and other similar language for clarity because Western is interested in fostering DSM and renewable energy. This change in no way invalidates an IRP that selects resources based on least cost; Western is simply not mandating this approach.

The sentence following the original definition, which was not part of the definition but an explanation of the process of preparing and IRP, was moved to § 905.11, where the process of preparing an IRP is more appropriately discussed.

4. § 905.11 *What Must an IRP Include?*

A. Comments

Some commenters said that the statutory criteria set forth in EPart should be adhered to without modification, while many commenters applauded Western's willingness to consider changes to the criteria that accommodate changes in the electric utility industry. Some commenters noted that, despite streamlining, the IRP criteria are still too comprehensive and too restrictive given changes in the utility industry. Two commenters suggested Western accept more summary descriptions, decreasing its reliance on strict numerical data.

One comment suggested the phrase "for new energy resources" be added to

the end of the first sentence in § 905.11(a). One commenter noted that, in § 905.11(a), “must” should be replaced with “should.” One comment suggested Western should not drop the “least cost” criteria. One comment suggested that Western’s proposal to allow customers to determine their own action planning horizons is inconsistent with EPAct.

Many comments requested Western add the modifier “to the extent practicable” to the first sentence of § 905.11(b)(3), as it is in the existing regulations. One comment requested Western add the modifier “ample opportunity” to the first sentence of § 905.11(b)(4), as it is in the existing regulations. Many commenters said that if additional load forecasting information is requested in the IRP review process, Western should accept any other required report containing this type of information that is submitted to the Department of Energy (DOE) or the Federal Energy Regulatory Commission (FERC). One commenter noted Western should require only the information necessary to define load characteristics, and not the specific nature of the use of that power, relating to the load forecasting criteria (§ 905.11(b)(5)).

B. Response

Section 114 of EPAct gives Western the authority to review its IRP program and to revise the IRP compliance criteria set forth in EPAct (42 U.S.C. 7276b(b)), which have been implemented through EPAMP at 10 CFR part 905, to reflect changes in technology, needs, or other development. Because Western’s IRP regulations were developed under the traditional utility planning framework, which no longer applies to many customers due to wholesale and retail electric competition, Western believes it is essential to review and subsequently revise the criteria.

Additionally, Western’s criteria revisions reduce reporting and paperwork burdens for customers and Western. Western streamlined the IRP criteria in § 905.11(b) to make them less comprehensive and restrictive, especially by changing the regulations to state that Western will accept summary information from customers rather than full data. While customers must include the criteria detailed in § 905.11(b), many of the items within in these criteria—for example, the list of what the options evaluated should relate to in § 905.11(b)(1)—are general guidelines and not strict requirements. Western’s intent is not to dictate resource choices or specific mechanisms for resource planning, but rather to

provide a general outline for IRP that meets the spirit and intent of EPAct. Reducing the criteria further would not meet the spirit or intent of EPAct even in light of the changing nature of the electric utility industry. Accepting even more summary information would not allow Western to adequately evaluate IRPs and annual reports and amendments.

It is not appropriate to add the phrase “for new energy resources” to the end of the first sentence in § 905.11(a) because EPAct makes no such limitation. IRPs may, at the customer’s discretion, incorporate all energy resources. Limiting an IRP to only new energy resources may be contrary to sound resource planning.

“Must” has replaced “shall” in § 905.11(a) to meet plain language guidelines. The comment that “should” was used in the original language in § 905.11(a) is incorrect. The original language, which was taken from the sentence following the definition of “integrated resource planning” in EPAct and § 905.2, used the verb “shall.” Because EPAct Section 201(2) mandates these components of IRP, Western will continue to use “must” rather than “should.”

Western has dropped the “designation of least-cost options” criteria, previously located at § 905.11(b)(3), deleting some language that is no longer relevant and moving the remaining relevant language to the “identification of resource options” criteria (§ 905.11(b)(1)). Because least cost is no longer a deciding factor for many customers—and is often perceived as a barrier for some customers in further pursuit of DSM and renewable energy—Western believes it may impede effectively implementing IRP.

Because Section 114 of EPAct gives Western authority to revise its IRP criteria, allowing customers to determine their own action planning horizons in § 905.11(b)(2) is not inconsistent with EPAct. Moreover, determining action planning horizons is essential for customers facing wholesale competition. Many customers must make resource decisions on real-time bases that simply could not be planned for in advance and therefore included in either short-term or long-term action plans. Action planning flexibility is essential in the changing electric utility industry.

Western has returned the modifier “to the extent practicable” to § 905.11(b)(3), environmental effects, to reflect the language in EPAct. Western has returned the modifier “ample opportunity” to § 905.11(b)(4), public participation. It was removed to

accommodate plain language, but keeping it in the rule allows customers to continue to meet the public involvement criteria in a manner consistent with the language of EPAct.

Western will accept information required by DOE, FERC, or another entity so long as it contains adequate load forecasting information. Western’s intent is not to require duplicative efforts, but to ensure Western receives the specific customer information needed to fully evaluate the IRP. Western only requires the information necessary to define load characteristics, and will request information about the specific nature of the use of that power only in those rare cases where it is necessary to adequately evaluate the IRP.

5. § 905.12 How Must IRPs Be Submitted?

A. Comment

One commenter requested that the phrase “Such IRP or IRPs shall constitute the MBA’s IRP where the MBA subcontracts or acts as an agent but does not assume power supply responsibility” be returned to § 905.12(b)(2), as it is in the existing regulations.

B. Response

Western agrees that under § 905.12(b)(2), the IRP may constitute the MBA’s IRP where the MBA subcontracts or acts as an agent but does not assume power supply responsibility. The definition of MBA in § 905.2 meets the intent of the phrase, so in light of plain language guidelines and the need for clarity in the regulations, Western does not feel it is necessary to adopt this comment.

6. § 905.13 When Must IRPs Be Submitted?

A. Comment

One comment suggested that an existing IRP cooperative should be able to file the new report alternatives on behalf of its participants.

B. Response

Western agrees that an IRP cooperative should be able to file a minimum investment report on behalf of its participants, just as a consultant can now prepare and submit an IRP or small customer plan on behalf of a utility or end-use customer. Language has been added to § 905.12(b)(3) to this effect.

7. § 905.15 What Are the Requirements for the Small Customer Plan Alternative?

A. Comments

One commenter said that Western cannot extend the definition of small customer to include members of joint-action agencies (JAA) and generation and transmission (G&T) cooperatives with power supply responsibility because EPAct specifically excludes these entities, while some commenters noted that the ability of individual members of JAAs and G&T cooperatives to prepare small customer plans would greatly simplify the task of meeting Western's IRP requirements for a substantial number of customers.

