Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 3—Hazardous Waste Management System: General

PROPOSED AMENDMENT

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information. The commission is proposing to amend sections (1) and (3).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 260, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 260, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, *[and the changes made at 71 FR 42928, July 28, 2006,]* are incorporated by reference, except for the changes made at 70 FR 53453, September 8, 2005**, and 73 FR 64667 to 73 FR 64788, October 30, 2008,** subject to the following additions, modifications, substitutions, or deletions. This rule does not incorporate any subsequent amendments or additions.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260–270, 273, and 279 and 49 CFR parts 40, 171–180, 383, 387, and 390–397.

(U) Definitions beginning with the letter U.

1. Universal waste means any of the hazardous wastes that are defined under the universal waste requirements of 10 CSR 25-16.273(2)(A).

2. Used oil.

A. The definition of used oil at 40 CFR 260.10 is amended to include, but not be limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for any of the following:

(I) Lubrication/cutting oil;

(II) Heat transfer;

(III) Hydraulic power; or

(IV) Insulation in dielectric transformers.

B. The definition of used oil at 40 CFR 260.10 is amended to exclude used petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under 10 CSR 25.)

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3–9 and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. USGS means United States Geological Survey.

4. U.S. importer means a United States-based person who is in corporate good standing with the U.S. state in which they are registered to conduct business and who will be assuming all generator responsibilities and liabilities specified in sections 260.350–260.430, RSMo**,** for wastes which the U.S. importer has arranged to be imported from a foreign country.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and section 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 4—Methods for Identifying Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-4.261 Methods for Identifying Hazardous Waste. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would*

add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 261, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 261, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, *[and the changes made at 71 FR 42928, July 28, 2006, and 72 FR 31185, June 6, 2007,]* are incorporated by reference, except for the changes made at 55 FR 50450, December 6, 1990, 56 FR 27332, June 13, 1991, 60 FR 7366, February 7, 1995, 63 FR 33823, June 19, 1998, *[and]* 70 FR 53453, September 8, 2005, **73 FR 64667 to 73 FR 64788, October 30, 2008, and 73 FR 77954, December 19, 2008**. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modifications of the regulations incorporated in section (1) of this rule. A person required to identify a hazardous waste shall comply with this section as it modifies 40 CFR part 261 as incorporated in this rule. (Comment: This section has been organized in order that all Missouri additions, changes, or deletions to any subpart of the federal regulation are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 261 subpart A will be located in subsection (2)(A) of this rule.)

(A) General. The following are changes to 40 CFR part 261 subpart A incorporated in this rule:

1. Material that is stored or accumulated in surface impoundments or waste piles is inherently waste-like as provided in 40 CFR 261.2(d) incorporated in this rule, and is a solid waste, regardless of whether the material is recycled;

2. A solid waste, as defined in 40 CFR 261.2, as incorporated in this rule, is a hazardous waste if it is a mixture of solid waste and one (1) or more hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, and has not been excluded from 40 CFR 261.3(a)(2), as incorporated in this rule, under 40 CFR 260.20 and 260.22, as incorporated in 10 CSR 25-3.260. However, mixtures of solid wastes and hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, are not hazardous wastes (except by application of 40 CFR part 261.3(a)(2)(i) or (ii), as incorporated in this rule) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is regulated under Chapter 644, RSMo, the Missouri Clean Water Law;

3. In Table 1 of 40 CFR 261.2, add an asterisk in column 3, row 6, Reclamation of Commercial Chemical Products listed in 40 CFR 261.33 and add the following additional footnote: "Note 2. Commercial chemical products listed in 40 CFR 261.33 are not solid wastes when the original manufacturer uses, reuses**,** or legitimately recycles the material in his/her manufacturing process";

4. *[Except as provided otherwise in 40 CFR 261.3(c)(2)(ii), as incorporated in this rule, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.);]* ***(Reserved)***

5. In addition to the requirements in 40 CFR 261.3 incorporated in this rule, hazardous waste may not be diluted solely for the purpose of rendering the waste nonhazardous unless dilution is warranted in an emergency response situation or where the dilution is part of a hazardous waste treatment process regulated or exempted under 10 CSR 25-7 or 10 CSR 25-9;

6. Fly ash that is not regulated under sections 260.200–260.245, RSMo, or sections 644.006–644.564, RSMo, or is not beneficially reused as allowed under 10 CSR 80-2.020(9)(B), and fails Toxicity Characteristic Leaching Procedure (TCLP) is not subject to the exclusion at 40 CFR 261.4(b)(4) and shall be disposed of in a permitted hazardous waste facility;

7. In 40 CFR 261.4(a)(8)(i) incorporated in this rule, substitute "is a totally enclosed treatment facility" for "through completion of reclamation is closed";

8. 40 CFR 261.4(a)(11) is not incorporated in this rule;

9. 40 CFR 261.4(a)(16) is not incorporated in this rule (Note: The paragraph at 40 CFR 261.4(a)(16) added by 63 FR 33823, June 19, 1998, is the paragraph not incorporated by 10 CSR 25-4.261(2)(A)9.);

10. Household hazardous waste which is segregated from the solid waste stream becomes a regulated hazardous waste upon acceptance by delivery at a commercial hazardous waste treatment, storage, or disposal facility. Any waste for which the commercial facility becomes the generator in this way shall not be subject to waste minimization requirements under 40 CFR 264.73(b)(9), as incorporated by 10 CSR 25-7.264(1), nor shall that facility be required to pay hazardous waste fees and taxes on that waste pursuant to 10 CSR 25-12.010;

11. A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) as incorporated in this rule to the department along with the Generator's Hazardous Waste Summary Report required in 10 CSR 25-5.262(2)(D)1.;

12. The changes to 40 CFR 261.5, special requirements for hazardous waste generated by small quantity generators, incorporated in this rule are as follows:

A. The modification set forth in 10 CSR 25-3.260(1)(A)25. applies in this rule in addition to other modifications set forth;

B. 40 CFR 261.5(g)(2) is not incorporated in this rule;

C. A process, procedure, method, or technology is considered to be on-site treatment for the purposes of 40 CFR 261.5(f)(3) and 40 CFR 261.5(g)(3), as incorporated in this rule, only if it meets the following criteria:

(I) The process, procedure, method, or technology reduces the hazardous characteristic(s) and/or the quantity of a hazardous waste; and

(II) The process, procedure, method, or technology does not result in off-site emissions of any hazardous waste or constituent; and

D. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279.10(b)(3) as incorporated in 10 CSR 25-11.279;

13. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 261.6(a)(3)(i), as incorporated in this rule. The state may not assume authority from the Environmental Protection Agency (EPA) to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies;

14. 40 CFR 261.6(a)(4) is amended by adding the following sentence: "Used oil that exhibits a hazardous characteristic and that is released into the environment is subject to the requirements of 10 CSR 25-3, 4, 5, 6, 7, 8, 9, and 13.";

[15. Provided they are managed in accordance with the

requirements of 40 CFR 261.9 and 10 CSR 25-16.273, the following wastes are excluded from the requirements of 10 CSR 25-5.262 to 10 CSR 25-7.270:

A. Batteries as described in 40 CFR 273.2 and as modified in 10 CSR 25-16.273(2)(A)2.;

B. Pesticides as described in 40 CFR 273.3 and as modified in 10 CSR 25-16.273(2)(A)3.;

C. Mercury switches as described in 10 CSR 25-16.273(2)(A)4.A., mercury containing thermometers and manometers as described in 10 CSR 25-16.273(2)(A)4.B.; and

D. Lamps as described in 40 CFR 273.5.;]

15. ***(Reserved)***

16. Recyclable materials that meet the definition of used oil in 40 CFR 260.10 as incorporated in 10 CSR 25-3.260(1), shall be managed in accordance with 10 CSR 25-11.279 and applicable portions of 10 CSR 25-3.260–10 CSR 25-9.020;

17. The resource recovery of hazardous waste is regulated by 10 CSR 25-9.020. An owner/operator of a facility that uses, reuses, or recycles hazardous waste shall be certified under 10 CSR 25-9 or permitted under 10 CSR 25-7, unless otherwise excluded. Therefore, the parenthetic text in 40 CFR 261.6(c)(1) is not incorporated in this rule; and

18. In accordance with **section** 260.432.5(2), **RSMo,** used cathode ray tubes (CRTs) may not be placed in a sanitary landfill, except as permitted by **section** 260.380.3**, RSMo**.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 5—Rules Applicable to Generators of Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 262, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 49 CFR part 172, October 1, 1999, 40 CFR 302.4 and .5, July 1, 2006, and 40 CFR part 262, July 1, *[2006]* **2010**, except Subpart H, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A generator located in Missouri, except as conditionally exempted in accordance with 10 CSR 25-4.261, shall comply with the requirements of this section in addition to the requirements incorporated in section (1). Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional storage standards which are added to 40 CFR part 262 subpart C are found in subsection (2)(C) of this rule.)

(A) General. The following registration requirements are additional requirements to, or modifications of, the requirements specified in 40 CFR part 262 subpart A:

1. In lieu of 40 CFR 262.12(a) and (c), a generator located in Missouri shall comply with the following requirements:

A. A person generating in one (1) month or accumulating at any one (1) time the quantities of hazardous waste specified in 10 CSR 25-4.261 and a transporter who is required to register as a generator under 10 CSR 25-6.263 shall register and is subject to applicable rules under 10 CSR 25-3.260–10 CSR 25-9.020 and 10 CSR 25-12.010; **and**

[B. A person generating hazardous waste on a "one (1)-time" basis may apply for a temporary registration. A temporary registration shall be valid for one (1) initial thirty (30)-day period with the possibility of an extension of one (1) additional thirty (30)-day period. Should a temporary registration exceed the total sixty (60)-day period outlined here, the department shall consider the registration to be permanent rather than temporary. All reporting requirements and registration fees outlined in this chapter shall apply to temporary registrations; and]

*[C.]***B.** Conditionally exempt generators may choose to register and obtain Environmental Protection Agency (EPA) and Missouri identification numbers, but in doing so will be subject to any initial registration fee and annual renewal fee outlined in this chapter;

2. An owner/operator of a treatment, storage, disposal, or resource recovery facility who ships hazardous waste from the facility shall comply with this rule;

3. The following constitutes the procedure for registering:

A. A person who is required to register shall file a completed registration form furnished by the department. The department shall require an original ink signature on all registration forms before processing. In the event the department develops the ability to accept electronic submission of the registration form, the signature requirement will be consistent with the legally-accepted standards in Missouri for an electronic signature on documents. All generators located in Missouri shall use only the Missouri version of the registration form;

B. A person required to register shall also complete and file an updated generator registration form if the information filed with the department changes;

C. The department may request additional information, including information concerning the nature and hazards associated with a particular waste or any information or reports concerning the quantities and disposition of any hazardous wastes as necessary to authorize storage, treatment, or disposal and to ensure proper hazardous waste management;

D. A person who is required to register, and those conditionally-exempt generators who choose to register, shall pay a one-hundred-dollar ($100) initial or reactivation registration fee at the time their registration form is filed with the department. If a generator site has an inactive registration, and a generator required to register reactivates that registration, the generator shall file a registration form and pay the one-hundred-dollar ($100) registration reactivation fee. The department shall not process any form for an initial registration or reactivation of a registration if the one-hundred-dollar ($100) fee is not included. Generators required to register shall thereafter pay an annual renewal fee of one hundred dollars ($100) in order to maintain their registration in good standing; and

E. Any person who pays the registration fee with what is found to be an insufficient check shall have their registration immediately revoked;

4. The following constitutes the procedure for registration renewal:

A. The calendar year shall constitute the annual registration period;

B. Annual registration renewal billings will be sent by December 1 of each year to all generators holding an active registration;

C. Any generator initially registering between October 1 and December 31 of any given year shall pay the initial registration fee, but shall not pay the annual renewal fee for the calendar year immediately following their initial registration. From that year forward, they shall pay the annual renewal fee;

D. Any generator required to register who fails to pay the annual renewal fee by the due date specified on the billing shall be administratively inactivated and subject to enforcement action for failure to properly maintain their registration;

E. Generators administratively inactivated for failure to pay the renewal fee in a timely manner, who later in the same registration year pay the annual renewal fee, shall pay the fifteen-percent (15%) late fee required by section 260.380.4, RSMo, in addition to the one-hundred-dollar ($100) annual renewal fee for each applicable registration year and shall file an updated generator registration form with the department before their registration is reactivated by the department;

F. Generators who request that their registration be made inactive rather than pay the renewal fee, who later in that same renewal year pay the annual renewal fee to reactivate their registration, shall pay the fifteen-percent (15%) late fee required by **section** 260.380.4**,** RSMo**,** in addition to the one-hundred-dollar ($100) annual renewal fee and file an updated generator registration form with the department before their registration is reactivated by the department; and

G. Any person who pays the annual renewal fee with what is found to be an insufficient check shall have their registration immediately revoked; **and**

5. The department may administratively inactivate the registration of generators that fail to pay any applicable hazardous waste fees and taxes in a timely manner after appropriate notice to do so.

*AUTHORITY: sections 260.370 and 260.380, RSMo Supp. [2008] **2010**. This rule was previously filed as 10 CSR 25-5.010. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 6—Rules Applicable to Transporters of Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste. The commission is proposing to amend section (1).

PURPOSE: The commission is updating the date for incorporated-by-reference material.

(1) The regulations set forth in 40 CFR part 263, July 1, *[2006]* **2010**; 49 CFR parts 171–180, November 1, 1990, and December 1, 1997; and 49 CFR parts 40, 383, 387, 390–397, October 1, 1990, and October 1, 1997, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference, except for 49 CFR 390.3(f)(2), which is not incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in

addition to any other modifications set forth in section (2) of this rule except that the modifications do not apply to the 49 CFR parts incorporated in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.385 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 264, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 264, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modification set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. "Owner/operator," as defined in 10 CSR 25-3.260(2)(O)3., shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 264 incorporated in this rule.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal facility shall comply with this section in addition to the regulations of 40 CFR part 264. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 264 subpart E are found in subsection (2)(E) of this rule.)

(A) General. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart A.

1. A treatment permit is not required under this rule for a resource recovery process that has been certified by the department in accordance with 10 CSR 25-9.020. Storage of hazardous waste prior to resource recovery must be in compliance with this rule.

2. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department compliance with the requirements in 10 CSR 25-7.270(2)(A)3.

3. Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)

[4. 40 CFR 264.1(g)(11)(ii) is not incorporated into this rule.]

(P) Health Profiles.

1. An owner/operator shall submit a health profile, as required by section 260.395.7(5), RSMo, with the **initial** application for a hazardous waste treatment or *[operating]* **land** disposal facility. *[(]*A health profile is not necessary for **facilities that must obtain** a *[post-closure]* permit **for only post-closure care and/or corrective action activities**.*[)]* A health profile shall *[include efforts to]* identify any **potential** serious illnesses, the rate of which exceeds the state average for the illnesses, which might be attributable to environmental contamination*[. A serious illness is one which may cause or significantly contribute to an increase in morbidity and mortality or an increase in reversible or irreversible incapacitating effects*

on the health of humans. An owner/operator shall consult the Missouri Department of Health regarding appropriate factors to be included in the profile prior to initiating the health profile.

A. The health profile shall address five (5) main sources of data as listed and shall take into consideration—

(I) The population density around the site, as indicated by the most current census data;

(II) Mortality, as indicated by death certificate information;

(III) Incidence, as indicated by the State Cancer Registry;

(IV) Natality, as indicated by fetal death and birth certificate information; and

(V) Morbidity, as indicated by hospital discharge information.

B. Conditions reflecting routes of exposure shall be included in the report for all hazardous wastes to be treated or disposed of at the facility.

C. The discussion of measurements of health characteristics shall focus on comparisons between state, county and site-specific rates.

D. Site-specific rates shall include a geographic area of an approximate three to five (3—5)-mile radius around the site using zip code boundaries. Geographic areas of larger or smaller size may be used, where approved by the Missouri Department of Health, and shall reflect the risks on a representative population. Only Missouri data is required for any site where the three to five (3—5)-mile radius extends into another state.

(I) For incinerators, special consideration shall be given to wind roses for each season with distinct meteorological conditions. In addition, calculated effluent plume paths, including areas of maximum impact and width and length of plume at ground level, should be presented.

(II) After analysis of the data required in this section, modification of the site-specific geographic area from which disease rates will be computed may be necessary with respect to the previously mentioned three to five (3—5)-mile radius around the site.

E A minimum of five (5) years' data shall be required for a statistical analysis and averaging of rate computations. Qualitative technical difficulties in data resulting in time periods of less than five (5) years shall be fully explained and justified in the text of the report.] **from any hazardous waste treatment or land disposal unit at the hazardous waste facility applying for the permit. The purpose of the information in the health profile is to document the potential for exposure from the applicable hazardous waste treatment or land disposal units and to determine whether additional permit controls are necessary for these units to ensure protection of human health beyond the facility property boundaries. One (1) of the following for each applicable unit or combination of units as approved by the department may constitute a health profile for the purposes of this subsection:**

A. For combustion units—

(I) The evaluation described in 40 CFR 270.10(l)(1) for hazardous waste combustion units;

(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.;

B. For other treatment units—

(I) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(II) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.; and

C. For land disposal units—

(I) The information required by 40 CFR 270.10(j);

(II) An evaluation of the potential risk to human health resulting from both direct and indirect exposure pathways. In selecting this option, the applicant shall submit a workplan to conduct the evaluation with the initial application; however, the permit shall not be issued until the evaluation is final; or

(III) A Health Evaluation by the Missouri Department of Health and Senior Services requested by the facility according to paragraph (2)(P)4.

2. This paragraph sets forth requirements which shall be met subsequent to the initial **permit** application **for hazardous waste treatment and/or land disposal activities**.

A. *[A]* **If changes occur after permit issuance that may increase the potential for human exposure to hazardous waste or hazardous constituents from the treatment or land disposal unit, an updated** health profile shall be part of *[each request]* **a facility application** for permit renewal **or permit modifications that include addition or modification of a hazardous waste treatment or land disposal unit**.

B. Appropriate documentation to be submitted as the updated health profile shall include one (1) of the options set out in subparagraphs (2)(P)1.A. through C., or an update of a previous submittal under those requirements.

*[B.]***3.** Additional epidemiological investigations **by the Missouri Department of Health and Senior Services** may be required *[when the rate of any illness in the area described in subparagraph (2)(P)1.D. of this rule exceeds the state average for that illness]* **if the information provided pursuant to subparagraph (2)(P)2.B. indicates the presence of potentially acceptable human health risks**.

4. A Health Evaluation by the Missouri Department of Health and Senior Services will assess the potential for exposure and adverse health effects to the public from materials released by the applicable hazardous waste units. If the owner or operator chooses to request a Health Evaluation by the Missouri Department of Health and Senior Services to meet the requirements of this subsection, the request shall be submitted with the initial application; however, permit shall not be issued until the evaluation is final.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so

prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 265, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 265, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 265 incorporated in this rule. In the case of contradictory or conflicting requirements in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional requirements to be added to 40 CFR part 265 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 265 subpart A, the following regulations also apply:

1. This rule does not apply to an owner/operator of an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste generated on-site or generated by its operator or only one (1) operator if the unit meets the standards set forth in 10 CSR 25-7.270(2)(A)3.;

2. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with 10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes. (Note: Underground injection wells are prohibited in Missouri by section 577.155, RSMo.);

3. State interim status is authorization to operate a hazardous waste treatment, storage**,** or disposal facility pursuant to section 260.395.15, RSMo, 10 CSR 25-7.265**,** and 10 CSR 25-7.270 until the final administrative disposition of the permit application is made or until interim status is terminated pursuant to 10 CSR 25-7.270. The owner/operator of a facility or unit operating under state interim status shall comply with the requirements of this rule and 10 CSR 25-7.270. In addition to providing notification to the Environmental Protection Agency (EPA), the owner/operator is required to provide state notification in accordance with 10 CSR 25-7.270; **and**

4. Hazardous waste which must be managed in a permitted unit (e.g., waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held in areas for handling during the time period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow the necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)*[; and]***.**

[5. 40 CFR 265.1(c)(14)(ii) is not incorporated into this rule.]

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011.

Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 266, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR part 266, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons subject to the regulations in 40 CFR part 266 shall comply with the requirements, changes, additions, or deletions noted in this section in addition to 40 CFR part 266 incorporated in this rule. (Comment: This section has been organized so that all Missouri additions or changes to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to the management requirements for hazardous waste fuels, 40 CFR part 266 subpart D, are found in subsection (2)(D) of this rule.)

(H) Hazardous Waste Burned in Boilers and Industrial Furnaces. Additions, modifications**,** and deletions to 40 CFR part 266 subpart H "Hazardous Waste Burned in Boilers and Industrial Furnaces" are as follows:

1. 40 CFR 266.100*[(b)]***(c)**(1) is not incorporated by reference in this rule;

2. Add the following provision to 40 CFR 266.100*[(c)]***(d)** incorporated in this rule: "The owner/operator of facilities that process hazardous waste solely for metal recovery in accordance with 40 CFR 266.100*[(c)]***(d)** shall be certified for resource recovery pursuant to 10 CSR 25-9.020";

3. In 40 CFR 266.101(c)(2) incorporated in this rule, *[delete "(c)(1) of" and in its place insert "(c)(1) and (d)(1) of"]* **replace "paragraph (c)(1)" with "paragraphs (c)(1) and (d)(1)"**; and

4. 40 CFR 266.101 is amended by adding a new subsection (d) to 266.101 incorporated in this rule as follows: (d)(1) Treatment facilities. Owners/operators of permitted facilities that thermally, chemically, physically (that is, shredding, grinding, etc.)**,** or biologically treat hazardous waste prior to burning must comply with 10 CSR 25-7.264(2)(X), and owners/operator**s** of interim status facilities that thermally, chemically, physically (that is, shredding, grinding, etc.)**,** or biologically treat hazardous waste prior to burning shall comply with 10 CSR 25-7.265(2)(P) and (Q). Owners/operators of permitted facilities which blend hazardous waste in tanks or containers prior to burning must comply with 10 CSR 25-7.264(2)(J)*[7.]***6.**, and owners/operators of interim status facilities that blend hazardous waste in tanks or containers prior to burning shall comply with 10 CSR 25-7.265(2)(J).

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.268 Land Disposal Restrictions. The commission is proposing to amend sections (1) and (2).

PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 268, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the* ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 268, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons who generate or transport hazardous waste and owners/operators of hazardous waste treatment, storage, and disposal facilities shall comply with this section in addition to the regulations in 40 CFR part 268. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 268 subpart A are found in subsection (2)(A) of this rule.)

(A) General. This subsection sets forth modifications to 40 CFR part 268 subpart A incorporated by reference in section (1) of this rule.

1. *[40 CFR 268.1(f)(2) is not incorporated into this rule.]* ***(Reserved)***

2. The state cannot be delegated the authority from the United States Environmental Protection Agency (EPA) to approve extensions to effective dates of any applicable restrictions, as provided in 40 CFR 268.5 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.5 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.5 of the federal hazardous waste management regulations.

3. The state cannot be delegated the authority from the EPA to approve exemptions from prohibitions for the disposal of a restricted hazardous waste in a particular unit(s) based upon a petition demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit(s) for as long as the wastes remain hazardous as provided in 40 CFR 268.6 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.6 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.6 of the federal hazardous waste management regulations.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010*** *and sections 260.390, 260.395, and 260.400, RSMo 2000. Original rule filed Feb. 16, 1990, effective Dec. 31, 1990. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program. The commission is proposing to amend sections (1) and (2).

PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 270, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference*

these changes. The amendment will update the state regulations to be consistent with the most recent edition of the ***Code of Federal Regulations****.*

(1) The regulations set forth in 40 CFR part 270, July 1, *[2006]* **2010**, except for the changes made at 70 FR 53453 September 8, 2005, **and 73 FR 64667 to 73 FR 64788, October 30, 2008,** as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a permitted hazardous waste treatment, storage, or disposal (TSD) facility shall comply with the requirements noted in this rule along with 40 CFR part 270, incorporated in this rule. (Comment: This section has been organized so that all Missouri additions, changes, or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 270 subpart A are found in subsection (2)(A) of this rule.)

(A) General Information. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart A.

1. When a facility is owned by one (1) person but is operated by another person, both the owner and operator shall sign the permit application, and the permit shall be issued to both.

2. The owner/operator of a new hazardous waste management facility shall contact the department and obtain a*[n]* United States Environmental Protection Agency (EPA) identification number before commencing treatment, storage**,** or disposal of hazardous waste.

3. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department the following:

A. There is sufficient evidence that the unit is not leaking;

B. The unit is structurally sound and there is no evidence that the unit will fail or collapse;

C. There are no incompatible wastes being placed in the unit;

D. The owner/operator has been and is in compliance with all present and prior permits and authorizations issued to the owner/operator; and

E. There is no evidence of any past releases from the unit.

4. In addition to the requirements in 40 CFR 270.1(b) incorporated in this rule, the owner/operator shall provide state notification to the department within sixty (60) days after the effective date of a state rule that first requires him/her to comply with 10 CSR 25 where that notification is required.

5. *[40 CFR 270.1(c)(2)(viii)(B) is not incorporated into this rule.]* ***(Reserved)***

6. In 40 CFR 270.2, substitute "Facility mailing list means the mailing list required of the permittee or applicant in accordance with 10 CSR 25-7.270(2)(B)10." for the definition of "Facility mailing list" given in the incorporated regulation.

7. In 40 CFR 270.3 "Considerations Under Federal Law," do not substitute any comparable Missouri statute or administrative rule for the federal acts and regulations. This does not relieve the owner/operator of his/her responsibility to comply with any applicable and comparable state law or rule in addition to complying with the federal acts and regulations.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010*** *and sections 260.390 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 8—Public Participation and General Procedural Requirements

PROPOSED AMENDMENT

10 CSR 25-8.124 Procedures for Decision Making. The commission is proposing to amend the purpose statement and sections (1)–(5) of this rule.

PURPOSE: 10 CSR 25-8.124 is the state equivalent of the federal requirements for public participation found in 40 CFR part 124. In order to be equivalent with the federal regulations, the commission is proposing various changes to the state requirements that were determined by the United States Environmental Protection Agency to require modification in order to be considered equivalent. Additionally, the amendment is intended to ensure that the rule accurately reflects the current public participation process for permit applications, issuance, modification, and denial.

PURPOSE: This rule reflects the requirements of the federal regulations in 40 CFR part 124 [as amended by changes published in the Federal Register on December 11, 1995 (60 FR 63417)] ***July 1, 2010****, with modifications and additional requirements established by the* ***Revised Statutes of Missouri****. This rule establishes the requirements for public notice and public participation in the issuance,* ***denial,*** *modification****,*** *and revocation of hazardous waste management facility permits, [and resource recovery facility*

certifications, and the issuance and revocation of transporter licenses. This rule also specifies procedures for public participation in] appeal hearings, variance petitions, and closure ***and post-closure*** *activities.* ***This rule also specifies procedures for the issuance, modification, and revocation of resource recovery facility certifications and the issuance and revocation of transporter licenses.***

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule**, in addition to any other modifications established in paragraph (1)(A)(2). of this rule**. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40 CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements *[which]* **that** correspond to those requirements in 40 CFR **part** 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 **or department-initiated** modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. **This subsection also contains procedures for the denial of a permit, either in its entirety or as to the active life of a hazardous waste management facility or unit, under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270.** Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 **permit** modifications, as defined in 40 CFR *[270.41 or 40 CFR 270.43]* **270.42** as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2 *[and 271.2]*, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule:

[A. "Application" means the Environmental Protection Agency (EPA) standard national forms and the Missouri Hazardous Waste Management Facility Application Form for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14 through 270.29, as incorporated into 10 CSR 25-7.270;]

*[B.]***A.** "Draft permit" means a document prepared under paragraph (1)(A)6. of this rule indicating the department's tentative decision to issue, **deny,** modify *[in whole or]* in part **or in total, revoke**, or reissue a "permit." **A notice of intent to revoke, as discussed in subparagraph (1)(A)5.D. of this rule, and a notice of intent to deny, as discussed in subparagraph (1)(A)6.B. of this rule, are types of draft permits.** A denial of a request for modification, total modification**,** or revocation **of a permit**, as discussed in **sub**paragraph (1)(A)5.**B.** of this rule, is not a **type of** "draft permit" *[and is not appealable to the commission]*;

*[C.]***B.** "Formal hearing" means any contested case held under section 260.400, RSMo;

C. "Permit application" means the U.S. Environmental Protection Agency standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by the U.S. Environmental Protection Agency for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14–270.29, as incorporated into 10 CSR 25-7.270;

D. "Public hearing" means any hearing on a *[preliminary]* **tentative** decision at which any member of the public is invited to give oral or written comments;

E. "Revocation" means the termination of a permit;

F. "Schedule of compliance" means a schedule of remedial measures in a *[final]* permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. "Total modification" means the revocation and reissuance of a permit;

H. "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. "Variance" means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department *[an]* **a permit** application for each permit required under 40 CFR 270.1, as incorporated in 10 CSR 25-7.270. **Permit** *[A]***a**pplications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the **permit** application requirements for that permit**, as provided under 40 CFR 270.10 and 270.13, as incorporated in 10 CSR 25-7.270.** Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every **permit** application *[for a permit]*. **Each permit application submitted by a new facility should be reviewed for completeness by the department within thirty (30) days of its receipt.** Each **permit** application *[for a permit]* submitted **by an existing facility** should be reviewed for completeness by the department within *[forty-five (45)]* **sixty (60)** days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the **permit** application is complete. If the **permit** application is incomplete, the department will list the information necessary to make the **permit** application complete. When the **permit** application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the **permit** application is complete upon receiving the required information. After the **permit** application is complete*[d]*, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render *[an]* **a permit** application incomplete.

C. If an applicant fails or refuses to correct deficiencies in the **permit** application, the permit may be denied*[,]* and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of *[an]* **a permit** application is the date the department notifies the applicant that the **permit** application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each **permit** application the department will, no later than the effective date of the **permit** application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to*[:]*—

(I) Prepare a draft permit;

(II) Give public notice;

(III) Complete the public comment period, including any public hearing; and

(IV) Issue a final permit **decision**.

F. If the department decides that a site visit is necessary for any reason in conjunction with the processing of a permit application, the department will notify the applicant and a date will be scheduled.

G. Whenever a facility or activity requires more than one (1) type of environmental permit from the state, the applicant may request, or the department may offer, a unified permitting

schedule that covers the timing and order to obtain such permits, as provided in section 640.017, RSMo, and 10 CSR 1-3.010.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the **permit** modification **and to the permittee**. Denial of a request for *[revocation,]* modification**,** *[or total modification]* **in part or in total, or revocation of a permit is not subject to public notice, comment, or hearing, and** is not appealable *[to the commission]* **under section (2) of this rule**.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit *[in total or]* in part **or in total**, a draft permit **incorporating the proposed changes** will be prepared according to paragraph (1)(A)6. of this rule *[incorporating the proposed changes]*. The department may request additional information and, in the case of a **partial** permit modification, may require the submission of an updated **permit** application. In the case of a total **permit** modification, the department will require the submission of a new **permit** application.

(II) *[In a permit modification]* **When a permit is partially modified** under this paragraph, only *[those]* **the** conditions *[to be]* **being** modified shall be reopened *[when a draft permit is prepared]*. All other *[aspects]* **conditions** of the *[existing]* **original** permit shall remain in effect for the duration of the *[unmodified]* **original** permit. When a permit is totally modified under this *[section]* **paragraph**, the entire permit is reopened just as if the permit had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the *[existing]* **original** permit until a new, final permit is *[re]*issued.

(III) "Class 1 and **class** 2 **permit** modifications" as defined in 40 CFR 270.42*[(a) and (b)]*, as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this *[section]* **paragraph**.

D. If the department tentatively decides to revoke a permit, the department will issue a notice **of intent to revoke. A notice of intent to revoke is a type of draft permit** and follows the *[requirements of paragraph (1)(A)15. of this rule.]* **same procedures as any draft permit decision prepared under paragraph (1)(A)6. of this rule.**

6. Draft permits.

A. Once the technical review of *[an]* **a permit** application is complete*[d]*, the department shall tentatively decide whether to prepare a draft permit, or *[to]* deny the **permit** application.

B. If the department decides to deny the permit application, a notice of *[denial]* **intent to deny** shall be issued. A notice of *[denial]* **intent to deny is a type of draft permit and follows** *[is subject to]* the same procedures as any *[final]* **draft** permit decision prepared under *[paragraph(1)(A)15. of this rule]* **this paragraph**. **If the department's final decision under paragraph (1)(A)15. of this rule is that the decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and prepare a draft permit under this paragraph.**

C. If the department **tentatively** decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, *[and]* **publicly noticed per paragraph (1)(A)10. of this rule,** and made available for public comment per paragraph *[(1)(A)10.]* **(1)(A)11.** of this rule**. The department will give notice of opportunity for a public hearing per paragraph (1)(A)12. of this rule**, issue a final decision per paragraph (1)(A)15. of this rule**,** and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under *[section 260.395.11, and Chapter 536, RSMo and]* section (2) of this rule.