One commenter suggested that "customer" should be added after "utility" in § 905.15(e)(1)(i) to mirror the language used in the definition of small customer (§ 905.2).

B. Response

After further review, Western determined that the best approach is not to include members of JAAs and G&T cooperatives with power supply responsibility within the small customer provision. However, Western does have the ability to change the criteria for determining IRP compliance, as set forth in Section 114 of EPAct. Western also noted that JAA and G&T cooperative members with less than 25 gigawatthours (GWh) use and sales may have limited managerial, economic, and resource capability, similar to other small customers. Their resource scenarios are often similar, and their ability to conduct IRP just as limited. Accordingly, Western has created new, reduced IRP compliance criteria for JAA and G&T cooperative customers not qualifying for "small customer" status and yet have less than 25 GWh use and sales and have limited managerial, economic, and resource capability, at § 905.11(c). These criteria mirror the criteria set forth in the small customer provision at § 905.15, and are consistent with the flexibilities provided to Western under EPAct. These certain customers must conduct IRP, but under less stringent criteria to reflect their limited capabilities. Unlike the small customer provision, qualifying customers do not need to notify Western in advance if complying through the use of these reduced IRP compliance criteria. Western will use qualifying customers' annual IRP progress reports to verify ongoing eligibility.

"Customer" has been added after "utility" in § 905.15(e)(1)(i) as suggested, to match the definition in § 905.2.

8. § 905.16 and § 905.17 General Comments on Minimum Investment Report, Public Benefits Report, and Energy Efficiency/Renewable Energy (EE/RE) Report Alternatives

A. Comments

Western received a number of general comments about the proposed new alternatives—minimum investment report, public benefits report, and EE/RE report. One commenter noted that the alternatives appear to be essentially the same, so they should be combined.

A number of comments suggested that eligibility for State, Tribal, and Federal Government mandates on these alternatives is too narrow, and that the alternatives should also be open to standard-setting by local governing boards such as city councils and utility boards. Another commenter said alternatives should include mandates set by either State law or State policy. One comment suggested Western should establish some of its own mandates for minimum investments and EE/RE reports. One commenter noted the proposed alternatives should only be applicable in States in which retail competition exists.

One commenter requested that in instances where the State, Tribal, or Federal Government has implemented a program that meets Western's alternatives, Western defer its review authority and accept every report on or stemming from these programs.

Some comments called for additional clarification as to how State, Tribal, or Federal mandates are to be applied for multi-state entities, such as MBAs and IRP cooperatives.

Some commenters noted that Western should add provisions to the alternatives to allow for joint reporting by a group of customers.

One commenter noted that Western was not requiring customers to submit revisions to approved alternative reports every 5 years, as provided for IRPs and small customer plans.

Several municipalities and rural electric cooperatives asked if preparing energy efficiency plans as required by their State's public utility commission could satisfy any of Western's alternative reporting requirements.

B. Response

Western believes that the EE/RE report alternative is clearly different from the minimum investment and public benefits report alternatives, in large part because it applies only to end-use customers. Western agrees that the minimum investment report and public benefits report are essentially the same. Western eliminated the separate public

benefits report alternative and combined the relevant public benefits language with the minimum investment report alternative. Language noting that public benefits charges are included within the definition of minimum investment report has been added in § 905.2, as well.

Western does not agree that limiting the alternatives to mandates set only by State, Tribal, and Federal Governments is too narrow. Likewise Western believes it is inappropriate for it to set such mandates. Because of the broad and open nature of lawmaking and regulatory processes at the State and Federal levels in comparison to the processes of Western's customers, Western is reluctant to accept any lesser mandates. Additionally, as a Federal agency, Western defers to Tribes' sovereign authority to set their own minimum investment or EE/RE reporting requirements.

While Western always reviews submissions—whether IRP or alternatives—for reasonableness, Western is more comfortable with broad decision making (State or Federal) that customers must follow by law, and prefers to rest on the minimum investment and EE/RE requirements set at higher levels of government. Customers not under the jurisdiction of State, Tribal, or Federal Governments with minimum investment or EE/RE reporting requirements must meet the IRP or small customer provision, as applicable.

Similarly, Western does not agree that the energy efficiency and renewable energy mandates for all alternatives should be allowed by State policy. State law or State regulations developed by the public utilities commission or its equivalent must be the standard. Policy adopted by State end-use customers does not meet the intent of the alternative reporting requirements. Otherwise, State end-use customers are setting their own minimum investment or EE/RE requirements, which is contradictory to the intent of these regulations.

Western does not agree that the proposed alternatives should only be applicable in States where retail competition exists. The passage of EPAct created wholesale competition, followed by FERC's mandate for open access to transmission systems. These events have had a far larger impact on utility resource planning and use than retail competition. Wholesale competition drives resource decisions, especially real-time and short-term resource acquisition.

Western will not defer its authority in instances where the State, Tribal, or

Federal Government has implemented a program that meets the alternatives, because this approach would not satisfy our obligations. EPAct mandates that Western collect, evaluate, and report on data to meet EPAct's IRP requirements. Western must report on the data annually to Congress, and, to meet this requirement, must receive adequate data from all customers. While Western will accept reports that fully meet the criteria contained in the alternative provisions (§ 905.16 and § 905.17, respectively), a request to submit the reports must be submitted and approved prior to submitting the report.

Western agrees that additional clarification is needed regarding application of the new alternatives to multi-state entities. Accordingly, Western has developed a new paragraph (c) in the minimum investment report alternative at § 905.16. A multi-state customer choosing to comply with the minimum investment alternative must apply the highest minimum investment level mandated by any State or Tribal jurisdiction within its service territory to all customers in States or Tribal jurisdictions without mandated minimum investments. In instances where more than one State or Tribal jurisdiction has a minimum investment requirement, those should be applied to customers within that State or Tribal jurisdiction. To qualify for the minimum investment alternative, however, the highest investment level must still be applied to customers in States or Tribal jurisdictions without requirements. Alternatively, multi-state entities can complete the streamlined IRP outlined in § 905.11. Western is willing to work with multi-state entities to ensure the most effective, and least burdensome, compliance mechanism.

Western will allow minimum investment reports to be submitted by MBAs on behalf of the MBA or one or more of its members, and by IRP cooperatives on behalf of its participants, as detailed in § 905.16(a). This is also demonstrated by applying the definitions of customers and MBAs in § 905.2, to statements in § 905.12(b) and (c).

Western agrees it should require customers to submit revisions to their approved alternative reports every 5 years, as provided for IRPs and small customer plans, and has revised the regulations accordingly.

Municipalities and rural electric cooperatives subject to State regulatory jurisdiction can potentially satisfy the requirements of the minimum investment report alternative based on energy efficiency plans prepared to comply with requirements established

by their State's public utility commission. They must submit requests to prepare the minimum investment reports and, if Western approves the requests, must submit reports, meeting the requirements of these regulations, particularly § 905.16.

9. § 905.16 What Are the Requirements for the Minimum Investment Report?

A. Comment

One commenter requested that customers be allowed to continue meeting the levels of minimum investment established by State, Tribal, or Federal mandate once the mandate has expired or is otherwise no longer in effect. One comment suggested the minimum investment requirement should include the full array of DSM, including both energy efficiency and load management, instead of just energy efficiency.

B. Response

Because Western is allowing the State, Tribal, or Federal mandate to set the minimum level of investment and related parameters, subject to Western's review for reasonableness, Western cannot allow customers to continue applying the minimum investment once the mandate no longer exists. If the State, Tribal, or Federal Government chooses to terminate the mandate, Western sees no compelling reason to continue to recognize an expired standard.

Western agrees that it should not restrict the permissible demand-side minimum investment activities to just those that can be categorized as energy efficiency, so it has expanded the list of acceptable categories in § 905.16(b)(1) and elsewhere by changing the term "energy efficiency" to "DSM," which includes energy efficiency, load management, and other demand-side measures.

10. § 905.17 What Are the Requirements for the Energy Efficiency and/or Renewable Energy (EE/RE) Report Alternative?

A. Comments

Many comments suggested that Schedule 5 of Energy Information Administration (EIA) Report No. 861, EIA Report No. 412, and Federal Energy Regulatory Commission (FERC) Form No. 1, be acceptable as approved reports under the EE/RE report alternative. One commenter said that the EE/RE report is not a substitute for IRP, and should be withdrawn. One commenter noted that reports submitted by Federal agencies in accordance with Section 303 of Executive Order (EO) 13123 should be

considered as meeting the EE/RE reporting requirement, while another comment suggested any reporting requirement should be waived for Federal customers under the mandate of EO 13123 because compliance with EO 13123 sufficiently satisfies the intended goals of EPAct.

B. Response

The intent underlying the EE/RE report was not clearly understood by customers and stakeholders, so additional clarifying language has been added to § 905.17. The language emphasizes that the EE/RE report applies only to end-use customers, and that it is based on a mandate by a State, Tribal, or Federal Government to implement energy efficiency and/or renewable energy activities within a specified timeframe, for which there is also an associated reporting requirement. Therefore, EIA Reports No. 861 and 412, and FERC Form No. 1 cannot be accepted because they have no mandated energy efficiency or renewable energy requirements. Western will, however, accept any of these reports as all or part of an annual IRP progress report so long as it meets by itself, or meets when supported by additional information, the IRP annual reporting criteria set forth in § 905.14, IRP annual reporting.

Western believes the EE/RE report is an acceptable alternative to the IRP because of the associated energy efficiency and/or renewable energy mandate.

In general, it is Western's belief that the reports for specific Federal end-use customers under EO 13123 will be acceptable as EE/RE reports. However, a requirement to comply with EO 13123 does not excuse a Federal end-use customer from complying with this rule. Western does not agree that a report submitted by a Federal agency in accordance with EO 13123 should automatically be considered as meeting the EE/RE reporting requirements. Any Federal end-use customer must first request EE/RE report status and then submit reports that provide data specific to that Federal end-use customer. Western must report to Congress annually about the activities undertaken by its customers, so the agency must receive adequate information, as specified in § 905.17, about the activities of the Federal end-use customer. Aggregate reports of the agency where the end-use customer is only a part are not acceptable. The EE/RE report must contain customer-specific data.

11. § 905.18 What Are the Criteria for Western's Approval of Submittals?

A. Comments

Some commenters noted that Western needs to clarify whether this section applies to the small customer plan and new alternatives as well as the IRP. A number of commenters said that there should be no IRP reporting obligation in those States that have adopted retail restructuring. Some commenters requested that water conservation measures be allowed in addition to energy efficiency and renewable energy in Western's alternatives. One commenter noted that "shall" was changed to "will," and that there should be a clarifying statement that this language change was editorial in nature.

B. Response

This section applies to small customer plans and new alternatives as well as IRP. To make this clearer, Western changed the word "IRP" in the title of the section to "plans and reports" and moved this section so that it follows the IRP, small customer provision, minimum investment report, and EE/RE report sections.

Western does not agree that there should be no IRP reporting obligation in those states that have adopted retail restructuring. Neither wholesale nor retail competition negate Section 114 of EPAct. Even though our customers may be subject to retail competition, Western will continue to require each of its customers to comply with the IRP or an applicable alternative under this rule.

Western has considered water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies for IRP and small customer planning, as detailed in § 905.18(d). Accordingly, Western will consider water conservation measures for the new alternatives, so long as the mandates for the new alternatives extend to water conservation measures. Western will not allow measures other than those identified by alternative-related State, Tribal, or Federal mandates, and will additionally use the reasonableness criteria as detailed in Section 114 of EPAct and § 905.18(a) in reviewing all plans and reports.

Western changed "shall" to "will" to comply with the requirements for plain language. The change is editorial and does not suggest any substantive change.

12. § 905.19 How Are Plans and Reports Reviewed and Approved?

A. Comment

One comment suggested a time period for resubmittal of reports that is similar to language in "Western's review of IRPs" paragraph be included in § 905.19, as well.

B. Response

Western agrees that time periods for resubmitting plans and reports should be consistent. We have moved the "Western's review of IRPs" paragraph from § 905.13 to § 905.19, and added additional language to clearly indicate the resubmittal timing pertains to IRPs, small customer plans, minimum investment reports, and EE/RE reports.

13. § 905.20 When Are Customers in Noncompliance With This Rule, and How Does Western Ensure Compliance?

A. Comments

One comment suggested that instead of imposing the existing penalty scheme for non-compliant customers, Western should penalize customers up to the amount they "under-spent" on a given public benefits program. A commenter also suggested that, for penalties, Western should limit the liability to 10 percent of power charges and earmark the penalty funds to a public benefits fund for investment in energy efficiency and renewable energy in the non-complying customer's service territory. One commenter noted that Western should clarify that the 30-day good faith period for compliance applies to all plans and reports.

B. Response

Other than plain language revisions, and clarifications to ensure that the penalties and 30-day good faith period are applicable to all plans and reports, Western will not implement any changes to the penalty provisions. The penalty scheme is mandated in Section 114 of EPAct, and Western believes these standards are adequate to ensure compliance with the rule.