E. Prior to making the draft permit available for public comment, the department shall deliver the draft permit to the applicant for review, as provided in section 640.016.2, RSMo. The applicant shall have ten (10) days to review the draft permit for nonsubstantive drafting errors. The department shall make the applicant's changes to the draft permit within ten (10) days of receiving the applicant's review and then submit the draft permit for public comment. The applicant may waive the opportunity to review the draft permit prior to public notice.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological**,** and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the **public** comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

(V) Name and telephone number of a *[person to contact]* **department contact** for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that *[a draft permit has been prepared.]* **the following actions have occurred:**

(a) A notice of intent to deny a permit application has been prepared under subparagraph (1)(A)6.B. of this rule;

(b) A draft permit has been prepared under subparagraph (1)(A)6.C. of this rule;

(c) A hearing has been scheduled under paragraph (1)(A)12. of this rule;

(d) An appeal hearing has been scheduled under section (2) of this rule; or

(e) A notice of intent to revoke a permit has been prepared under subparagraph (1)(A)5.D. of this rule.

(II) No public notice is required when a request for permit modification, **in part or in** total *[modification]*, or revocation is denied. *[Written notice of that denial]* **A brief written response**

giving a reason for the decision will be *[given]* **sent** to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit **(including a notice of intent to deny a permit application and a notice of intent to revoke a permit)** required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing. **Public notice of the hearing may be given at the same time as the public notice of the draft permit, and the two (2) notices may be combined.**

C. Methods. Public notice of *[a draft permit or intent to deny]* **activities** described in *[subparagraph]* **part** (1)(A)10.A.**(I)** of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons **(any person otherwise entitled to receive notice under this part may waive their rights to receive notice for any permit)**:

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, **and** state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by*[:]***—**

I. Including those who request *[in writing]* to be on the list;

II. Soliciting persons for "area lists" from participants in past permit proceedings in that area; *[and]*

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The *[department]* **facility** may *[delete]* **remove** from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the **current or proposed** facility**, in accordance with section 260.395.8, RSMo**;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the **current or** proposed facility**, in accordance with section 260.395.8, RSMo**;

(d) A copy of the notice shall also be sent to *[any unit of local government]* **the highest elected official of the county and the highest elected official of the city, town, or village** having jurisdiction over the area where the facility is **currently or** proposed **to be located, in accordance with section 260.395.8, RSMo, and each state agency having any authority under state law with respect to the construction or operation of such facility**;

(e) The department will mail a copy of the legal notice, fact sheet**,** and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule; **and**

(f) A copy of the notice shall also be sent to any other department program or federal agency which the department knows has issued or is required to issue a Resource Conservation and Recovery Act (RCRA), Hazardous and Solid Waste Amendments (HSWA), Underground Injection Control (UIC), Prevention of Significant Deterioration (PSD), (or other permit issued under the Clean Air Act), National Pollutant Discharge Elimination System (NPDES), 404, or sludge management permit for the same facility or activity (including the U.S. Environmental Protection Agency);

(II) Other publication.

(a) *[Publication of]* **Publish** a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any **draft permit that includes** active land disposal *[facility permit]* **of hazardous waste**, **issue** a news release to the media serving the area where the facility is **currently or proposed to be** located**, in accordance with section 260.395.8, RSMo**; and

(III) Any other method reasonably calculated to give actual notice of the *[action in question]* **activity** to the persons potentially affected by it, including *[press]* **news** releases or any other forum or medium to elicit public participation.

D. Contents. All *[public]* notices issued under this *[sub]*paragraph shall contain the following minimum information:

(I) Name and address of the department;

(II) Name and address of the permittee or *[permit]* applicant and, if different, of the facility or activity regulated by the permit;

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address**,** and telephone number of *[an agency]* **a department** contact person *[for further]* **from whom interested persons may obtain additional** information*[, which may include copies of the draft permit, fact sheet, and the application]*;

(V) A brief description of the comment procedures, the **date,** time**,** and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled), and any other procedures by which the public may participate in the final permit decision; *[and]*

(VI) Any additional information considered necessary or proper by the department*[.]***;**

(VII) The location where the information listed in subpart (1)(A)10.C.(I)(e) of this rule was placed for public review; and

(VIII) In addition to the information listed above, the public notice of a public hearing under paragraph (1)(A)12. of this rule shall contain the following information:

(a) Reference to the date of previous public notices relating to the draft permit;

(b) Date, time, and place of the hearing; and

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

E. In addition to the notice described in subparagraph (1)(A)10.D. of this rule, the department shall mail a copy of the permit application (if any), draft permit, and fact sheet to all persons identified in subparts (1)(A)10.C.(I)(a), (b), and (f) of this rule.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised in the hearing. All **written** comments **and oral comments given at the public hearing, if one is held,** shall be considered by the department in making the final **permit** decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. **In accordance with section 260.395.8, RSMo,** *[T]***t**he department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice*[. Whenever the department issues, reviews every five (5) years or renews an active hazardous waste land disposal*

facility permit, it shall hold a public hearing.] **under part (1)(A)10.B.(I) of this rule. For any permit that includes active land disposal of hazardous waste, the department shall hold a public hearing after public notice, as required in paragraph (1)(A)10. of this rule, before issuing, modifying in total, or renewing the permit; and before any Class 3 or department-initiated permit modification related to the hazardous waste land disposal unit(s), including those necessary due to the department's five (5)-year review.**

B. The department may hold a public hearing **at its own discretion** whenever there is significant public interest in a draft permit*[(s),]* **or** when*[ever]* one **(1)** or more issues involved in the permit decision *[could be clarified or at its discretion]* **requires clarification**.

C. Whenever possible, the department will schedule a **public** hearing under this *[section]* **paragraph** at a location convenient to the nearest population center to the **current or** proposed facility.

D. Public notice of the **public** hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit **written** comments or data concerning the draft permit. The department will accept oral comments during the **public** hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph (1)(A)10. of this rule will automatically be extended to the close of any public hearing if the **public** hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the **public** hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including **the** applicant*[s]*, who believe**s** any condition of a draft permit is inappropriate*[,]* **or that the department's tentative decision to deny a permit application, prepare a draft permit, or revoke a permit is inappropriate,** shall raise all ascertainable issues and submit all *[available]* **relevant** arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless *[they consist of]* **the supporting materials are** state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. *[Commenters shall make supporting materials available to the department upon the department's request.]*

14. *Reserved*.

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, **Class 3 or department-initiated** modification, total modification, or revocation of a permit. After the close of the public comment period *[described in]* **under** paragraph (1)(A)10. of this rule *[on a draft permit]*, the department will issue a final permit decision **(or a decision to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270)**. The department will notify the applicant and each person who *[has]* submitted written comments**, gave oral comments at the public hearing,** or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a **final permit** decision **under section (2) of this rule**. *[For active land disposal facility permits, t]***T**he department *[also]* will **also** send a news release announcing the final **permit** decision to the *[news]* media serving the area where the facility is **currently or proposed to be** located**, in accordance with section 260.395.8, RSMo**.

B. *[A final permit revocation decision will become effective thirty (30) days after the decision.]* A final permit issuance**,** *[or]* denial**, or modification decision (or a decision to deny a permit either in its entirety or as to the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270)** will become effective on the date the decision is signed by the department. **A final permit revocation decision will become effective thirty (30) days after the department signs the decision, unless no comments requested a change in the draft permit revocation decision, in which case the final permit revocation decision will become effective on the date the decision is signed by the department.**

16. *Reserved*.

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall*[:]***—**

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period*[, or during any]* **and public** hearing**, if one was held**.

B. The response to comments will be **made** available to the public.

18. *Reserved*.

19. *Reserved*.

20. *[Reserved.]* **Computation of time.**

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to end before the occurrence of an act or event shall end on the last working day before the act or event.

C. If the last day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a specific time period after he or she receives notice by mail, three (3) days shall be added to the time period to allow for mail delivery.

(B) This subsection sets forth requirements *[which]* **that** correspond to the requirements in 40 CFR part 124 subpart B.

1. Applicable permit procedures.

A. The requirements of this *[subsection]* **paragraph** shall apply to all new *[part B]* **permit** applications*[. The requirements of this section shall also apply to part B]* **and permit** applications for renewal of permits where a significant change in facility operations is proposed. For purposes of this *[section]* **paragraph**, a "significant change" is any change that would qualify as a class *[III]***3** permit modification under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270. The requirements of this *[section]* **paragraph** do not apply to **class 1 or class 2** permit modifications *[under]***, as defined in** 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or *[to]* **permit** applications *[that are]* submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. **At least ninety (90) days** *[P]***p**rior to *[submission of an]* **submitting a permit** application*[, proposed]* **for a** disposal *[facilities]* **facility, the applicant** shall submit **to the department** a letter of intent **to construct, substantially alter, or operate a hazardous waste disposal facility,** in accordance with section 260.395**.7**, RSMo. *[When a letter of intent submitted under section 260.395, RSMo is received, t]***T**he department will publish the letter within ten (10) days of receipt. *[In accordance with section 260.395, RSMo, t]***T**he letter will be published as specified in section 493.050, RSMo. The letter will be published once a week for four (4) **consecutive** weeks in a newspaper of general circulation serving the county in which the facility is **currently or** proposed to be located.

C. Prior to *[the submission of]* **submitting** a *[part B]* permit application for a facility, the applicant shall hold at least one (1) **public** meeting *[with the public in order]* to solicit questions from

the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide an opportunity for attendees to voluntarily provide their names and addresses.

D. The applicant shall submit a summary of the meeting, *[along with]* the list of attendees and their addresses developed under subparagraph (1)(B)1.C. of this rule, and copies of any written comments or materials submitted at the meeting*[,]* to the *[permitting agency]* **department** as a part of the *[part B]* **permit** application, in accordance with 40 CFR 270.14(b), as incorporated in 10 CSR 25-7.270.

E. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department *[upon request]* **as part of the permit application**, documentation of the notice.

(I) The applicant shall provide public notice in all of the following forms:

(a) A newspaper advertisement. The applicant shall publish a notice*[, fulfilling the requirements in part (1)(B)1.E.(II) of this rule,]* **as a display advertisement** in a newspaper of general circulation *[in]* **serving** the county or equivalent jurisdiction *[in the proposed location of the facility]* **where the current or proposed facility is located**. In addition, the applicant shall publish the notice in newspapers of general circulation *[in]* **serving** adjacent counties or equivalent jurisdictions*[. The notice shall be published as a display advertisement]*;

(b) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility*[, fulfilling the requirements in part (1)(B)1.E.(II)]*. If the applicant places the sign on the facility property, *[then]* the sign shall be large enough to be read*[able]* from the nearest point where the public would pass by the site;

(c) A broadcast media announcement. The applicant shall broadcast *[one (1) notice, fulfilling the requirements in part (1)(B)1.E.(II) of this rule,]* **a notice as a paid advertisement** at least once on at least one (1) local radio station or television station. The applicant may employ another medium with the prior written approval of the department; and

(d) *[A notice to the permitting agency.]* **In addition to the department,** *[T]***t**he applicant shall send a copy of the newspaper *[notice to the permitting agency and]* **advertisement** to the units of **state and** local government described in subpart (1)(A)10.C.(I)(d) of this rule.

(II) *[The]* **All** notices required under *[part (1)(B)1.E.(I) of this rule]* **this subparagraph** shall include:

(a) The date, time, and location of the meeting;

(b) A brief description of the purpose of the meeting;

(c) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the **current or proposed** facility location;

(d) A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

(e) The name, address, and telephone number of a contact person for the applicant.

2. Public notice requirements at the **permit** application stage.

A. Applicability. The requirements of this *[section]* **paragraph** shall apply to all *[part B]* **new permit** applications *[seeking initial permits]* for hazardous waste management units*[. The requirements of this section shall also apply to part B]* **and permit** applications *[seeking]* **for** renewal of permits for such units under 40 CFR 270.51, as incorporated in 10 CSR 25-7.270. The requirements of this *[section]* **paragraph** do not apply to permit modifications *[under]***, as defined in** 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Notification at **permit** application submittal.

(I) The department shall provide public notice as set forth in subpart (1)(A)10.C.(I)(c) of this rule, and notice to the appropriate units of **state and** local government as set forth in subpart (1)(A)10.C.(I)*[(b)]***(d)** of this rule, that a complete *[part B]* permit application has been submitted to the *[agency]* **department** and is available for review.

(II) The notice will be published within a reasonable period of time after the *[application is received by the]* department **determines that the permit application is complete**. The notice must include:

(a) The name and telephone number of the applicant's contact person;

(b) The name and telephone number of *[the permitting agency's office,]* **the department contact person** and a mailing address to which information and inquiries may be directed throughout the *[permit review]* **permitting** process;

(c) An address to which people can write in order to be put on the facility mailing list;

(d) A location where copies of the permit application and any supporting documents can be viewed and copied;

(e) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the **current or proposed** facility location on the front page of the notice; and

(f) The date that the **permit** application was submitted.

C. Concurrent with the notice required under subparagraph (1)(B)2.B. of this rule, the department will place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the *[permitting agency's]* **department's** office **as identified in the notice**.

3. Information repository.

A. Applicability. The requirements of this *[section]* **paragraph** apply to all applicants seeking hazardous waste management **facility** permits.

B. The department *[may]* **shall** assess the need, on a case-by-case basis, for a*[n]* **local** information repository. When assessing the need for a*[n]* **local** information repository, the department will consider a variety of factors, including*[:]* the level of public interest*[;]***,** the type of facility*[;]***,** and the presence of an existing repository. If the department determines, at any time after submittal of a permit application, that there is a need for a **local** repository, then the department will notify the facility that it must establish and maintain *[an]* **a local** information repository.

C. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department will have the discretion to limit the contents of the repository.

D. The information repository shall be located and maintained at a *[site]* **location** chosen by the facility. If the department finds the *[site]* **location** unsuitable for the purposes and persons for which it was established**,** due to problems with the location, hours of availability, access, or other relevant considerations, the department will specify a more appropriate *[site]* **location**.

E. The department will specify requirements **the applicant must meet** for informing the public about the **local** information repository. At a minimum, the department will require the *[facility]* **applicant** to provide a written notice about the information repository to all individuals on the facility mailing list.

F. The *[facility owner/operator]* **applicant** shall be responsible for maintaining and updating the repository with appropriate information throughout the time period specified by the department. The department may close the repository *[in]* **at** its discretion, based on the factors in subparagraph (1)(B)3.B. of this rule.

(2) Appeal of Final Decision.

(A) **For purposes of this section, a final permit decision means**

the issuance, denial, partial or total modification, or revocation of a permit. The requirements of this section apply to *[permit appeals, permit denials, permit revocations or total modifications,]* **final permit decisions,** closure plan approvals, *[and]* post-closure plan approvals**, and any condition of a final permit decision or approval**.

(B) The applicant or any aggrieved person may appeal to *[the commission a final permit decision, a closure plan approval, a post-closure plan approval or any condition of a final permit, closure plan approval or post-closure plan approval by filing a notice of appeal with the commission within thirty (30) days of the decision.]* **have the matter heard by the Administrative Hearing Commission. To initiate the appeal, the aggrieved party must follow the procedure established in 10 CSR 25-2.020 and sections 260.395.11 and 621.250, RSMo. Written petitions must be filed within thirty (30) days after the date the final permit decision or approval was mailed or the date it was delivered, whichever was earlier. If the written petition is sent by registered or certified mail, the petition will be deemed filed on the date it was mailed. If the written petition is sent by any other method, the petition will be deemed filed on the date it is received by the Administrative Hearing Commission.** The *[notice of appeal]* **written petition** shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit **decision** or approval to the applicant's or aggrieved person's satisfaction. Issues included in the *[notice of appeal]* **written petition** outside those raised during the public comment period shall not be considered; however, the **Administrative Hearing** *[c]***C**ommission may consider an appeal of a condition in the final permit **decision or approval** that was not part of the draft permit **or proposal** and therefore could not have been commented *[upon previously]* **on during the public comment period**.

(D) Any party described in subsection (2)(G) of this rule may petition the **Administrative Hearing** *[c]***C**ommission for an interlocutory order staying the effectiveness of a final permit **decision**, a closure plan approval, a post-closure plan approval**,** or any condition of a final permit **decision** or approval which is subject to an appeal, until the **Missouri Hazardous Waste Management** *[c]***C**ommission enters its final order upon the appeal. *[The applicant may a]***A**t any time during the proceeding**, the applicant may** apply to the **Administrative Hearing** *[c]***C**ommission for relief from a stay order previously issued.

1. In determining whether to grant a stay or relief from a stay, the **Administrative Hearing** *[c]***C**ommission will consider the likelihood that the petition will eventually succeed on the merits, the potential for harm to the applicant, business, industry, public health**,** or the environment if the requested stay or relief is or is not granted**,** and the potential magnitude of the harm.

2. Any decision concerning a petition for a stay or relief from a stay shall not be considered a contested case or a final order and shall be made by a majority of the sitting quorum of the **Administrative Hearing** *[c]***C**ommission.

3. The stay of any **final** permit **decision** pending appeal to the **Administrative Hearing** *[c]***C**ommission shall have the effect of continuing the effect and enforceability of any existing permit until the **Missouri Hazardous Waste Management** *[c]***C**ommission issues a final order upon the appeal, unless the stay is lifted sooner by the **Administrative Hearing** *[c]***C**ommission. **During the appeal proceeding,** *[T]***t**he stay of any condition of a **final** permit **decision** pending appeal *[to the commission]* shall not relieve the applicant of complying *[during the appeal proceeding]* with all conditions of the **final** permit **decision** not stayed.

4. No petition for a stay order or relief from a stay order shall be presented to the **Administrative Hearing** *[c]***C**ommission on less than ten (10) days' notice to all other parties to the proceeding.

(E) A timely **written petition of** appeal stays the effectiveness of a **final** permit revocation **decision**. If a timely *[notice]* **written petition** of appeal is not filed, the **final permit** revocation becomes *[final]* **effective** thirty (30) days after the *[revocation decision was made by the]* department **signs the decision**.

(F) Public notice of **the** appeal*[s]* **hearing**, including the time**, date,** and place of the appeal hearing, shall be given in accordance with part (1)(A)10.C.(II) of this rule. **The department will mail a copy of the notice to all persons identified in subparts (1)(A)10.C.(I)(a) and (c) of this rule. After the Hazardous Waste Management Commission issues a final appeal decision, the department will notify the participants in the appeal hearing and each person who requested notice of the final appeal decision. The department will also send a news release announcing the final appeal decision to the media serving the area where the facility is currently or proposed to be located.**

(G) The participants in an appeal hearing shall be*[:]*—

1. The department;

2. The applicant;

3. Any aggrieved person filing a timely *[notice]* **written petition** of appeal; and

4. Any person who files a timely application for intervention and is granted leave to intervene of right or permissive intervention. Any person desiring to intervene in an appeal shall file with the *[staff director of the]* **Administrative Hearing** *[c]***C**ommission, an application to intervene according to the procedures of Rule 52.12, Supreme Court Rules of Civil Procedure.

A. The application to intervene shall state the interests of the *[applicant and]* **intervener,** the grounds upon which intervention is sought**,** and *[also shall contain]* a statement of the position which the *[applicant]* **intervener** desires to take in the proceeding. The *[applicant]* **intervener** shall serve a copy of the application to intervene on each of the parties to the proceeding as determined under part (1)(A)10.C.(II) of this rule.

B. The **Administrative Hearing** *[c]***C**ommission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The **Administrative Hearing** *[c]***C**ommission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(H) A tape recording or written transcript of the appeal hearing shall be made available to the public.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the *[license]* **application** conforms to the requirements of sections 260.385 and 260.395, RSMo**,** and 10 CSR 25-6*[, and serve on the applicant its decision issuing,]***. The department will notify the applicant of its decision to issue,** with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo**,** have been paid.

2. The procedure for appealing a license **issuance**, *[a]* denial *[of a license]***,** or any condition of a license shall be the same as the procedure for **appealing a final** permit *[appeals]* **decision** under section (2) of this rule.

(B) Revocation of a Transporter License.

1. Transporter licenses may be revoked for the reasons specified in sections 260.379.2, 260.395.3, 260.410.3**,** and 260.410.4, RSMo, or for failure to comply with sections 260.395.1(2) and 260.395.1(3), RSMo.

2. The department may initiate proceedings to revoke a transporter license. If the department proposes to revoke a transporter license, it will send **a notice of intent to revoke** by certified mail to the licensee *[a notice of intent to revoke which will specify]***, specifying** the provisions of sections 260.350-260.434, RSMo, *[the provisions of]* 10 CSR 25-6, the conditions of the license or the provisions of an order issued to the licensee *[which]* **that** the

licensee has violated, *[or]* the manner in which the licensee misrepresented or failed to fully disclose relevant facts, or the manner in which the activities of the licensee endanger human health or the environment*[,]* or are creating a public nuisance.

3. The procedure for appealing a license revocation shall be the same as the procedure for **appealing a** permit revocation under section (2) of this rule. A timely **written petition for** appeal stays the effectiveness of a license revocation. If a timely **written petition for** *[notice of]* appeal is not filed, the revocation shall become *[final]* **effective** thirty (30) days after the **department signs the** revocation decision *[was made by the department]*.

(4) Resource Recovery Facility Certifications.

(A) Issuance of Resource Recovery Facility Certifications. Upon receipt of a complete application for resource recovery facility certification, the department will determine whether the application conforms to the requirements of section 260.395.13, RSMo**,** and 10 CSR 25-9.020*[, and will serve on the applicant its decision issuing]***. The department will notify the applicant of its decision to issue**, with or without conditions, or deny*[ing]* the certification. If the certification is denied, the department will specify the reasons for the denial. The procedure for appealing a certification **issuance**, denial *[of a certification]***,** or any condition of a certification will be the same as the procedure for *[permit appeals]* **appealing a final permit decision** under section (2) of this rule.

(B) Modification of Resource Recovery **Facility** Certifications.

1. The department may modify a resource **recovery facility** certification under any of the following circumstances:

A. When required to prevent violations of the requirements of section 260.395.14, RSMo**,** or 10 CSR 25-9.020;

B. When relevant facts have been misrepresented or not fully disclosed;

C. When required to protect the health of humans or the environment or to prevent or abate a public nuisance;

D. When the facility proposes changing any waste stream(s) *[accepted]* **managed** by the facility; **or**

E. When the facility proposes changing any processes or equipment utilized **for resource recovery operations** at the facility*[; or]***.**

[F. When the conditions specified in 40 CFR 270.41 and 270.42, as incorporated in 10 CSR 25-7.270, would warrant a permit modification if the activities at the facility were also subject to a permit.]

2. If the department proposes to modify the **resource recovery facility** certification**,** it will send **a notice of intent to modify** by certified mail to the *[owner/operator ()]*certificate holder*[() a notice of intent to modify which will specify]***, specifying** the reasons for the proposed modification and the manner in which the certificate is proposed to be modified.

3. The facility may appeal any **certification** modification**s**, except *[a modification]* **those** requested by the facility *[itself]* **that were approved as proposed without further modification**. The procedure for appealing a **certification** modification shall be the same as the procedure for appeal**ing** *[of a permit condition]* **a final permit decision** under section (2) of this rule.

(C) Revocation of Resource Recovery Facility Certifications.

1. The department may initiate proceedings to revoke *[the certification of]* a resource recovery facility **certification**. If the department **decides to** revoke*[s the certification of]* a resource recovery facility **certification**, it will send **a final revocation** by certified mail to the *[owner/operator of the affected facility ()]*the certificate holder*[() a final revocation which will specify]***, specifying** the provisions of section 260.395.14, RSMo, *[the provisions of]* 10 CSR 25-9.020**,** or *[the provisions of]* an order issued to the *[owner/operator which]* **certificate holder that** have been violated**,** *[or]* the manner in which the *[owner/operator]* **certificate holder** misrepresented or failed to fully disclose relevant facts, or the manner in which the activities at the facility endanger human health or the environment or are creating a public nuisance.

2. Resource recovery facility certifications may be revoked for the reasons specified in paragraph (4)(B)1. of this rule.

3. The procedure for appealing a **certification** revocation shall be the same as the procedure for appeal**ing** *[of]* a permit revocation under section (2) of this rule. A timely **written petition for** appeal stays the effectiveness of a **certification** revocation. If a timely *[notice of]* **written petition for** appeal is not filed, the revocation shall become *[final]* **effective** thirty (30) days after the **department signs the** revocation decision *[was made by the department]*.

(5) Variances.

(A) Applicability. **According to section 260.405.1, RSMo, unless prohibited by any federal hazardous waste management act, the Hazardous Waste Management Commission may grant individual variances from the requirements of sections 260.350 to 260.430, RSMo, whenever it is found, upon presentation of adequate proof, that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people.** The commission will not consider any petition for variance that would permit the occurrence or continuance of a condition *[which]* **that** unreasonably poses a present or potential threat to the health of humans or other living organisms. The department may require any petitioner for a variance to submit mailing lists and mailing labels required to accomplish the public notice requirements of this section.

(B) Evaluation. **Upon receipt of any petition for a variance,** *[T]***t**he department will evaluate *[any petition for a variance]* **the petition** to determine whether the request is substantive or non-substantive based upon the effect of the proposed variance on facility operations, types of waste, type and volume of hazardous waste management units, location of facility, public interest**,** and compliance history. Variances from generator or transporter requirements will be deemed non-substantive provided all conditions of subsection (3)(A) of this rule are met.

(C) Substantive Variance. If a variance petition is deemed substantive, the department will*[:]***—**

1. Upon receipt*[:]***—**

A. Mail a notice to all record owners of **real** property **located** within one (1) mile of the outer boundaries of the *[site]* **facility**, the highest elected official of the county**,** and the highest elected official of the city, town**,** or village **having jurisdiction over the area** where the facility is located; and

B. Issue a news release **to the media** and publish a legal notice in a newspaper of general circulation serving *[that area]* **the area where the facility is located**.

2. Within sixty (60) days of receipt*[:]***—**

A. Prepare a recommendation as to whether the variance should be granted, granted with conditions, or denied;

B. Submit the recommendation to the **Missouri Hazardous Waste Management** *[c]***C**ommission;

C. Notify the petitioner of the recommendation;

D. Publish a legal notice regarding the recommendation in a newspaper of general circulation serving *[that area]* **the area where the facility is located**; **and**

E. Mail a notice regarding the recommendation to all record owners of *[adjoining]* **real** property **adjacent to the facility**, the highest elected official of the county**,** and the highest elected official of the city, town**,** or village **having jurisdiction over the area** where the facility is located; and

3. Request a formal hearing before the **Missouri Hazardous Waste Management** *[c]***C**ommission or a duly appointed hearing officer on the variance **petition** and the department's recommendation, as provided in section 260.400, RSMo.

(D) Non-Substantive Variance. If a variance **petition** is deemed

non-substantive, the department will comply with paragraph (5)(C)2. of this rule. The **Missouri Hazardous Waste Management** *[c]***C**ommission will hold a *[public]* **formal** hearing as provided in section 260.400, RSMo if requested by the petitioner. A request for a **formal** hearing may also be made by any aggrieved person if the department's recommendation is to grant the variance *[or grant the variance with conditions]* **with or without conditions**. Any request by the petitioner or aggrieved person for a *[public]* **formal** hearing shall be made in writing within thirty (30) days of the date *[that]* the **legal** notice *[of]* **regarding the** recommendation is published.

(E) Final Decision. *[If the commission makes a decision on a variance without a public hearing, the matter will be passed upon by the commission at a public meeting no sooner than thirty (30) days from the date of the recommendation.]* **If no formal hearing is requested, the Missouri Hazardous Waste Management Commission shall make a decision on the variance at a public meeting held no earlier than thirty (30) days from the date the legal notice regarding the recommendation was published.**

(F) Hearing Procedures. Any hearings under this section shall be a contested case pursuant to section 260.400 and Chapter 536, RSMo. The participants shall be the department, the petitioner, any aggrieved person who requests a **formal** hearing**,** and any person who files a timely application for intervention and is granted leave to intervene. Any person desiring to intervene shall file **an application to intervene** with the *[staff director of the commission an application]* **Missouri Hazardous Waste Management Commission secretary** within thirty (30) days *[of the date that the notice of]* **from the date the legal notice regarding the** recommendation is published.

1. The application to intervene shall state the interests of the *[applicant]* **intervener,** *[and]* the grounds upon which intervention is sought**,** and *[also shall contain]* a statement of the position that the *[applicant]* **intervener** desires to take in the proceeding. The *[applicant]* **intervener** shall serve a copy of the application to intervene on each of the parties listed in subsection (5)(F) of this rule.

2. The **Missouri Hazardous Waste Management** *[c]***C**ommission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The **Missouri Hazardous Waste Management** *[c]***C**ommission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(G) If the applicant fails to comply with the terms and conditions of the variance as specified by the Missouri Hazardous Waste Management Commission, the variance may be revoked or modified by the commission after a formal hearing held after no less than thirty (30) days' written notice. The department will notify all persons who will be subjected to greater restrictions if the variance is revoked or modified and each person who requested notice from the department.

*AUTHORITY: section[s] 260.370, **RSMo Supp. 2010 and sections** 260.400, 260.405**,** and 260.437, RSMo 2000. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 11—Used Oil

PROPOSED AMENDMENT

10 CSR 25-11.279 Recycled Used Oil Management Standards. The commission is proposing to amend sections (1) and (2).

*PURPOSE: This rule needs to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 2006 CFR, which includes changes through July 1, 2006. One (1) of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2010 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 2006, and July 1, 2010. Department staff have reviewed the changes made to 40 CFR part 279, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the **Code of Federal Regulations**.*

(1) The regulations set forth in 40 CFR parts 110.1, 112, and 279, July 1, *[2006]* **2010**, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modification to 40 CFR part 279, incorporated by reference in section (1) of this rule. A person managing used oil shall comply with this section in addition to the regulations in 40 CFR part 279. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that Missouri additions, changes, or deletions to a particular lettered subpart in 40 CFR part 279 are noted in the corresponding lettered subsection of this section. For example, changes to 40 CFR part 279 subpart A are found in subsection (2)(A) of this rule.)

(A) Definitions. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart A.

1. The definition of do-it-yourselfer used oil collection center at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil collected from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

2. The definition of used oil at 40 CFR 279.1 is amended as follows:

A. Used oil includes, but is not limited to, petroleum-derived and synthetic oils which have been spilled into the environment or used for lubrication/cutting oil, heat transfer, hydraulic power, or insulation in dielectric transformers*[.]***;**

B. Used oil does not include petroleum-derived or synthetic oils which have been used as solvents. (Note: Used ethylene glycol is not regulated as used oil under this chapter.)**; and**

C. Except for used oil that meets the used oil specifications found in 40 CFR 279.11, any amount of used oil that exhibits a hazardous characteristic and is released into the environment is a hazardous waste and shall be managed in compliance with the requirements of 10 CSR 25, Chapters 3, 4, 5, 6, 7, 8, 9, and 13. Any exclusions from the definition of solid waste or hazardous waste will apply.

3. The definition of "used oil aggregation point" at 40 CFR 279.1 is amended to allow these sites or facilities to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

4. The definition of used oil collection center at 40 CFR 279.1 is amended to allow these centers to accept/aggregate and store used oil from household do-it-yourselfers and farmers not regulated by 40 CFR part 279 subpart C as incorporated in this rule.

(B) Applicability. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart B.

1. 40 CFR 279.10(b)(2) is not incorporated in this rule.

2. Mixtures of used oil and hazardous waste are subject to the following:

A. Except as provided for in subparagraphs (2)(B)2.B. and C. of this rule, used oil that is mixed with hazardous waste shall be handled according to 10 CSR 25-3, 4, 5, 6, 7, 8, 9**,** and 13;

B. Used oil that is mixed with hazardous waste that solely exhibits the characteristic of ignitability or is mixed with a listed hazardous waste that is listed solely because it exhibits the characteristic of ignitability shall be managed as a used oil; provided that the subsequent mixture does not exhibit the characteristic of ignitability; and

C. A generator who generates and accumulates hazardous waste in amounts less than those described in 10 CSR 25-3.260(1)(A)25. shall handle mixtures of used oil with hazardous waste as a used oil.

3. 40 CFR 279.10(c) is modified as follows. Used oil drained or removed from materials containing or otherwise contaminated with used oil shall be managed as a hazardous waste if the used oil exhibits a hazardous characteristic. Any exclusions from the definition of solid waste or hazardous waste will apply.

*[3.]***4.** In 40 CFR 279.10(f), incorporated by reference in this rule, delete "subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater)" and in its place substitute "regulated under Chapter 644, RSMo, the Missouri Clean Water Law."

*[4.]***5.** In addition to the prohibitions of 40 CFR 279.12, incorporated by reference in this rule, the following shall apply:

A. All used oil is prohibited from disposal in a solid waste disposal area; and

B. Used oil shall not be disposed of into the environment or cause a public nuisance.

(C) Standards for Used Oil Generators. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart C.

1. In addition to the requirements of 40 CFR 279.20(a)(2), incorporated by reference in this rule, vessels on navigable waters, as defined in 40 CFR 110.1, shall not dispose of used oil into waters of the state except as allowed by Chapter 644, RSMo.

2. *[In addition to the requirements of 40 CFR 279.20, incorporated in this rule, the following shall apply:*

A. Except as provided in subparagraph (2)(C)2.B. of this rule, generators who process or re-refine used oil must also comply with 10 CSR 25-11.279(2)(F); and

B. Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specifications used oil fuel:

[(I) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(II) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management or discharge of wastewaters;

(III) Using oil mist collectors to remove small droplets of used oil from inplant air to make plant air suitable for continued recirculation;

(IV) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to 40 CFR 279.10(c), as incorporated in this rule; or

(V) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater pursuant to 40 CFR 279.23, as incorporated in this rule.] ***(Reserved)***

3. In 40 CFR 279.22(d), incorporated by reference in this rule, delete "the effective date of the authorized used oil program for the State in which the release is located," and insert in its place "the original effective date of 10 CSR 25-11.279."

4. In addition to the requirements at 40 CFR 279.23(a), generators also may burn in used oil space heaters used oil from farmers not regulated by 40 CFR part 279 subpart C.