14. § 905.23 What Are the Opportunities for Using the Freedom of Information Act (FOIA) To Request Plan and Report Data?

A. Comment

One commenter said that a reference to the exemptions under FOIA should be added, and broadened to include 10 CFR part 1004.10. The intent should be further clarified by designating as proprietary any information that relates to State retail competition which state law and/or regulation has classified as

proprietary. One commenter said that, if Western requests additional information to support Western's review of IRP submittals, Western should agree to use due diligence in protecting the information. The commenter also suggested Western ensure customers have flexibility in determining a reasonable level of data collection and reporting given individual situations.

B. Response

Western has removed the specific reference to 10 CFR part 1004.11, and will not include a specific reference to 10 CFR part 1004.10, recognizing that these references are too narrow, may change, and therefore may not remain accurate. Instead, Western has added the term "applicable" in front of FOIA, to make it clear that any FOIA exemptions may be requested and, if appropriate, granted. Western has also added the phrase, "recognizing that certain competition-related customer information may be proprietary," to the end of the last sentence.

Given customer concerns over proprietary and potentially proprietary information, Western will accept summary information in the IRP rather than full data. However, customers should not have unlimited discretion in determining the amount of data required by Western. Western is always willing to work with customers to ensure we receive adequate, but not unnecessary, data. However, Western must have access to sufficient data to verify that customers are meeting the intent of EPAct and the IRP regulations. Western understands customers' concerns over proprietary information, and will ensure that it applies FOIA protections to customer information.

III. Procedural Requirements

A. Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this rulemaking by the Office of Management and Budget (OMB) is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western's Administrator certified that the proposed rule would have no significant adverse impact on a substantial number of small entities because the proposed

revisions to these regulations reduce paperwork and financial and other burdens, as well as reporting redundancies for small entities. Western did not receive any comments on this certification.

C. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB to collect customer information in this rule, under control number 1910–1200.

D. Review Under the National Environmental Policy Act

Western prepared an environmental impact statement (EIS) and record of decision (ROD) pursuant to NEPA for EPAMP, which established the existing IRP requirements for Western power customers. The EIS met the requirements of NEPA, 42 U.S.C. 4321, *et seq.*, the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021). Since the proposed revisions would modify the IRP requirements addressed in the EPAMP EIS, Western completed a review and determined a supplemental EIS is not required. A revised EPAMP ROD has been issued.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the need for such actions. Western has examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and Tribal governments and the private sector. Western has determined that this regulatory action does not impose an

additional Federal mandate on State, local, or Tribal governments or on the private sector.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996), imposed on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. Western has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The final rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, Western has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Western may not issue a discretionary rule that significantly or uniquely affects Indian

tribal governments and imposes substantial direct compliance costs. The incremental amendments involved in this rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

J. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 905

Electric power, Electric utilities, Energy, Energy conservation, Hydroelectric power and utilities.

Issued in Lakewood, CO on March 13, 2000.

Michael S. Hacsckaylo,
Administrator.

For the reasons set forth in the preamble, 10 CFR part 905 is amended as set forth below:

PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7152 and 7191; 32 Stat. 388, as amended; and 42 U.S.C. 7275–7276c.

2. Subparts A and B are revised to read as follows:

Subpart A—General Provisions

Sec.

- 905.1 What are the purposes of the Energy Planning and Management Program?
905.2 What are the key definitions of this part?

Subpart B—Integrated Resource Planning

- 905.10 Who must comply with the integrated resource planning and reporting regulations in this subpart?
905.11 What must an IRP include?
905.12 How must IRPs be submitted?
905.13 When must IRPs be submitted?
905.14 Does Western require annual IRP progress reports?
905.15 What are the requirements for the small customer plan alternative?
905.16 What are the requirements for the minimum investment report alternative?
905.17 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?
905.18 What are the criteria for Western’s approval of submittals?
905.19 How are plans and reports reviewed and approved?
905.20 When are customers in noncompliance with the regulations in this subpart, and how does Western ensure compliance?

- 905.21 What is the administrative appeal process?
- 905.22 How does Western periodically evaluate customer actions?
- 905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?
- 905.24 Will Western conduct reviews of this program?

Subpart A—General Provisions

§ 905.1 What are the purposes of the Energy Planning and Management Program?

The purposes of the Energy Planning and Management Program (EPAMP) are to meet the objectives of Section 114 of the Energy Policy Act of 1992 (EPAAct) and to extend long-term firm power resource commitments while supporting customer integrated resource planning (IRP); demand-side management (DSM), including energy efficiency, conservation, and load management; and the use of renewable energy. Subpart B, Integrated Resource Planning, allows customers of the Western Area Power Administration (Western) to meet the objectives of section 114 of EPAAct through integrated resource planning or by other means, such as attaining a minimum level of investment in energy efficiency and/or renewable energy, collecting a charge to support defined public benefits, or complying with a mandated energy efficiency and/or renewable energy reporting requirement.

§ 905.2 What are the key definitions of this part?

Administrator means Western's Administrator.

Customer means any entity that purchases firm capacity, with or without energy, from Western under a long-term firm power contract. The term also includes a member-based association (MBA) and its distribution or user members that receive direct benefit from Western's power, regardless of which holds the contract with Western.

Energy efficiency and/or renewable energy (EE/RE) report means the report documenting energy efficiency and/or renewable energy activities imposed by a State, Tribal, or the Federal Government upon a State, Tribal, or Federal end-use customer within its jurisdiction.

Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable

energy resources, to provide adequate and reliable service to a customer's electric consumers.

Integrated resource planning cooperative (IRP cooperative) means a group of Western's customers and/or their distribution or user members with geographic, resource supply, or other similarities that have joined together, with Western's approval, to complete an IRP.

Member-based association (MBA) means:

- (1) An entity composed of member utilities or user members, or
- (2) An entity that acts as an agent for, or subcontracts with, but does not assume power supply responsibility for its principals or subcontractors, who are its members.

Minimum investment report means the report documenting a mandatory minimum level of financial or resource investment in demand-side management (DSM) initiatives, including energy efficiency and load management, and/or renewable energy activities, such as investment of a set minimum percentage of the utility's gross revenues in renewable energy, which is imposed by State, Tribal, or Federal law upon a customer under its jurisdiction. For the purposes of this part, the minimum investment report includes reports about public benefits charges, as well.

Public benefits charge means a mandatory financial charge imposed by State, Tribal, or Federal law upon a customer under its jurisdiction to support one or more of the following: energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and/or other similar programs defined by applicable State, Tribal, or Federal law. This term is also known as a public goods or system benefit charge in the utility industry.