5. In addition to the requirements at 40 CFR 279.23, incorporated in this rule, burning in a used oil space heater any mixture of used oil with a hazardous waste is prohibited, except that mixtures of used oil with hazardous waste originating from conditionally exempt small quantity generators of hazardous waste may be burned in used oil-fired space heaters, so long as the hazardous waste is hazardous solely because it exhibits the characteristic of ignitability.

6. Used oil generators shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

(D) Standards for Used Oil Collection Centers and Aggregation Points. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart D.

1. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points owned by the generator may accept used oil from farmers not regulated under 40 CFR part 279 subpart C.

2. In addition to the requirements of 40 CFR part 279 subpart D, do-it-yourselfer used oil collection centers, used oil aggregation points, and used oil collection centers shall notify the solid waste district in which they operate or the department's *[Technical Assistance]* **Hazardous Waste** Program of their used oil collection activities.

A. Notification shall be by letter and shall include the following:

(I) The name and location of the collection center;

(II) The name and telephone number of the owner/operator;

(III) The name and telephone number of the facility contact, if different from the owner/operator;

(IV) The type of collection center; and

(V) The dates and hours of operation.

B. The notification submitted by a used oil collection center will satisfy the requirement of 40 CFR 279.31(b)(2) that the used oil collection center be recognized by the state.

C. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points shall notify the solid waste district in which they operate or the department's *[Technical Assistance]* **Hazardous Waste** Program when their used oil collection activities cease.

D. The notifications to operate or cease to operate received by a solid waste district shall be transmitted to the department's *[Technical Assistance]* **Hazardous Waste** Program for public information purposes or be incorporated in the information submitted to the department as part of their regular reporting requirements.

3. No quantity of used oil collected by do-it-yourselfer oil collection centers, used oil collection centers, and used oil aggregation points shall be stored for more than twelve (12) months at the collection center or aggregation point.

4. Do-it-yourselfer used oil collection centers, used oil collection centers**,** and used oil aggregation points shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

5. Used oil collection centers, do-it-yourselfer used oil collection centers, and used oil aggregation points shall have a means of controlling public access to the used oil storage area.

A. Access control may be an artificial or natural barrier which completely surrounds the storage area*[,]* or access control may be achieved by storing the used oil inside a locked building.

B. An attendant shall be present when the public has access to the do-it-yourselfer used oil collection center, used oil collection center, and used oil aggregation point. No public access shall be allowed to the stored used oil when the collection center or aggregation point is unattended.

(I) Standards for Use as a Dust Suppressant and Disposal of Used Oil. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart I.

1. 40 CFR 279.81 is not incorporated in this rule. Instead of the requirements in 40 CFR 279.81, the following shall apply:

A. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be managed in accordance with 10 CSR 25-5, 6, 7, 9, and 13**, and release of even non-hazardous used oil into the environment is prohibited**; and

B. Used oil that cannot be or is not intended to be recycled in accordance with this rule shall be assigned the Missouri waste code number D098.

2. The use of used oil as a dust suppressant on a road, parking lot, driveway, or other similar surface is prohibited.

3. 40 CFR 279.82 is not incorporated in this rule.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010**. Original rule filed Jan. 5, 1994, effective Aug. 28, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 13—Polychlorinated Biphenyls

PROPOSED AMENDMENT

10 CSR 25-13.010 Polychlorinated Biphenyls. The commission is proposing to amend section (1) of this rule.

PURPOSE: The commission is updating the date for incorporated-by-reference material.

(1) The regulations set forth in 40 CFR parts 761.3, 761.30(a)(2)(v), 761.60(b)(1)(i)(B), 761.60(g), 761.65(b), 761.71, 761.79, 761.72, and 761.180(b), July 1, *[2006]* **2010**, as published by the Office of Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

*AUTHORITY: section 260.370, RSMo Supp. [2008] **2010** and sections 260.395 and 260.396, RSMo 2000. Original rule filed Aug. 14, 1986, effective Jan. 1, 1987. For intervening history, please consult the **Code of State Regulations**. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 16—Universal Waste

PROPOSED AMENDMENT

10 CSR 25-16.273 Standards for Universal Waste Management. The commission is proposing to amend sections (1) and (2).

PURPOSE: The commission is updating the date for incorporated-by-reference material and references to the ***Code of Federal Regulations*** *citations.*

(1) The regulations set forth in 40 CFR part 273, July 1, *[2006]* **2010**, and the changes made at 72 FR 35666, June 29, 2007, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Small and large quantity handlers of universal waste, universal waste transporters, universal waste collection programs, and owners/operators of a universal waste destination facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 273 incorporated in this rule. (Comment: This section has been organized such that Missouri additions or changes to a particular federal subpart are noted in the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 273 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 273 subpart A, the following regulations also apply:

1. *[Scope.*

A. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with all requirements for the universal waste in question and of an R2 Missouri-certified resource recovery facility recycling universal waste as described in 10 CSR 25-9.020(3)(A)3.;] ***(Reserved)***

2. Applicability—batteries.

A. The additional state specific requirements described in this rule do not apply to batteries as described in 40 CFR 273.2;

3. Applicability—pesticides.

A. 40 CFR 273.3(a)(2) is modified as follows: Stocks of other unused pesticide products that are collected and managed as part of a universal waste pesticide collection program, as defined in paragraph (2)(A)9. of this rule.

[(I) 40 CFR 273.3(c) is not incorporated in this rule, and this subparagraph describes when pesticides become wastes:

(a) A pesticide becomes a waste on the date the generator of a recalled pesticide agrees to participate in the recall;

(b) A pesticide becomes a waste on the date the person conducting a recall decides to discard the pesticide; and

(c) An unused pesticide product as described in 40 CFR 273.3(a)(2) becomes a waste on the date the generator permanently removes it from service.]

B. The words "or reclamation" in 40 CFR 273.3(d)(1)(ii) are not incorporated in this rule;

4. *(Reserved)*

5. *(Reserved)*

6. *(Reserved)*

7. *(Reserved)*

8. Applicability—household and conditionally exempt small quantity generator waste.

A. In addition to the requirements of 40 CFR 273.8(a)(1) incorporated in this rule, household hazardous wastes which are of the same type as universal wastes defined at 40 CFR 273.9 as amended by paragraph (2)(A)9. of this rule, and which are segregated from the solid waste stream must either be managed in compliance with this rule or 10 CSR 25-4.261(2)(A)10.;

9. Definitions.

A. *[Universal waste—In lieu of the definition of "Universal waste" in 40 CFR 273.9, the following definition shall apply: "Universal waste" means batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3 as modified by paragraph (2)(A)3. of this rule, mercury-containing equipment as described in 40 CFR 273.4, and lamps as described in 40 CFR 273.5.]* ***(Reserved)***

B. Universal Waste Pesticide Collection Program—a Missouri universal waste pesticide collection program is any site where stocks of unused pesticide products are collected and managed. The collection program may accept unused pesticide products from both small and large quantity handlers of universal waste pesticides, universal waste transporters, and other universal waste pesticide collection programs. The collection program must operate in compliance with the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri and submit a Letter of Intent to the director of the Hazardous Waste Program at least fourteen (14) days prior to accepting unused pesticide products. The Letter of Intent shall contain all of the following:

(I) The name of the organization/agency sponsoring the collection program;

(II) Name, telephone number, and address of a contact person responsible for operating the collection program;

(III) Location of the collection program; and

(IV) Date and time of the collection.

(B) Standards for Small Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart B, the following regulations also apply except that additional state specific requirements do not apply to batteries as described in 40 CFR 273.2, as incorporated in this rule:

1. In addition to the requirements of 40 CFR 273.11, a small quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving small quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. The phrase "or received from another handler" in 40 CFR 273.15(a) in regards to universal waste pesticides is not incorporated in this rule **because in Missouri small quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a small quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

3. In 40 CFR 273.18(a), with respect to universal waste pesticides, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

4. *[In addition to the requirements of 40 CFR 273.18(a) through (c) as modified in paragraphs (2)(B)2. through (2)(B)4. and incorporated in this rule, in regards to universal waste pesticides,]* **Subsections 40 CFR 273.18(d) through (g) are not incorporated in this rule in regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. I***[i]***f a shipment of universal waste pesticides is rejected by the Missouri-certified resource recovery facility or destination

facility, the originating handler must either*[:]*—

A. Receive the waste back when notified that the shipment has been rejected; or

B. Send the pesticides to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

5. *[40 CFR 273.18(d) through (g) is not incorporated in this rule in regards to universal waste pesticides;]* ***(Reserved)***

6. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.20, as incorporated in this rule. The state may not assume authority from the **Environmental Protection Agency (**EPA**)** to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(C) Standards for Large Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart C, the following regulations also apply:

1. In addition to the requirements of 40 CFR 273.31, a large quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving large quantity handler operates a universal waste pesticide collection program as defined in paragraph (2)(A)9. of this rule;

2. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) as modified by 10 CSR 25-16.273(2)(A)3. and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify EPA for those recalled universal waste pesticides under this section;

3. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34;

B. Ensure that the area in which containers are stored is ventilated;

4. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

A. Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills, or leaks into a container that meets the requirements of 40 CFR 262.34;

B. Ensure that the area in which containers are stored is ventilated; and

C. Ensure that employees handling universal waste lamps are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spillage or released material into appropriate containers;

5. In 40 CFR 273.35(a) and (b), the phrase "or received from another handler" is not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the accumulation time limits specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

6. In 40 CFR 273.35(c)(1) through (c)(6), the phrases "or is received" and "or was received" are not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from accepting universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the requirements for marking, labeling, and accumulation time limits that are specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

7. In 40 CFR 273.38(a), with respect to pesticide, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

8. *[In addition to the requirements of 40 CFR 273.38(a) through (c) incorporated by reference and modified by this section,]* **40 CFR 273.38(d) through (f) are not incorporated in this rule with regards to universal waste pesticides. In lieu of these subsections, the following requirements apply. I***[i]*f a shipment of universal waste pesticides from a large quantity generator is rejected by the Missouri-certified resource recovery facility or destination facility, the original handler must either*[:]*—

A. Receive waste back when notified that the shipment has been rejected; or

B. Send the waste to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

9. *[40 CFR 273.38(d) through (f) is not incorporated in this rule with regards to universal waste pesticides;]* ***(Reserved)***

10. 40 CFR 273.39(c)(1) is not incorporated in this rule in regards to universal waste pesticides **because in Missouri large quantity handlers of universal waste pesticides are prohibited from receiving shipments of universal waste pesticides from another handler. If a large quantity handler of universal waste pesticides operates a universal waste pesticide collection program as defined in section (2) of this rule, the handler shall comply with the record retention requirements that are specified in the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri**;

11. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.40, as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(G) In addition to the requirements in 40 CFR 273*[.80]* subpart G, any person seeking to add a hazardous waste or a category of hazardous waste to this rule shall*[:]*—

1. Comply with those provisions of section 536.041, RSMo**,** that describe a petition process to adopt, amend, or repeal any rule.

AUTHORITY: section 260.370, RSMo Supp. [2008] ***2010****. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed March 31, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective June 30, 2009. Amended: Filed April 15, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to tim.eiken@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 1—Underground and Aboveground Storage Tanks—Organization

PROPOSED RULE

10 CSR 26-1.010 Organization

PURPOSE: This rule provides a description of this division and explains the methods and procedures whereby the public may obtain information or make submissions or requests regarding the rules in this division.

(1) For ease of administration, and to assist the regulated community and the general public, the Missouri Hazardous Waste Management Commission and the Missouri Clean Water Commission have jointly decided to assemble their rules relating to underground and aboveground storage tanks into one division of the *Code of State Regulations*, Division 26. These rules are organized as follows:

(A) Rules pertaining to underground storage tanks are contained in Chapters 2, 3, and 4 of Division 26 and are under the authority of the Missouri Hazardous Waste Management Commission, in accordance with sections 319.109 and 319.137, RSMo; and

(B) Rules pertaining to aboveground storage tanks are contained in Chapter 5 of Division 26 and are under the authority of the Missouri Clean Water Commission, in accordance with sections 644.026 and 644.143, RSMo.

(2) Day-to-day administration of these rules is carried out by the Department of Natural Resources' Hazardous Waste Program. Requests for copies of these rules or other information about implementation of these rules are to be submitted to the Department of Natural Resources, Hazardous Waste Program, PO Box 176, Jefferson City, MO 65102.

(3) Additional information about the Hazardous Waste Management Commission and its operations may be found at 10 CSR 25-1.010, 10 CSR 25-2.010, and 10 CSR 25-2.020. Additional information about the Clean Water Commission and its operations may be found at 10 CSR 20-1.010 and 10 CSR 20-1.020.

AUTHORITY: section 536.021, RSMo Supp. 2010. Original rule filed April 15, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance Storage Tanks
Chapter 2—Underground Storage Tanks—Technical Regulations

PROPOSED RULE

10 CSR 26-2.019 New Installation Requirements

PURPOSE: This rule sets the standards that installations and installers of new underground storage tank systems must meet.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Any installer who intends to install an underground storage tank (UST) system for storage of a regulated substance must, at least thirty (30) days before installing the tank, notify the department by letter of the intent to install a UST. The notification must provide the tank owner's name, installer name, the name and location of the facility where the UST will be installed, the date that the installation is expected to commence, the date that the tank is expected to be brought in-use, UST system information, including tank material, size, manufacturer, piping material, tank and piping type and manufacturer, release detection equipment, and spill and overfill equipment. The installation notice is valid for one hundred eighty (180) days from receipt by the department and only for the UST system(s) listed on the notice. If installation does not commence within one hundred eighty (180) days of the date on which the department received the notice, a new installation notice must be submitted prior to commencing installation activities.

(2) Installers must document compliance with all manufacturer certification or training requirements for tank, piping, release detection

equipment, and spill and overfill equipment installed.

(3) Installers and manufacturers must have a current financial responsibility mechanism filed with the Missouri Department of Agriculture, in accordance with 2 CSR 90-30.085, at the start and until completion of installation of the underground storage tank system.

(4) Prior to installation of an UST intended to be used for storage of a regulated substance, the tank and associated piping must be tested, inspected, and measured in accordance with the manufacturer's requirements and in accordance with the pre-installation inspection, testing, and/or backfilling sections of either—

(A) American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or

(B) Petroleum Equipment Institute's Recommended Practice 100-2011, *Installation of Underground Liquid Storage Systems*, 2011 Edition. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

(5) Tanks, piping, and equipment must comply with the new system requirements in 10 CSR 26-2.020. Installations shall be conducted in accordance with all manufacturers' requirements and in accordance with either—

(A) American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or

(B) Petroleum Equipment Institute's Recommended Practice 100-2011, *Installation of Underground Liquid Storage Systems*, 2011 Edition. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

(6) Should one (1) or more of a manufacturer's requirements contradict the recommended industry practice(s), the manufacturer's requirements shall be followed. Backfill materials must meet tank and piping manufacturers' specifications.

(7) The tank and piping system must pass a 0.1 gallon/hour system tightness test before the system is brought in operation.

(8) Until the installation is complete and the system is released by the installer to the owner/operator, the tank shall be monitored for leaks daily by using either—

(A) An approved release detection method, in accordance with 10 CSR 26-2.043; or

(B) Daily Inventory Liquid Measurements. Upon completion of initial post-installation tightness testing, daily measurements are based on the average of two (2) consecutive stick readings. A variation of no greater than twenty-six (26) gallons per week is allowed. Any suspected release, alarm, or inconclusive or failure result from these release detection methods must be reported and investigated in accordance with 10 CSR 26-2.050.

(9) Upon the department's discovery of an installation that is not in compliance with the requirements of this rule, the department's authorized representative may require that the installation remain open and uncovered, or that no additional UST system work be conducted, until—

(A) The manufacturer approves the installation that deviates from their written guidelines, specifications, and instructions;

(B) The owner approves the installation; and

(C) The department approves the installation.

(10) Any equipment repairs necessary during the installation must be manufacturer certified or approved, with supporting written documentation from the manufacturer.

(11) Certification of Installation. All installers must ensure that one (1) or more of the following methods of certification, testing or inspection is used to demonstrate compliance with this rule by providing a certification of compliance:

(A) The installation has been inspected and approved by the department;

(B) All work listed in the manufacturer's installation checklists has been completed and submitted to the department; or

(C) The installer has complied with another method for ensuring compliance with this rule that is determined by the department to be no less protective of human health and the environment.

AUTHORITY: sections 319.105, RSMo 2000. Original rule filed April 15, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement Practices

PROPOSED RESCISSION

20 CSR 100-1.060 Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans. This rule effectuated or aided in the interpretation of section 375.1007, RSMo 2000, and sections 376.383 and 376.384, RSMo Supp. 2008.

PURPOSE: This rule is being rescinded because it conflicts with the underlying statute, section 376.383, RSMo, which was amended by HB 1498 (2010). The provisions of the amended statute supersede many of the provisions of the current regulation.

AUTHORITY: section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008. Original rule filed Sept. 5, 2008, effective May 30, 2009. Rescinded: Filed April 8, 2011.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rescission at 9:30 a.m. on June 21, 2011. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rescission until 5:00 p.m. on June 24, 2011. Written statements shall be sent to Carolyn Kerr, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-2619 at least five (5) working days prior to the hearing.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 1—Organization and Description

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 536.023, RSMo Supp. 2010, the director amends a rule as follows:

2 CSR 30-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1845). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry, and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1845–1846). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Four (4) comments were received on the proposed amendment.

COMMENT #1: Dale Ridder, Hermann, MO, states absolute objection to the proposed rule as currently written and urges the Department of Agriculture to put a hold on the proposed amendment until the technology to better predict false-positives becomes available or to at least allow for a procedure to remove the "death sentence" of a potential false-positive Trich test from bulls and Missouri breeders. The producer agrees with the intent of curtailing the spread of Trichomoniasis in Missouri but it is absolutely unfair to do so based on one (1) positive test with no collaborative test, and no chances of ever reversing a test which current research indicates can and does have false-positives. The real private cost in time and dollars would exceed five hundred dollars ($500) and has already exceeded this producer twenty thousand dollars ($20,000). This does not take into consideration potential future sales of semen and breeding animals. In an article published in JAVMA, Vol. 237, No. 9, November 1, 2010 pages 1068–1073, authored by Ondrak et al., states "This provides further evidence that sporadic false-positive results detected by the use of culture, gel PCR assay, and real=time PCR assay can occur." Other false-positives were reported by Cobo et al. in their 2007 research. Ondrak indicates that the unnecessary sale and slaughter of false-positive bulls would substantially increase the financial impact of T foetus outbreaks.

RESPONSE: The research conducted by E.R. Cobo, et al., was attempting to determine the specificity and sensitivity of the Polymerase Chain Reaction (PCR) and culture utilized in different testing protocols to establish the most efficient and accurate method of testing bulls for *Tritrichomonas foetus*. The current gold-standard testing protocol consists of six (6) weekly cultures, which is expensive and time consuming for the producers. The study concluded PCR or both tests applied in parallel on three (3) consecutive weeks may be as sensitive and specific as the gold-standard. The research concluded the sensitivity and specificity of the gold-standard test was 87.7% (Se) and 97.5% (Sp) compared to PCR and culture combined on a single sample the sensitivity was 78.3% and specificity was 98.5%. The sensitivity of the PCR was found to be seventy-eight percent (78%), which would indicate the test was not able to identify 22/100 positive bulls and would identify their status as negative. The specificity of the combination (98.5%) would predict approximately 1.5 bulls tested out of 100 would be false positives, given the prevalence of the disease in the general population is comparable to the animals tested. The prevalence of Trichomoniasis in the general population is predicted to be between three percent to five percent (3%–5%), this corresponds to the current prevalence of disease in our sample submissions.

The objective of the research published in JAVMA, Vol. 237, No. 9, November 1, 2010, was to determine whether the percentage of nonpregnant cows was associated with the percentage of bulls infected with *Tritrichomonas foetus*. The results cite a similar conclusion to the aforementioned research conducted by E.R. Cobo, which determined a combination of culture and PCR (this study utilizes gel PCR) was comparable to the gold-standard testing protocol. The study does not discuss how it was determined the RT-PCR yielded three (3) false positives out of one hundred twenty-one (121) bulls.

Research conducted by Michael S.Y. Ho, et al. in 1993, published in the Journal of Clinical Microbiology, Jan. 1994, evaluated a method to increase the accuracy of the diagnosis of *Tritrichomonas foetus* by developing a more sensitive testing protocol through the utilization of

PCR technology. The need for the technology was due to the low sensitivity ten percent to forty-eight percent (10%–48%) of the traditional method of culturing and microscopic examination to identify the parasite, thus several positive bulls were classified as negative. The study concluded the PCR protocol was able to detect as few as one (1) parasite in culture media or ten (10) parasites in bovine preputial smegma. The analysis of fifty-two (52) samples showed that forty-seven (47) (90.4%) were correctly identified, with no false-positive results. In comparison, the culture method detected 44/52 (84.6%), thus classifying three (3) positive bulls as negative.

In 2002, the PCR assay was improved to increase the ability of the test to identify positive bulls, as described in the research conducted by D. Douglas Nickel, et al. The improved assay identified four (4) positive bulls out of eight hundred forty-seven (847) samples, compared to three (3) positive bulls utilizing the culture method. The increased sensitivity of the PCR decreases the possibility of misdiagnosis of a positive animal. The results were repeated and the positive samples were verified.

Dr. James A. Kennedy, a co-author on the research conducted by E. R. Cobo, has published research advocating the utilization of pooled samples utilizing PCR to detect *Tritrichomonas foetus* to decrease the cost to producers. He identifies a "pitfall" of the culture method is the low specificity, thus high number of false-positives. The standard protocol to verify culture positive animals utilizes the PCR to differentiate the *Tritrichomonas foetus* parasite from other trichomonad organisms. The PCR assay has the ability to identify a particular sequence of DNA of the *Tritrichomonas foetus*, this sequence is unique to this specific *Tritrichomonas spp*. Dr. Kennedy's research states the PCR identified sixteen (16) out of sixty-one (61) pools (five (5) samples combined), identifying two (2) pools containing samples that had previously been considered negative by culture.

Research has proven the PCR assay has the ability to detect the *Tritrichomonas foetus* parasite when only a few organisms are present. The ability to obtain and maintain the quality of a sample prior to arrival at a diagnostic laboratory and the inability to accurately detect and diagnose Trichomoniasis in infected bulls has been detrimental to the control and eradication of the disease. The incidence of false-positive results is extremely low, especially in comparison to other diagnostic tests we currently or have utilized in previous years to eradicate financially devastating livestock diseases, i.e., brucellosis, tuberculosis. The financial impact to producers by inaccurately diagnosing a negative bull can be tremendous.

Positive bulls remain carriers for life, except for the five percent (5%) of bulls less than thirty (30) months of age which one (1) research study has indicated may clear the parasite due to the lack of depth in the crypts of their sheath. However, this theory is controversial among the experts in the field of Trichomoniasis and additional research is needed to validate the findings. This represents a very small number of bulls.

Research has proven virgin bulls may become infected if comingled with positive bulls due to naturally occurring homosexual activity (Sarah Parker, et al., 2003).

The Texas and UMC laboratory utilize the same PCR assay protocol to analyze the samples for *Tritrichomonas foetus*. The Ct value determines the presence or absence of the parasite, 35–40 (TX) or 35–37 (UMC) have been established as the range for "suspect" samples. The owners/veterinarians are contacted and the lab recommends the animal is retested. The animals below thirty-five (35) are classified as positive and samples above thirty-seven (37) (UMC) or forty (40) (TX) are designated as negative. The UMC laboratory has identified a trichomonad organism in the samples that had been classified as "suspect" upon analysis of results and attempting to determine the reason of the "suspect" category. Since the discovery of this organism, all the samples with Ct values of 32–41 have been sequenced out and were all identified as *Tritrichomonas foetus*, thus eliminating the possibility of any false-positive results being reported.

The Texas Animal Health Commission classifies any RT-PCR positive bull as infected with Trichomoniasis. Positive bulls are quarantined and transported directly to slaughter on a VS 1-27 permit or to a livestock market for slaughter only on a VS 1-27 permit.

The department has considered this comment and will not make a change to the proposed regulations.

COMMENT #2: Dr. Charles T. Winslow, Lamar Animal Clinic, commented that the importation of feral swine into Missouri is unneeded and unnecessary, and therefore, should be restricted to the same entry allowance as breeding bulls testing positive for Trichomoniasis. Questioned what penalties would be given people who either import Trich positive bulls or feral swine without OCVs, etc. but suspected few if any feral swine importers will find the time to abide by these rules and that feral swine importation may be mostly done with disregard to the revised law so perhaps a figure of more than five hundred dollars ($500) should be included in the cost of the change to enforce the new regulation and/or educate the citizens who may import feral swine. If these revisions are accepted, it would be interesting to know how many entry permits are granted by the state of Missouri for importation of feral swine each year and is this information available to the public.

RESPONSE: Currently feral swine are not allowed to enter into Missouri; however, during the last legislative session legislation was introduced and passed enabling feral swine to move into Missouri. The new regulations reflect the change and require the owners to obtain a permit prior to movement. The legislation did not give us the authority to assess a fee to those not adhering to the regulations. No changes were made as a result of this comment.

COMMENT #3: Dr. Charles Massengill commented that in 2 CSR 30-2.010(4)(D)1.B. that references is made to "approved laboratory." How can a veterinarian in another state determine if the laboratory they rely on is "approved" by the state veterinarian? He suggested the requirement be changed to "laboratory approved by the AAVLD." This way laboratories will already know if they are approved and can share this information with their client. Also, in 2 CSR 30-2.010(15), reference is made to "all aquaculture entering Missouri. . ." and that the intent is to address all aquatic animals entering Missouri. However, aquaculture is a process or practice.

RESPONSE: The department has reviewed the comment regarding the approved laboratory and feels that the current language includes any laboratory approved by the AAVLD and the language will remain the same. In response to the comment on section (15) Aquaculture, the department has reviewed and according to statute 277.024, RSMo 2000, aquaculture is classified as livestock and therefore referred to as aquaculture. No changes were made to this section.

COMMENT #4: Upon further administrative review, potbelly pigs are covered by current regulations and will be removed from the section regarding feral swine, and section (16) regarding large carnivores needs further guidance than what is noted.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will remove this section at this time to make the suggested change.

2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry, and Exotic Animals Entering Missouri

(5) Swine.

(A) Swine are classified as the following:

1. Commercial swine—swine that are continuously managed and have adequate facilities and practices to prevent exposures to feral swine;

2. Feral swine—any swine that are free roaming or Russian and Eurasian that are confined. This also includes javelinas and peccaries; and

3. Transitional swine—swine raised on dirt or that have reasonable opportunities to be exposed to feral swine.

(D) All feral swine (including Eurasian and Russian swine) entering Missouri must—

1. Obtain an entry permit;

2. Be officially identified;

3. Be listed individually on a Certificate of Veterinary Inspection, in addition to age, gender, and permit number of feral swine facility of destination;

4. Must be from a validated and qualified herd; last test date and herd numbers must be listed on the Certificate of Veterinary Inspection; or

5. Have two (2) negative tests sixty (60) days apart for brucellosis and pseudorabies within thirty to sixty (30–60) days prior to movement. The laboratory and test date must be listed on the Certificate of Veterinary Inspection.

6. Feral swine moving directly from the farm-of-origin to an approved processing facility or to an approved slaughter-only facility will be exempt from any required testing.

(16) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration, and the permanent identification.

(A) Elephants (Asiatic, African) must test negative for tuberculosis within one (1) year prior to entry.

(B) Importation of skunks and raccoons into Missouri is prohibited by the Missouri Wildlife Code, 3 CSR 10-9.

(C) No tests are required for animals moving between publicly-owned American Zoos and Aquariums (AZA)-accredited zoos but must be accompanied by a Certificate of Veterinary Inspection. Cervids moving between publicly-owned AZA-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subsection (10)(E). An entry permit is required on all animals moving between publicly-owned American Zoos and Aquariums (AZA)-accredited zoos.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry, and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of Agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1846–1848). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Five (5) comments were received.

COMMENT #1: Dale Ridder, Hermann, MO, states absolute objection to the proposed rule as currently written and urges the Department of Agriculture to put a hold on the proposed amendment until the technology to better predict false-positives becomes available or to at least allow for a procedure to remove the "death sentence" of a potential false-positive Trich test from bulls and Missouri breeders. The producer agrees with the intent of curtailing the spread of Trichomoniasis in Missouri but it is absolutely unfair to do so based on one (1) positive test with no collaborative test, and no chances of ever reversing a test which current research indicates can and does have false positives. The real private cost in time and dollars would exceed $500 (five hundred dollars) and has already exceeded this producer $20,000 (twenty thousand dollars). This does not take into consideration potential future sales of semen and breeding animals. In an article published in JAVMA, Vol. 237, No. 9, November 1, 2010 pages 1068-1073, authored by Ondrak et al., states "This provides further evidence that sporadic false-positive results detected by the use of culture, gel PCR assay, and real=time PCR assay can occur." Other false-positives were reported by Cobo et al. in their 2007 research. Ondrak indicates that the unnecessary sale and slaughter of false-positive bulls would substantially increase the financial impact of T foetus outbreaks.

RESPONSE: The research conducted by E.R. Cobo, et al., was attempting to determine the specificity and sensitivity of the PCR and culture utilized in different testing protocols to establish the most efficient and accurate method of testing bulls for *Tritrichomonas foetus*. The current gold-standard testing protocol consists of six (6) weekly cultures, which is expensive and time consuming for the producers. The study concluded PCR or both tests applied in parallel on three (3) consecutive weeks may be as sensitive and specific as the gold-standard. The research concluded the sensitivity and specificity of the gold-standard test was 87.7% (Se) and 97.5% (Sp) compared to PCR and culture combined on a single sample the sensitivity was 78.3% and specificity was 98.5%. The sensitivity of the PCR was found to be 78%, which would indicate the test was not able to identify 22/100 positive bulls and would identify their status as negative. The specificity of the combination (98.5%) would predict approximately 1.5 bulls tested out of 100 would be false positives, given the prevalence of the disease in the general population is comparable to the animals tested. The prevalence of Trichomoniasis in the general population is predicted to be between three percent to five percent (3%–5%), this corresponds to the current prevalence of disease in our sample submissions.

The objective of the research published in JAVMA, Vol 237, No. 9, November 1, 2010, was to determine whether the percentage of nonpregnant cows was associated with the percentage of bulls infected with *Tritrichomonas foetus*. The results cite a similar conclusion to the aforementioned research conducted by E.R. Cobo, which determined a combination of culture and PCR (this study utilizes gel PCR) was comparable to the gold-standard testing protocol. The study does not discuss how it was determined the RT-PCR yielded three (3) false-positives out of one hundred twenty-one (121) bulls.

Research conducted by Michael S.Y. Ho, et al. in 1993, published in the Journal of Clinical Microbiology, Jan. 1994, evaluated a method to increase the accuracy of the diagnosis of *Tritrichomonas foetus* by developing a more sensitive testing protocol through the utilization of PCR technology. The need for the technology was due to the low sensitivity ten percent to forty-eight percent (10%–48%) of the traditional method of culturing and microscopic examination to identify the parasite, thus several positive bulls were classified as negative. The study concluded the PCR protocol was able to detect as few as one (1) parasite in culture media or ten (10) parasites in bovine preputial smegma. The analysis of fifty-two (52) samples showed that forty-seven (47) (90.4%) were correctly identified, with no false-positive results. In comparison, the culture method detected 44/52 (84.6%), thus classifying three (3) positive bulls as negative.

In 2002, the PCR assay was improved to increase the ability of the test to identify positive bulls, as described in the research conducted by D. Douglas Nickel, et al. The improved assay identified four (4) positive bulls out of eight hundred forty-seven (847) samples, compared to three (3) positive bulls utilizing the culture method. The increased sensitivity of the PCR decreases the possibility of misdiagnosis of a positive animal. The results were repeated and the positive samples were verified.

Dr. James A. Kennedy, a co-author on the research conducted by E. R. Cobo, has published research advocating the utilization of pooled samples utilizing PCR to detect *Tritrichomonas foetus* to decrease the cost to producers. He identifies a "pitfall" of the culture method is the low specificity, thus high number of false-positives.

The standard protocol to verify culture positive animals utilizes the PCR to differentiate the *Tritrichomonas foetus* parasite from other trichomonad organisms. The PCR assay has the ability to identify a particular sequence of DNA of the *Tritrichomonas foetus*, this sequence is unique to this specific *Tritrichomonas spp*. Dr. Kennedy's research states the PCR identified sixteen (16) out of sixty-one (61) pools (five (5) samples combined), identifying two (2) pools containing samples that had previously been considered negative by culture.

Research has proven the PCR assay has the ability to detect the *Tritrichomonas foetus* parasite when only a few organisms are present. The ability to obtain and maintain the quality of a sample prior to arrival at a diagnostic laboratory and the inability to accurately detect and diagnosis Trichomoniasis in infected bulls has been detrimental to the control and eradication of the disease. The incidence of false-positive results is extremely low, especially in comparison to other diagnostic tests we currently or have utilized in previous years to eradicate financially devastating livestock diseases, i.e., brucellosis, tuberculosis. The financial impact to producers by inaccurately diagnosing a negative bull can be tremendous.

Positive bulls remain carriers for life, except for the five percent (5%) of bulls less than thirty (30) months of age which one (1) research study has indicated may clear the parasite due to the lack of depth in the crypts of their sheath. However, this theory is controversial among the experts in the field of Trichomoniasis and additional research is needed to validate the findings. This represents a very small number of bulls.