Region means a Western regional office or management center, and the geographic territory served by that regional office or management center: the Desert Southwest Customer Service Region, the Rocky Mountain Customer Service Region, the Sierra Nevada Customer Service Region, the Upper Great Plains Customer Service Region, or the Colorado River Storage Project Management Center.

Renewable energy means any source of electricity that is self-renewing, including plant-based biomass, waste-based biomass, geothermal, hydropower, ocean thermal, solar (active and passive), and wind.

Small customer means a utility customer with total annual sales and

usage of 25 gigawatthours (GWh) or less, as averaged over the previous 5 years, which is not a member of a joint-action agency or generation and transmission cooperative with power supply responsibility; or any end-use customer.

Western means the Western Area Power Administration.

Subpart B—Integrated Resource Planning

§ 905.10 Who must comply with the integrated resource planning and reporting regulations in this subpart?

(a) Integrated resource plans (IRP) and alternatives. Each Western customer must address its power resource needs in an IRP prepared and submitted to Western as described in this subpart. Alternatively, Western customers may submit a small customer plan, minimum investment report or EE/RE report as provided in this subpart.

(b) Rural Utility Service and state utility commission reports. For customers subject to IRP filings or other electrical resource use reports from the Rural Utilities Service or a state utility commission, nothing in this part requires a customer to take any action inconsistent with those requirements.

§ 905.11 What must an IRP include?

(a) General. Integrated resource planning is a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, to provide adequate and reliable service to a customer's electric consumers. An IRP supports customer-developed goals and schedules. The plan must take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other risk factors; must take into account the ability to verify energy savings achieved through energy efficiency and the projected durability of such savings measured over time; and must treat demand and supply resources on a consistent and integrated basis.

(b) IRP criteria. IRPs must consider electrical energy resource needs and may consider, at the customer's option, water, natural gas, and other energy resources. Each IRP submitted to Western must include:

- (1) Identification of resource options. Identification and comparison of resource options is an assessment and comparison of existing and future supply-and demand-side resource options available to a customer based

upon its size, type, resource needs, geographic area, and competitive situation. Resource options evaluated by the specific customer must be identified. The options evaluated should relate to the resource situation unique to each Western customer as determined by profile data (such as service area, geographical characteristics, customer mix, historical loads, projected growth, existing system data, rates, and financial information) and load forecasts. Specific details of the customer's resource comparison need not be provided in the IRP itself. They must, however, be made available to Western upon request.

(i) Supply-side options include, but are not limited to, purchased power contracts and conventional and renewable generation options.

(ii) Demand-side options alter the customer's use pattern to provide for an improved combination of energy services to the customer and the ultimate consumer.

(iii) Considerations that may be used to develop potential options include cost, market potential, consumer preferences, environmental impacts, demand or energy impacts, implementation issues, revenue impacts, and commercial availability.

(iv) The IRP discussion of resource options must describe the options chosen by the customer, clearly demonstrating that decisions were based on a reasonable analysis of the options. The IRP may strike a balance among the applicable resource evaluation factors.

(2) Action plan. IRPs must include an action plan describing specific actions the customer will take to implement its IRP.

(i) The IRP must state the time period that the action plan covers, and the action plan must be updated and resubmitted to Western when this time period expires. The customer may submit a revised action plan with the annual IRP progress report discussed in § 905.14.

(ii) For those customers not experiencing or anticipating load growth, the action plan requirement for the IRP may be satisfied by a discussion of current actions and procedures in place to periodically reevaluate the possible future need for new resources. The action plan must include a summary of:

(A) Actions the customer expects to take in accomplishing the goals identified in the IRP;

(B) Milestones to evaluate accomplishment of those actions during implementation; and

(C) Estimated energy and capacity benefits for each action planned.

(3) Environmental effects. To the extent practical, the customer must minimize adverse environmental effects of new resource acquisitions and document these efforts in the IRP. Customers are neither precluded from nor required to include a quantitative analysis of environmental externalities as part of the IRP process. IRPs must include a qualitative analysis of environmental effects in summary format.

(4) Public participation. The customer must provide ample opportunity for full public participation in preparing and developing an IRP (or any IRP revision or amendment). The IRP must include a brief description of public involvement activities, including how the customer gathered information from the public, identified public concerns, shared information with the public, and responded to public comments. Customers must make additional documentation identifying or supporting the full public process available to Western upon request.

(i) As part of the public participation process, the governing body of an MBA and each MBA member (such as a board of directors or city council) must approve the IRP, confirming that all requirements have been met. To indicate approval, a responsible official must sign the IRP submitted to Western or the customer must document passage of an approval resolution by the appropriate governing body included or referred to in the IRP.

(ii) For Western customers that do not purchase electricity for resale, such as some State, Tribal, and Federal agencies, the customer can satisfy the public participation requirement by having a top management official with resource acquisition responsibility review and concur on the IRP. The customer must note this concurrence in the IRP.

(5) Load forecasting. An IRP must include a statement that the customer conducted load forecasting. Load forecasting should include data that reflects the size, type, resource conditions, and demographic nature of the customer using an accepted load forecasting method, including but not limited to the time series, end-use, and econometric methods. The customer must make the load forecasting data available to Western upon request.

(6) Measurement strategies. The IRP must include a brief description of measurement strategies for options identified in the IRP to determine whether the IRP's objectives are being met. These validation methods must include identification of the baseline from which a customer will measure the

benefits of its IRP implementation. A reasonable balance may be struck between the cost of data collection and the benefits resulting from obtaining exact information. Customers must make performance validation and evaluation data available to Western upon request.

(c) IRP criteria for certain customers not qualifying for "small customer" status. Customers with limited economic, managerial, and resource capability and total annual sales and usage of 25 gigawatthours (GWh) or less who are members of joint-action agencies and generation and transmission cooperatives with power supply responsibility are eligible for the criteria specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Each IRP submitted by a customer under paragraph (c) of this section must:

(i) Consider all reasonable opportunities to meet future energy service requirements using DSM techniques, renewable energy resources, and other programs; and

(ii) Minimize, to the extent practical, adverse environmental effects.

(2) Each IRP submitted by a customer under paragraph (c) of this section must include, in summary form:

(i) Customer name, address, phone number, email and Website if applicable, and contact person;

(ii) Customer type;

(iii) Current energy and demand profiles, and data on total annual energy sales and usage for the past 5 years, which Western will use to verify that customers qualify for these criteria;

(iv) Future energy services projections;

(v) How items in paragraphs (c)(1)(i) and (c)(1)(ii) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

§ 905.12 How must IRPs be submitted?