Research has proven virgin bulls may become infected if co-mingled with positive bulls due to naturally occurring homosexual activity (Sarah Parker, et al., 2003).

The Texas and UMC laboratory utilize the same PCR assay protocol to analyze the samples for *Tritrichomonas foetus*. The Ct value determines the presence or absence of the parasite, 35–40 (TX) or 35–37 (UMC) have been established as the range for "suspect" samples. The owners/veterinarians are contacted and the lab recommends the animal is retested. The animals below thirty-five (35) are classified as positive and samples above thirty-seven (37) (UMC) or forty (40) (TX) are designated as negative. The UMC laboratory has identified a trichomonad organism in the samples that had been classified as "suspect" upon analysis of results and attempting to determine the reason of the "suspect" category. Since the discovery of this organism, all the samples with Ct values of 32–41 have been sequenced out and were all identified as *Tritrichomonas foetus*, thus eliminating the possibility of any false-positive results being reported.

The Texas Animal Health Commission classifies any RT-PCR positive bull as infected with Trichomoniasis. Positive bulls are quarantined and transported directly to slaughter on a VS 1-27 permit or to a livestock market for slaughter only on a VS 1-27 permit.

The department has considered this comment and will not make a change to the proposed regulations.

COMMENT #2: Neal Hendrix commented that setting up rules that could result in the slaughter of bulls is premature. Given the economic damage that trich can do to an operation, unbiased education of producers may be the first step along with using proven, reliable, and verifiable testing procedures. After these steps are accomplished, it will be possible to get a handle on the scope of this problem within the state.

RESPONSE: I am unaware of the seven (7) false-positives or how Mr. Hendrix has determined the bulls are not infected with *Tritrichomonas foetus*. However, regarding the possibilities of false-positives animals, please refer to the response to Mr. Ridder's comments. The Department of Agriculture (MDA) has been proactive in utilizing opportunities to educate and enlighten livestock producers and veterinarians throughout the state regarding the need to implement biosecurity to protect their herds from this financially devastating disease. We have provided continuing education to veterinarians to enhance their ability to obtain quality samples and implement prevention and control management protocols. The MDA veterinarians have spoke to several producer groups, including a purebred production sale, to increase the awareness of trichomoniasis to livestock producers. The department has considered this comment and will not make a change.

COMMENT #3: Carroll Craig commented in favor of testing of bulls for trich beginning at age one (1) and if a bull tested positive, he should be branded and the herd should be quarantined until they have cleaned up or sold for slaughter. Bulls should be tested and found negative before sold through a sale barn; if positive, they should be sent to slaughter.

RESPONSE: The department appreciates this comment. This disease can be the most financially devastating to the Missouri cattlemen since brucellosis.

COMMENT #4: Dr. Chuck Massengill presented several comments on the proposed changes:

Comment #1: Subsection (1)(D) and the exclusion of exotic bovids. Through several of the definitions, reference is made to "bovines." If the intent was to address only cattle and bison, why not refer to cattle and bison? Comment #2: Subparagraph (1)(D)5.C. addresses female bovines from a *T.foetus herd*. There is not a provision for release of quarantine for a herd that does not have bulls. Possibly there needs to be a clarification on how a herd can be released from quarantine. Comment #3: Paragraph (1)(D)2. should not the statement read "the absence of" rather than "the presence of" both permanent central incisor teeth in wear. The presence and in wear of the central incisors is an indication that the animal is at least twenty-four (24) months old in our livestock market regulations. Comment #4: Part (1)(D)5.B.(I) that the department would reconsider the requirement of identifying positive *T.foetus* with a "V" brand on the left jaw by an accredited veterinarian. Comment #5: Questioned the use of the undefined stand alone term "*T.foetus*" to assign a status requiring regulatory action might need attention. Comment #6: Regarding feral swine proposed regulations, paragraph (2)(D)1. that swine moving within Missouri required an entry permit and that owners of pot bellied pigs in Missouri have a feral swine permit number and individuals that keep pot bellied pigs in their houses and yards will meet the requirements for that facility permit. Also, how can two tests be sixty (60) days apart and occur within thirty to sixty (30–60) days prior to movement.

RESPONSE AND EXPLANATION OF CHANGE: Comment #1—exclusion of exotic bovids. The department has reviewed and considered this comment and is convinced that the title in the proposed rulemaking provides clarity and the rule will remain as is. Comment #2—In response to 2 CSR 30-2.020(1)(D)5.C., the department has reviewed and considered this comment and agrees that the proposed rule lacks clarity. The department has rewritten this section to address clarity issues. Comment #3—the presence or absence of the central incisiors. The department has reviewed and considered this comment and will not make a change. The current language is taken from and in compliance with federal regulations. Comment #4—The department has reviewed and considered this comment and is in agreement with the commenter. The department has rewritten this section to address identification of positive animals. Comment #5—the department has reviewed this comment and agrees for clarification that "*T.foetus"* will be spelled out. Comment #6—The department has reviewed and considered this comment. A change with the proposed rule will be made accordingly.

COMMENT #5: Upon departmental review, Dr. Hagler recommended that positive *Tritrichomonas foetus* test results be reported to the state veterinarian within seventy-two (72) hours. Additional departmental review of proposed paragraph (1)(D)5. regarding quarantine requirements needed further clarification. Also, section (11) regarding large carnivores needs further guidance than what is noted.

RESPONSE AND EXPLANATION OF CHANGE: The state veterinarian agrees that positive *Tritrichomonas foetus* test results should be reported within seventy-two (72) hours and will include a reporting period in the regulations and agrees with the change to the quarantine requirements. The department agrees with the comment regarding section (11) and will remove this section at this time.

2 CSR 30-2.020 Movement of Livestock, Poultry, and Exotic Animals Within Missouri

(1) Cattle, Bison, and Exotic Bovids.

(D) Trichomoniasis (Excluding Exotic Bovids).

1. Definitions.

A. Official laboratory—Veterinary Diagnostic Laboratory operated and under the direction of the state veterinarian, University of Missouri Veterinary Medical Diagnostic Laboratory, or other diagnostic laboratories approved by the state veterinarian.

B. Positive Trichomoniasis (*Tritrichomonas foetus*) bull—male bovine which has ever tested positive for Trichomoniasis (*Tritrichomonas foetus*).

C. Trichomoniasis—venereal disease of cattle caused by the protozoan parasite species of *Tritrichomonas foetus*.

D. Positive Trichomoniasis (*Tritrichomonas foetus*) herd—group of bovines that have commingled in the previous breeding season and in which an animal (male or female) has had a positive diagnosis for *Tritrichomonas foetus*.

E. Negative Trichomoniasis (*Tritrichomonas foetus*) herd—a group of bovines that have been commingled in the previous breeding season and all test-eligible bulls have tested negative for *Tritrichomonas foetus* within the previous twelve (12) months.

F. Test-eligible animal—any bull at least thirty (30) months of age or any non-virgin bull that is sold, leased, bartered, or traded in Missouri.

G. Negative Trichomoniasis (*Tritrichomonas foetus*) bull—a bull from a negative Trichomoniasis herd with a series of three (3) negative cultures at least one (1) week apart or one (1) negative PCR test for *Trichomoniasis foetus* or two (2) negative PCR if commingled with a positive herd.

2. All breeding bulls (excluding exotic bovids) sold, bartered, leased, or traded within the state shall be—

A. Virgin bulls not more than twenty-four (24) months of age as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or

B. Tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test by an approved diagnostic laboratory within thirty (30) days prior to change in ownership or possession within the state.

(I) Bulls shall be tested three (3) times not less than one (1) week apart by an official culture test or one (1) time by an official PCR test.

(II) Shall be identified by official identification at the time the initial test sample is collected and the official identification recorded on the test documents.

(III) Bulls that have had contact with female cattle subsequent to or at the time of testing must be retested prior to movement.

C. The official identification, test results, date of test, test performed, and laboratory where test was performed should be included on the certificate of veterinary inspection.

3. If the breeding bulls are virgin bulls and less than thirty (30) months of age, they shall be—

A. Individually identified by official identification; and

B. Accompanied with a breeder's certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls.

C. The official identification number shall be written on the breeder's certificate.

4. Bulls going directly to slaughter are exempt from Trichomoniasis testing.

5. *Tritrichomonas foetus* positive herd—

A. Shall be quarantined or sold directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(I) Any non-virgin female or female twelve (12) months of age or older may be sold directly to slaughter and move on a VS 1-27 or remain quarantined.

(II) Positive bulls shall be sent directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(III) Positive animals shall be identified by a state-issued temper-evident eartag; and

B. The quarantine shall be released upon the following:

(I) All bulls in a positive *Tritrichomonas foetus* herd shall have tested negative to three (3) consecutive official *Tritrichomonas foetus* culture tests or two (2) consecutive official *Tritrichomonas foetus* PCR tests at least one (1) week apart. The initial negative test is included in the series of negative tests required; and

(II) Female(s) has a calf at side (with no exposure to other than known negative *Tritrichomonas foetus* bulls since parturition), has one hundred twenty (120) days of sexual isolation, or is determined by an accredited veterinarian to be at least one hundred twenty (120) days pregnant.

6. All positive *Tritrichomonas foetus* test results must be reported to the state veterinarian within seventy-two (72) hours of confirmation.

(2) Swine.

(A) Swine in Missouri are classified as follows:

1. Commercial swine—swine that are continuously managed and have adequate facilities and practices to prevent exposures to feral swine;

2. Feral swine—swine that are free roaming or Russian and Eurasian that are confined. This includes javelinas and peccaries; and

3. Transitional swine—swine raised on dirt or that have reasonable opportunities to be exposed to feral swine.

(D) All feral swine (including Eurasian and Russian) moving within Missouri must:

1. Obtain an entry permit;

2. Be officially identified;

3. Be listed individually on a Certificate of Veterinary Inspection, in addition to age, gender, and permit number of feral swine facility of destination;

4. Be from a validated and qualified herd, last test date, and herd numbers must be listed on the Certificate of Veterinary Inspection; or

5. Have two (2) negative tests sixty (60) days apart for brucellosis and pseudorabies within thirty to sixty (30–60) days prior to movement. The laboratory and test date must be listed on the Certificate of Veterinary Inspection.

6. Feral swine moving directly from the farm-of-origin to an approved processing facility or to an approved slaughter-only facility will be exempt from required testing.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1737–1738). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

The proposed policy rule incorporates the MEEIA rule by requiring the resource planning process to be in compliance with all legal mandates. This language is flexible in that it incorporates the MEEIA requirements and all future federal and state legal mandates. For that reason the commission has included language regarding compliance with legal mandates in section (2) of the rule as proposed.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the

commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition of "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.010(1). Ameren Missouri takes issue with the section that states the commission's policy goal in promulgating this chapter. The existing rule states that the chapter establishes a resource planning process "to ensure that the public interest is adequately served." The amendment would add "with a view to the public welfare, efficient facilities, and substantial justice between patrons and public utilities."

Ameren Missouri is concerned that the added terms are unclear, undefined, and unnecessary. Ameren Missouri suggests the new phrase simply be removed from the amendment. Alternatively, Ameren Missouri suggests the commission add "utility shareholders" to the list of considerations that make up the public interest.

In its comments at the hearing, staff explained that the new language is taken directly from section 386.610, RSMo 2000, which states that the provisions of the statute that establish the Public Service Commission should be "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

RESPONSE AND EXPLANATION OF CHANGE: In promulgating the rule changes regarding Chapter 22, the commission did not intend to modify its objective to protect the public interest. The new language quoting the statutory provision is therefore unnecessary and can only confuse future interpretation of the rule. Therefore, the commission will remove the new language from section (1) of this rule.

COMMENT #7: Changes to Section 4 CSR 240-22.010(2)—"rates" to "costs." The Department of Natural Resources suggests that the reference in section (2) to just and reasonable "rates" be changed to just and reasonable "costs," reasoning that "costs" is a more accurate description of the factor that has a direct effect on customers.

RESPONSE: The commission has statutory authority to set rates for the services provided by the utilities it regulates. Customers ultimately determine their costs for utility services based upon their personal decisions in response to the utility's service offerings. The commission will not change "rates" to "costs" in this section.

COMMENT #8: Changes to Section 4 CSR 240-22.010(2)—consistent with other policies. The Department of Natural Resources suggests that language be added indicating that the fundamental objective of the resource planning process should be consistent with state energy and environmental policies.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and will modify the section accordingly.

COMMENT #9: Changes to Subsection 4 CSR 240-22.010(2)(A). The Department of Natural Resources suggests that the subsection should be modified to reflect a priority for demand-side resources that result in all cost-effective demand-side savings. DNR further suggests that the subsection be modified to specifically include analysis of renewable energy and supply-side additions and retirements on an equivalent basis.

RESPONSE: The commission does not agree that demand-side resources should be given priority over supply-side resources. Section 393.1075.3, RSMo, establishes that it is the policy of this state to value demand-side investments equally to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22. The commission will not make the change proposed by DNR.

4 CSR 240-22.010 Policy Objectives

(1) The commission's policy goal in promulgating this chapter is to set minimum standards to govern the scope and objectives of the resource planning process that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served. Compliance with these rules shall not be construed to result in commission approval of the utility's resource plans, resource acquisition strategies, or investment decisions.

(2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall—

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
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SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

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RESPONSE AND EXPLANATION OF CHANGE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

To this end, the commission, as described below, is changing the definitions of realistic achievable potential and technical potential to be consistent with the MEEIA rule definitions and will add a definition for maximum achievable potential consistent with the MEEIA rule definition.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are more appropriate alternatives for pre-approval and

will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.020(5). This is a new section in the proposed amendment that adds a definition of "concern." The Department of Natural Resources would revise the definition of "concern" to eliminate the implication that a "concern" can be treated as less important than a "deficiency." DNR would also add a definition of "substantive concern" as part of its proposal to authorize commission acknowledgment.

Public counsel proposes the following change to the definition of "concern":

> Concern means concerns with the electric utility's compliance with the provisions of this chapter, and major concerns with the methodologies or analysis required to be performed by this chapter, and anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

Public counsel points out that the limited definition in the proposed rule does not make sense because it is not possible to determine ahead of time whether a deficiency in compliance with Chapter 22, or with the methodologies or analyses required, would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22. Such a determination cannot be made until the analysis is redone to correct for the deficiency in compliance with Chapter 22, or with the methodologies or analyses required, and the new analyses are reviewed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the change proposed by public counsel and will modify the definition of concern in the manner suggested by public counsel and will renumber the definition as section 4 CSR 240-22.020(6). This definition will be sufficient for acknowledgment as adopted by the commission.

COMMENT #7: Changes to Section 4 CSR 240-22.020(8). This section of the proposed amendment would add a definition of "deficiency." The Department of Natural Resources proposes an expanded definition of "deficiency" that would ensure that a "deficiency" would be subject to a broad definition. Ameren Missouri also proposes a change to the definition of "deficiency." Ameren Missouri's change would narrow the definition by making it clear that only substantial noncompliance with the requirements of the Chapter 22 rules would constitute a "deficiency." In its written comments, public counsel proposed the following revised definition:

> Deficiency means deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

Public counsel points out that the limited definition in the proposed rule does not make sense because it is not possible to determine ahead of time whether a deficiency in compliance with Chapter 22, or with the methodologies or analyses required, would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22. Such a determination cannot be made until the analysis is redone to correct for the deficiency in compliance with Chapter 22, or with the methodologies or analyses required, and the new analyses are reviewed.

RESPONSE AND EXPLANATION OF CHANGE: The commission does not believe that the changes proposed by DNR and Ameren Missouri are necessary and will not incorporate them in the rule. However, the commission agrees with the change proposed by public counsel and will modify the definition of deficiency in the manner suggested by public counsel. The definition will be renumbered as section (9) of this rule.

COMMENT #8: Changes to Section 4 CSR 240-22.020(27). This section of the proposed amendment adds a definition of "legal mandates." Public counsel would modify that definition to make it more consistent with provisions for calculations of economic impacts of alternative resource plans found in paragraph 4 CSR 240-22.060(4)(C)2. Specifically, public counsel would add "cost recovery mechanisms" to the definition, which would result in the legal mandates that affect cost recovery mechanisms being included as a legal mandate for the purposes of Chapter 22.

RESPONSE: The commission will modify the definition in the manner suggested by public counsel and will renumber the definition as section (28) of this rule. This will make meeting MEEIA and any future cost recovery legal mandates a fundamental objective of Chapter 22.

COMMENT #9: Changes to Section 4 CSR 240-22.020(35). Staff proposes to modify the definition of "lost revenues" to change "installed demand-side measures" to "installed end-use measures." Staff indicates this change is needed to make the definition consistent with other aspects of the rule. Public counsel indicated its support for this change.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the definition as suggested by staff and will renumber the definition as section (36) of this rule.