(a) Number of IRPs submitted. Except as provided in paragraph (c) of this section, one IRP is required per customer, regardless of the number of long-term firm power contracts between the customer and Western.

(b) Method of submitting IRPs. Customers must submit IRPs to Western under one of the following options:

(1) Customers may submit IRPs individually.

(2) MBAs may submit IRPs for each of their members or submit one IRP on behalf of all or some of their members. An IRP submitted by an MBA must specify the responsibilities and participation levels of individual members and the MBA. Any member of an MBA may submit an individual IRP

to Western instead of being included in an MBA IRP.

(3) Customers may submit IRPs as IRP cooperatives when previously approved by Western. IRP cooperatives may also submit small customer plans, minimum investment reports and EE/RE reports on behalf of eligible IRP cooperative members.

(c) Alternatives to submitting individual IRPs. Customers with Western approval to submit small customer plans, minimum investment or EE/RE reports may substitute the applicable plan or report instead of an IRP. Each customer that intends to seek approval for IRP cooperative, small customer, minimum investment report or EE/RE report status must provide advance written notification to Western. A new customer must provide this notification to the Western Regional Manager of the Region in which the customer is located within 30 days from the time it becomes a customer. Any customer may resubmit an IRP or notify Western of its plan to change its compliance method at any time so long as there is no period of noncompliance.

§ 905.13 When must IRPs be submitted?

(a) Submitting the initial IRP. Except as provided in paragraph (c) of this section, customers that have not previously had an IRP approved by Western must submit the initial IRP to the appropriate Regional Manager no later than 1 year after May 1, 2000, or after becoming a customer, whichever is later.

(b) Updates and amendments to IRPs. Customers must submit updated IRPs to the appropriate Regional Manager every 5 years after Western's approval of the initial IRP. Customers that complied with Western's IRP regulations in effect before May 1, 2000 must maintain their submission and resubmission schedules previously in effect. Customers may submit amendments and revisions to IRPs at any time.

(c) IRP cooperatives. Customers with geographic, resource supply, and other similarities may join together and request, in writing, Western's approval to become an IRP cooperative. Western will respond to IRP cooperative status requests within 30 days of receiving a request. If Western disapproves a request for IRP cooperative status, the requesting participants must maintain their currently applicable integrated resource or small customer plans, or submit the initial IRPs no later than 1 year after the date of the disapproval letter. Western's approval of IRP cooperative status will not be based on any potential participant's contractual status with Western. Each IRP

cooperative must submit an IRP for its participants within 18 months after Western approves IRP cooperative status.

§ 905.14 Does Western require annual IRP progress reports?

Yes, customers must submit IRP progress reports each year within 30 days of the anniversary date of the approval of the currently applicable IRP. The reports must describe the customer's accomplishments achieved under the action plan, including projected goals and implementation schedules, and energy and capacity benefits and renewable energy developments achieved as compared to those anticipated. Western prefers measured values, but will accept reasonable estimates if measurement is infeasible or not cost-effective. Instead of a separate progress report, the customer may use any other annual report that the customer submits to Western or another entity, at the customer's discretion, if that report contains all required data for the previous full year and is submitted within 30 days of the approval anniversary date of the currently applicable IRP. With Western's approval, customers may submit reports outside of the 30-day anniversary date window.

§ 905.15 What are the requirements for the small customer plan alternative?

(a) Requesting small customer status. Small customers may submit a request to prepare a small customer plan instead of an IRP. Requests for small customer status from electric utilities must include data on total annual energy sales and usage for the 5 years prior to the request. Western will average this data to determine overall annual energy sales and usage so that uncontrollable events, such as extreme weather, do not distort levelized energy sales and usage. Requests from end-use customers must only document that the customer does not purchase electricity for resale. Western will respond to small customer status requests within 30 days of receiving the request. If Western disapproves a request, the customer must maintain its currently applicable IRP, or submit the initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for minimum investment report or EE/RE report status, as appropriate.

(b) Small customer plan contents.

Small customer plans must:

(1) Consider all reasonable opportunities to meet future energy service requirements using demand-side

management techniques, renewable energy resources, and other programs that provide retail consumers with electricity at reasonable cost;

(2) Minimize, to the extent practical, adverse environmental effects; and

(3) Present in summary form the following information:

(i) Customer name, address, phone number, email and Website if applicable, and contact person;

(ii) Type of customer;

(iii) Current energy and demand profiles and data on total annual energy sales and usage for the previous 5 years for utility customers, or current energy and demand use for end-use customers;

(iv) Future energy services projections;

(v) How items in paragraphs (b)(1) and (b)(2) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

(c) When to submit small customer plans. Small customers must submit the first small customer plan to the appropriate Western Regional Manager within 1 year after Western approves the request for small customer status. Small customers must submit, in writing, a small customer plan every 5 years.

(d) Maintaining small customer status.

(1) Every year on the anniversary of Western's approval of the plan, small customers must submit a letter to Western verifying that either their annual energy sales and usage is 25 GWh or less averaged over the previous 5 years, or they continue to be end-use customers. The letter must also identify their achievements against targeted action plans, as well as the revised summary of actions if the previous summary of actions has expired.

(2) Western will use the letter for overall program evaluation and comparison with the customer's plan, and for verification of continued small customer status. Customers may submit annual update letters outside of the anniversary date if previously agreed to by Western so long as the letter contains all required data for the previous full year.

(e) Losing eligibility for small customer status. (1) A customer ceases to be a small customer if it:

(i) Is a utility customer and exceeds total annual energy sales and usage of 25 GWh, as averaged over the previous 5 years; or

(ii) Is no longer an end-use customer.

(2) Western will work with a customer that loses small customer status to develop an appropriate schedule for submitting an IRP or other report required under this subpart.

§ 905.16 What are the requirements for the minimum investment report alternative?

(a) Request to submit the minimum investment report. Customers may submit a request to prepare a minimum investment report instead of an IRP. Minimum investment reports may be submitted by MBAs on behalf of the MBA or its members, and by IRP cooperatives on behalf of its participants. Requests to submit minimum investment reports must include data on:

- (1) The source of the minimum investment requirement (number, title, date, and jurisdiction of law);
- (2) The initial, annual, and other reporting requirement(s) of the mandate, if any; and
- (3) The mandated minimum level of investment or public benefits charge for DSM and/or renewable energy.

(b) Minimum investment requirement. The minimum investment must be either:

- (1) A mandatory set percentage of customer gross revenues or other specific minimum investment in DSM and/or renewable energy mandated by a State, Tribal, or Federal Government with jurisdictional authority; or
- (2) A required public benefits charge, including charges to be collected for and spent on DSM; renewable energy; efficiency and alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits category, mandated by a State, Tribal, or Federal Government with jurisdictional authority. Participation in a public benefits program requires either a mandatory set percentage of customer gross revenues or other specific charges to be applied toward the programs as determined by the applicable State, Tribal, or Federal authority. The revenues from the public benefits charge may be expended directly by the customer, or by another entity on behalf of the customer as determined by the applicable State, Tribal, or Federal authority.

(c) Multi-state entities. For those customers with service territories lying in more than one State or Tribal jurisdiction, and where at least one of the States or Tribal jurisdictions has a mandated minimum investment requirement, to meet this alternative customers must use the highest requirement from the State or Tribe within the customer's service territory and additionally apply it to all members in those States or Tribal jurisdictions in which there is no requirement. Alternatively, if each State or Tribe has a requirement, customers may satisfy Western's requirement by reporting on

compliance with each applicable minimum investment requirement. Western will work with multi-state entities to ensure the most effective, and least burdensome, compliance mechanism.

(d) Western's response to minimum investment report requests. Western will respond to requests to accept minimum investment reports within 30 days of receiving the request. If Western disapproves a request to allow use of the minimum investment report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for small customer plan or EE/RE report status, as appropriate.

(e) Minimum investment report contents. Reports documenting compliance with a minimum level of investment in DSM and/or renewable energy must include:

- (1) Customer name, address, phone number, email and Website if applicable, and contact person;
- (2) Authority or requirement to undertake a minimum investment, including the source of the minimum investment requirement (number, title, date, and jurisdiction of law or regulation); and
- (3) A description of the minimum investment, including:
 - (i) Minimum percentage or other minimum requirement for DSM and/or renewable energy, including any charges to be collected for and spent on DSM, renewable energy, efficiency or alternative energy-related research and development, low-income energy assistance, and any other applicable public benefits categories;
 - (ii) Actual or estimated energy and/or capacity savings resulting from minimum investments in DSM, if known;
 - (iii) Actual or estimated energy and/or capacity resulting from minimum investments in renewable energy, if known; and
 - (iv) A description of the DSM and/or renewable energy activities to be undertaken over the next 2 years as a result of the requirement for minimum investment, if known.
- (f) Minimum investment report approval. Western will approve the minimum investment report when it meets the requirements in paragraph (e) of this section.

(g) When to submit the minimum investment report. The customer must submit the first minimum investment report to the appropriate Western Regional Manager within 1 year after

Western approves the request to accept the minimum investment report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first minimum investment report, to ensure there is no gap in complying with section 114 of EPart. Customers must submit, in writing, a minimum investment report every 5 years.

(h) Maintaining minimum investment reports. (1) Every year on the anniversary of Western's approval of the first minimum investment report, customers choosing this option must submit a letter to Western verifying that they remain in compliance with the minimum investment requirement. The letter must also contain summary information identifying annual energy and capacity savings associated with minimum investments in DSM, if known, and energy and capacity associated with minimum investments in renewable energy, if known. The letter must also include a revised description of customer DSM and/or renewable energy activities if the description from the minimum investment report has changed or expired.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western, and if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the minimum investment and associated DSM and/or renewable energy savings and/or use, if known.

(i) Loss of eligibility to submit the minimum investment report. (1) A customer ceases to be eligible to submit a minimum investment report if:

- (i) A State, Tribal, or Federal mandate no longer applies to the customer, or
- (ii) The customer does not comply with the minimum level of investment in applicable State, Tribal, or Federal law.

(2) Western will work with a customer no longer eligible to submit a minimum investment report to develop an appropriate schedule to submit an IRP or other plan or report required under this subpart.

§ 905.17 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?

(a) Requests to submit an EE/RE report. End-use customers may submit a request to prepare an EE/RE report instead of an IRP. Requests to submit EE/RE reports must include data on:

(1) The source of the EE/RE reporting requirement (number, title, date, and jurisdiction of law or regulation);

(2) The initial, annual, and other reporting requirement(s) of the report; and

(3) A summary outline of the EE/RE report's required data or components, including any requirements for documenting customer energy efficiency and renewable energy activities.

(b) EE/RE report requirement. The EE/RE report is based on a mandate by a State, Tribal, or Federal Government to implement energy efficiency and/or renewable energy activities within a specified timeframe, for which there is also an associated reporting requirement. The EE/RE report may include only electrical resource use and energy efficiency and/or renewable energy activities, or may additionally include other resource information, such as water and natural gas data. At a minimum, the EE/RE report must annually document energy efficiency and/or renewable energy activities undertaken by the end-use customer.

(c) Western's response to EE/RE report requests. Western will respond to requests to accept EE/RE reports within 30 days of receiving the request. If Western disapproves a request to allow use of the EE/RE report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for small customer plan or minimum investment report, as appropriate, within 30 days after the date of the disapproval letter.

(d) EE/RE report contents. EE/RE reports must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to complete the EE/RE report, including the source of the requirement (number, title, date, and jurisdiction of law); and

(3) A description of the customer's required energy efficiency and/or renewable energy activities, including:

(i) Level of investment or expenditure in energy efficiency and/or renewable energy, and quantifiable energy savings or use goals, if defined by the EE/RE reporting requirement;

(ii) Annual actual or estimated energy and/or capacity savings, if any, associated with energy efficiency and resulting from the EE/RE reporting requirement;

(iii) Actual or estimated energy and/or capacity, if any, associated with renewable energy and resulting from the EE/RE reporting requirement;

(iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the EE/RE reporting requirement.

(e) EE/RE report approval. Western will approve the EE/RE report when the report meets the requirements in paragraph (d) of this section.

(f) When to submit the EE/RE report. The customer must submit the first EE/RE report to the appropriate Western Regional Manager within 1 year after Western approves the request to accept the EE/RE report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first EE/RE report to ensure there is no gap in complying with section 114 of EPAct. Customers must submit, in writing, an EE/RE report every 5 years.

(g) Maintaining EE/RE reports. (1) Every year on the anniversary of Western's approval of the first EE/RE report, customers choosing this option must submit an annual EE/RE letter to Western. The letter must contain summary information identifying customer annual energy and capacity savings associated with energy efficiency, if any, and annual customer energy and capacity associated with renewable energy, if any. The letter must also verify that the customer remains in compliance with the EE/RE reporting requirement. Additionally, the letter must include a revised description of customer DSM and/or renewable energy activities if the description from the EE/RE report has changed or expired. If this information is contained in an EE/RE report sent to another authority, the customer may submit that report instead of a separate letter.

(2) Customers may submit annual EE/RE letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year.

(h) Loss of eligibility to submit the EE/RE report. (1) A customer ceases to be eligible to submit a EE/RE report if:

(i) The EE/RE reporting requirement no longer applies to the customer, or

(ii) The customer does not comply with the EE/RE reporting requirements

in applicable State, Tribal, or Federal law.

(2) Western will work with a customer no longer eligible to submit an EE/RE report to develop an appropriate schedule to submit a small customer plan or other plan or report required under this subpart.

§ 905.18 What are the criteria for Western's approval of submittals?

(a) Approval criteria. Western will approve all plans and reports based upon:

(1) Whether the plan or report satisfactorily addresses the criteria in the regulations in this subpart; and

(2) The reasonableness of the plan or report given the size, type, resource needs, geographic area, and competitive situation of the customer.

(b) Review of resource choices.

Western will review resource choices using section 114 of EPAct and this subpart. Western will disapprove plans and reports if Western deems that they do not meet the reasonableness criteria in paragraph (a)(2) of this section or the provisions of section 114 of EPAct.

(c) Accepting plans and reports under other initiatives. If a customer or group of customers implements integrated resource planning under a program responding to other Federal, Tribal, or State initiatives, Western will accept and approve the plan or report as long as it substantially complies with the requirements of this subpart.

(d) Water-based plans and reports. In evaluating a plan or report, Western will consider water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies. Customers that provide water utility services and customers that service irrigation load as part of their overall load may include water conservation activities in their plans or reports. To the extent practical, customers should convert reported water savings to energy values.

§ 905.19 How are plans and reports reviewed and approved?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receiving it. If a plan or report submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the plan or report. Western, working together with the entity, will determine the time allowable for resubmitting the plan or report. However, the time allowed for resubmittal will not be greater than 9 months after the disapproval date, unless otherwise provided by applicable contract language.

§ 905.20 When are customers in noncompliance with the regulations in this subpart, and how does Western ensure compliance?

(a) Good faith effort to comply. If it appears that a customer's activities may be inconsistent with the applicable IRP, small customer plan, minimum investment report or EE/RE report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receiving information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(b) Penalties for noncompliance. Western will impose a penalty on long-term firm power customers for failing to submit or resubmit an acceptable IRP and action plan, small customer plan, minimum investment report or EE/RE report as required by this subpart. Western will also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(c) Written notification of penalty. Western will provide written notice of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for the penalty.

(d) Penalty options. (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.21.

(2) The surcharge increases to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.

(3) After the first 12 months of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

(i) When it appears to be more effective to ensure customer compliance, or

(ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) Assessing and ceasing penalties. Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) Penalties on MBAs and IRP cooperatives. In situations involving a plan or report submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

§ 905.21 What is the administrative appeal process?

(a) Filing written appeals with Western. If a customer disagrees with Western's decision on the acceptability of its IRP, small customer plan, minimum investment report or EE/RE report submittal, its compliance with an approved plan or report, or any other compliance issue, the customer may request reconsideration by filing a written appeal with the appropriate Regional Manager. Customers may submit appeals any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts the customer believes should be brought to Western's attention. The Regional Manager will respond within 45 days of receiving the appeal. If resolution is not achieved at the Regional Office level, the customer may appeal to the Administrator, who will respond within 30 days of receiving the appeal.

(b) Alternative dispute resolution. Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or

disputes relating to compliance with the regulations in this subpart.

(c) Penalties during appeal. Western will not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western will impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.

(d) Meeting other requirements during appeal process. A written appeal or use of alternative dispute resolution procedures does not suspend other reporting and compliance requirements.

§ 905.22 How does Western periodically evaluate customer actions?

(a) Periodic review of customer actions. Western will periodically evaluate customer actions to determine whether they are consistent with the approved IRP or minimum investment report. Small customer plans and EE/RE reports are not subject to this periodic review.

(b) Reviewing representative samples of plans and reports. Western will periodically review a representative sample of IRPs and minimum investment reports, and the customer's implementation of the applicable plan or report from each of Western's Regions. The samples will reflect the diverse characteristics and circumstances of the customers that purchase power from Western. These reviews will be in addition to, and separate and apart from, the review of initial and updated IRPs and minimum investment reports to ensure compliance with this subpart.

(c) Scope of periodic reviews. Periodic reviews may consist of any combination of review of the customer's annual IRP progress reports, minimum investment letters, telephone interviews, or on-site visits. Western will document these periodic reviews and may report on the results of the reviews in Western's annual report.

§ 905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?

IRPs, small customer plans, minimum investment reports and EE/RE reports and associated data submitted to Western are subject to the Freedom of Information Act (FOIA) and may be made available to the public upon request. Customers may request confidential treatment of all or part of a submitted document under applicable FOIA exemptions. Western will make its own determination whether particular information is exempt from public access. Western will not disclose to the public information it has determined to

be exempt, recognizing that certain competition-related customer information may be proprietary.

§ 905.24 Will Western conduct reviews of this program?

Yes, Western may periodically initiate a public process to review the regulations in this subpart to determine whether they should be revised to reflect changes in technology, needs, or other developments.

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective March 21, 2000. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452-3259; for users of Telecommunications Device for the Deaf (TDD), contact Janice Simms, at (202) 872-4984, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate from 5.25 percent to 5.5 percent, the

Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

The Board and the Reserve Banks remain concerned that increases in demand will continue to exceed the growth in potential supply, which could foster inflationary imbalances that would undermine the economy's record economic expansion. Against the background of their long-run goals of price stability and sustainable economic growth and of the information currently available, the Board and the Reserve Banks believe the risks are weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	March 21, 2000.
New York	5.5	March 21, 2000.
Philadelphia	5.5	March 21, 2000.
Cleveland	5.5	March 21, 2000.
Richmond	5.5	March 21, 2000.
Atlanta	5.5	March 21, 2000.
Chicago	5.5	March 21, 2000.
St. Louis	5.5	March 22, 2000.
Minneapolis	5.5	March 21, 2000.
Kansas City	5.5	March 21, 2000.
Dallas	5.5	March 23, 2000.
San Francisco	5.5	March 21, 2000.

By order of the Board of Governors of the Federal Reserve System, March 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-7893 Filed 3-29-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-185-AD; Amendment 39-11648; AD 2000-06-08]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires repetitive operational tests of the override mechanism of the trimmable horizontal stabilizer (THS) to determine if the system functions correctly; and corrective action, if necessary. This amendment requires replacement of existing flight control primary computers (FCPC) with