COMMENT #10: Changes to Section 4 CSR 240-22.020(36). In the proposed amendment, "major class" is defined as a "cost-of-service class of the utility." KCPL suggests that the commission instead define "major class" by economic sector—residential, commercial, and manufacturing. KCPL explains that it currently prepares its budgets and forecasts based on economic sectors. Requiring it to prepare separate budgets and forecasts based on its cost-of-service classifications would be duplicative and wasteful.

Staff responded to KCPL's argument at the hearing. Staff explains that there are advantages to using cost-of-service classes in that hourly load research data is at that level and small and large customer, which are impacted differently by economic conditions, are grouped separately.

RESPONSE: The commission agrees with its staff and will not modify the definition of major class. However, this section will be renumbered as section (37) of this rule.

COMMENT #11: Changes to the Definitions of Realistic Achievable, Maximum Achievable, and Technical Potential. The Department of Natural Resources proposes to replace the proposed definition of realistic achievable potential of a demand-side candidate resource option or portfolio with a definition drawn from the National Action Plan for Energy Efficiency (NAPEE) manual on best practices for analyzing demand-side potential. DNR contends its definition would better identify the specific considerations a utility should take into account when identifying the implementation level associated with realistic achievable potential.

RESPONSE AND EXPLANATION OF CHANGE: Substituting the NAPEE definition of achievable potential for the current definition of realistic achievable potential would create a very material change to the current proposed rules because the NAPEE definition of achievable potential is equivalent to the current proposed definition of maximum achievable potential. Using the NAPEE definitions will result in the most aggressive demand-side management (DSM) program scenarios possible (e.g., "providing end-users with payments for the entire incremental cost of more efficiency equipment") while maximum achievable potential in the current proposed rules assumes ". . . incentives that represent a very high portion of total program costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed." As noted in the NAPEE definition of achievable potential, changing the definitions assumes "the most aggressive program scenario possible." The commission believes substituting the definitions will result in an expectation of very high goals that are unrealistic and unattainable. Therefore, the commission will not adopt the NAPEE definition.

However, the commission notes that the definitions of realistic achievable potential and technical potential in the proposed amendment do not match the definitions of those terms found in the commission's MEEIA rules. The commission will, therefore, change those definitions in this rule so they match the definitions in the MEEIA rules. In addition, the commission will add a definition of maximum achievable potential for reasons more fully explained in Comment #11 in the Order of Rulemaking for 4 CSR 240-22.060. That new definition will also match the definition for that term in the MEEIA rules.

The new definition of maximum achievable potential will be added as section (40) of this rule. All subsequent sections of the rule will be renumbered accordingly.

COMMENT #12: Changes to Section 4 CSR 240-22.020(52). This section defines RTO as Regional Transmission Organization. Staff recommends the definition of RTO be expanded to include independent transmission system operators, reasoning that Ameren Missouri belongs to the Midwest Independent Transmission System Operator. Public counsel opposes this change as unnecessary because the Midwest Independent Transmission System Operator is an RTO and no change to the definition is needed to make it fit within the definition.

RESPONSE AND EXPLANATION OF CHANGE: The Midwest Independent Transmission Operator is an RTO, but the commission will adopt staff's recommendation so that it is clear to all persons reading the rule that the Midwest ISO is an RTO. This section will be renumbered as section (54) of this rule.

COMMENT #13: Changes to Section 4 CSR 240-22.020(53). This section defines "special contemporary issues." Staff proposes to modify that definition to make it consistent with the provisions of 4 CSR 240-22.080(4), which requires the commission to issue the list of contemporary issues. Public counsel supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission will incorporate the modification proposed by staff and will renumber this section (55) of this rule.

COMMENT #14: New Definition of Acknowledgment. As part of its proposal to include an option for the commission to acknowledge the reasonableness of a utility's resource plan, the Department of Natural Resources proposes the commission include a definition of acknowledgment.

RESPONSE AND EXPLANATION OF CHANGE: Because the commission has decided to include acknowledgement of the utility's resource acquisition strategy in its Chapter 22 rules, the commission will add a modified definition of acknowledgment to the rule as section (1) of this rule. All subsequent sections of the rule will be renumbered accordingly.

COMMENT #15: New Definition of Substantive Concern. DNR would also add a definition of "substantive concern" as part of its proposal to authorize commission acknowledgment.

RESPONSE: The commission will not add DNR's proposed definition because it is essentially identical to the revised definition of "concern" now contained in the rule. Inclusion of an additional definition that mirrors an existing definition would only create confusion.

4 CSR 240-22.020 Definitions

(1) Acknowledgment is an action the commission may take with respect to the officially adopted resource acquisition strategy or any element of the resource acquisition strategy including the preferred resource plan. Acknowledgement means that the commission finds the preferred resource plan, resource acquisition strategy, or the specified element of the resource acquisition strategy to be reasonable at a specific date, typically the date of the filing of the utility's Chapter 22 compliance filing or the date that acknowledgment is given. Acknowledgment may be given in whole, in part, or not at all. Acknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects.

(2) Annual update filing means the annual update report prepared by the utility in advance of the annual update workshop and the summary report prepared by the utility following the workshop as referenced in 4 CSR 240-22.080(3).

(3) Candidate resource options are the potential demand-side resource options pursuant to 4 CSR 240-22.050(6) and the potential supply-side resource options pursuant to 4 CSR 240-22.040(4) that advance to be included in one (1) or more alternative resource plans.

(4) Capacity means the maximum capability to continuously produce and deliver electric power via supply-side resources or the avoidance of the need for this capability by demand-side resources.

(5) Coincident demand means the hourly demand of a component of system load at the hour of system peak demand within a specified interval of time.

(6) Concern means concerns with the electric utility's compliance with the provisions of this chapter, any major concerns with the methodologies or analyses required to be performed by this chapter, and anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

(7) Contingency resource plan means an alternative resource plan designed to enhance the utility's ability to respond quickly and appropriately to events or circumstances that would render the preferred resource plan obsolete.

(8) Critical uncertain factor is any uncertain factor that is likely to materially affect the outcome of the resource planning decision.

(9) Deficiency means deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

(10) Demand means the rate of electric power use measured in kilowatts (kW).

(11) Demand-side program means an organized process for packaging and delivering to a particular market segment a portfolio of end-use measures that is broad enough to include at least some measures that are appropriate for most members of the target market segment.

(12) Demand-side rate means a rate structure for retail electric service designed to reduce the net consumption or modify the time of consumption of a customer rate class.

(13) Demand-side resource is a demand-side program or a demand-side rate conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter. A load-building program or rate is not a demand-side resource.

(14) Describe and document refers to the demonstration of compliance with each provision of this chapter. Describe means the provision of information in the technical volume(s) of the triennial compliance filing, in sufficient detail to inform the stakeholders how the utility complied with each applicable requirement of Chapter 22, why that approach was chosen, and the results of its approach. The description in the technical volume(s), including narrative text, graphs, tables, and other pertinent information, shall be written in a manner that would allow a stakeholder to thoroughly assess the utility's resource acquisition strategy and each of its components. Document means the provision of all of the supporting information relating to the filed resource acquisition strategy pursuant to 4 CSR 240-22.080(11).

(15) Distributed generation means a grid-connected electric generation system that is sized based on local load requirements and distributed primarily to the local load.

(16) Electric utility or utility means any electrical corporation as defined in section 386.020, RSMo, which is subject to the jurisdiction of the commission.

(17) End-use energy service or energy service means the specific need that is served by the final use of energy, such as lighting, cooking, space heating, air conditioning, refrigeration, water heating, or motive power.

(18) End-use measure means an energy-efficiency measure or an energy-management measure.

(19) Energy means the total amount of electric power that is generated or used over a specified interval of time measured in kilowatt-hours (kWh).

(20) Energy-efficiency measure means any device, technology, or operating procedure that makes it possible to deliver an adequate level and quality of end-use energy service while using less energy than would otherwise be required.

(21) Energy-management measure means any device, technology, or operating procedure that makes it possible to alter the time pattern of electricity usage so as to require less generating capacity or to allow the electric power to be supplied from more fuel-efficient generating units. Energy-management measures are sometimes referred to as demand-response measures.

(22) Expected cost of an alternative resource plan is the statistical expectation of the cost of implementing that plan, contingent upon the uncertain factors and associated probabilities. The utility shall consider probable environmental costs as well as direct utility costs in its assessment of alternative resource plans.

(23) Expected unserved hours means the statistical expectation of the number of hours per year that a utility will be unable to supply its native load without importing emergency power.

(24) Historical period shall be the ten (10) most recent years or the period of time used as the basis of the utility's forecast, whichever is longer.

(25) Implementation period means the time interval between the triennial compliance filings required of each utility pursuant to 4 CSR 240-22.080.

(26) Implementation plan means descriptions and schedules for the major tasks necessary to implement the preferred resource plan over the implementation period.

(27) Information means any fact, relationship, insight, estimate, or expert judgment that narrows the range of uncertainty surrounding key decision variables or has the potential to substantially influence or alter resource-planning decisions.

(28) Legal mandates include applicable state and federal executive orders, legislation, court decisions, and applicable state and federal administrative agency orders, rules, and regulations affecting electric utility cost recovery mechanisms, loads, resources, or resource plans.

(29) Levelized cost means the dollar amount of a fixed annual payment for which a stream of those payments over a specified period of time is equal to a specified present value based on a specified rate of interest.

(30) Life-cycle cost means the present worth of costs over the lifetime of any device or means for delivering end-use energy service.

(31) Load-building program means an organized promotional effort by the utility to persuade energy-related decision-makers to choose electricity instead of other forms of energy for the provision of energy service or to persuade existing customers to increase their use of electricity, either by substituting electricity for other forms of energy or by increasing the level or variety of energy services used. This term is not intended to include the provision of technical or engineering assistance, information about filed rates and tariffs, or other forms of routine customer service.

(32) Load impact means the change in energy usage and the change in diversified demand during a specified interval of time due to the implementation of a demand-side resource.

(33) Load profile means a plot of hourly demand versus chronological hour of the day from the hour ending 1:00 a.m. to the hour ending 12:00 midnight.

(34) Load-research data means major class level average hourly demands (kWhs per hour) derived from the metered instantaneous demand for each customer in the load-research sample.

(35) Long run means an analytical framework within which all factors of production are variable.

(36) Lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed end-use measures, multiplied by the fixed-cost margin of the appropriate rate component.

(37) Major class is a cost-of-service class of the utility.

(38) Market imperfection means any factor or situation that contributes to inefficient energy-related choices by decision-makers, including at least:

(A) Inadequate information about costs, performance, and benefits of end-use measures;

(B) Inadequate marketing infrastructure or delivery channels for end-use measures;

(C) Inadequate financing options for end-use measures;

(D) Mismatched economic incentives resulting from situations where the person who pays the initial cost of an efficiency investment is different from the person who pays the operating costs associated with the chosen efficiency level;

(E) Ineffective economic incentives when decision-makers give low priority to energy-related choices because they have a short-term ownership perspective or because energy costs are a relatively small share of the total cost structure (for businesses) or of the total budget (for households); or

(F) Inefficient pricing of energy supplies.

(39) Market segment means any subgroup of utility customers (or other energy-related decision-makers) which has some or all of the following characteristics in common: they have a similar mix of end-use energy service needs, they are subject to a similar array of market imperfections that tend to inhibit efficient energy-related choices, they have similar values and priorities concerning energy-related choices, or the utility has access to them through similar channels or modes of communication.

(40) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total program costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and are not typically observed.

(41) Nominal dollars means future or then-current dollar values that are not adjusted to remove the effects of anticipated inflation.

(42) Participant means an energy-related decision-maker who implements one (1) or more end-use measures as a direct result of a demand-side program.

(43) Planning horizon means a future time period of at least twenty (20) years' duration over which the costs and benefits of alternative resource plans are evaluated.

(44) Plot means a graphical representation to present data. Each plot shall be labeled as a stand-alone figure, whose axes shall be labeled with units. The data presented in each plot also shall be provided in tabular form in the technical volumes and in workpapers. Data tables will be labeled, including the identification of the corresponding plot. The plots and data tables shall be numbered, referenced, and explained in the text of the technical volumes and in workpapers.

(45) Potential resource options are all of the resources in the comprehensive set of demand-side resources that shall be considered pursuant to 4 CSR 240-22.050(1) and in the comprehensive set of supply-side resources that shall be considered pursuant to 4 CSR 240-22.040(1).

(46) Preferred resource plan means the resource plan that is contained in the resource acquisition strategy that has most recently been adopted by the utility decision-maker(s) for implementation by the electric utility.

(47) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

(48) Public counsel means the public counsel of the state of Missouri or their designated representative.

(49) Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential.

(50) Renewable energy means electricity generated from a source that is classified as a renewable energy source under a state or federal renewable energy standard to which the utility is subject.

(51) Resource acquisition strategy means a preferred resource plan, an implementation plan, a set of contingency resource plans, and the events or circumstances that would result in the utility moving to each contingency resource plan. It includes the type, estimated size, and timing of resources that the utility plans to achieve in its preferred resource plan.

(52) Resource plan means a particular combination of demand-side and supply-side resources to be acquired according to a specified schedule over the planning horizon.

(53) Resource planning means the process by which an electric utility evaluates and chooses the appropriate mix and schedule of supply-side, demand-side, and distribution and transmission resource additions and retirements to provide the public with an adequate level, quality, and variety of end-use energy services.

(54) RTO/ISO means Regional Transmission Organization or independent transmission system operator as defined in the Federal Energy Regulatory Commission (FERC) Order 200 and subsequent FERC orders.

(55) Special contemporary issues means a written list of issues contained in a commission order with input from staff, public counsel, and intervenors that are evolving new issues, which may not otherwise have been addressed by the utility or are continuations of unresolved issues from the preceding triennial compliance filing or annual update filing. Each utility shall evaluate and incorporate special contemporary issues in its next triennial compliance filing or annual update filing.

(56) Stakeholder group means—

(A) Staff, public counsel, and any person or entity granted intervention in a prior Chapter 22 proceeding of the electric utility. Such persons or entities shall be a party to any subsequent related Chapter 22 proceeding of the electric utility without the necessity of applying to the commission for intervention; and

(B) Any person or entity granted intervention in a current Chapter 22 proceeding of the electric utility.

(57) Subjective probability means the judgmental likelihood that the outcome will actually occur.

(58) Supply-side resource or supply resource means any device or method by which the electric utility can provide to its customers an adequate level and quality of electric power supply.

(59) Technical potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from a theoretical construct that assumes all feasible measures are adopted by customers of the utility regardless of cost or customer preference.

(60) Total resource cost test is a test of the cost-effectiveness of demand-side programs or demand-side rates that compares the sum of avoided utility costs plus avoided probable environmental costs to the sum of all incremental costs related to the end-use measures that are implemented due to the program or related to the rates (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources.

(61) Uncertain factor means any event, circumstance, situation, relationship, causal linkage, price, cost, value, response, or other relevant quantity which can materially affect the outcome of resource planning decisions, about which utility planners and decision-makers have incomplete or inadequate information at the time a decision must be made.

(62) Utility costs are the costs of operating the utility system and developing and implementing a resource plan that are incurred and paid by the utility. On an annual basis, utility cost is synonymous with utility revenue requirement.

(63) The utility cost test is a test of the cost-effectiveness of demand-side programs or demand-side rates that compares the avoided utility costs to the sum of all utility incentive payments, plus utility costs to administer, deliver, and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources.

(64) Utility discount rate means the post-tax rate of return on net investment used to calculate the utility's annual revenue requirements.

(65) Weather measure means a function of daily temperature data that reflects the observed relationship between electric load and temperature.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1741–1746). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy

Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, has the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

This particular rule, the load analysis and load forecasting rule, is no longer prescriptive of the requirements regarding the methodology the utility must use in its load analysis and forecasting. However, it is more prescriptive regarding the information the utility must provide in its compliance filing.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 392.1075, RSMo, (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.
RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.
RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.
RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge

that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not preapproval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.030(1)(B). Staff indicates the word "data" was inadvertently left out of this subsection. Public counsel supports this change.
RESPONSE AND EXPLANATION OF CHANGE: The commission will incorporate the correction proposed by staff.

4 CSR 240-22.030 Load Analysis and Load Forecasting

(1) Selecting Load Analysis Methods. The utility may choose multiple methods of load analysis if it deems doing so is necessary to achieve all of the purposes of load analysis and if the methods are consistent with, and calibrated to, one another. The utility shall describe and document its intended purposes for load analysis methods, why the selected load analysis methods best fulfill those purposes, and how the load analysis methods are consistent with one another and with the end-use consumption data used in the demand-side analysis as described in 4 CSR 240-22.050. At a minimum, the load analysis methods shall be selected to achieve the following purposes:

(B) To derive a data set of historical values from load research data that can be used as dependent and independent variables in the load forecasts;

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1746–1749). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The rule is also less prescriptive in some areas. For example, it no longer lists the attributes of supply-side options that the utility must consider. It is more prescriptive in other areas; for example, with regard to supply-side option's interconnection agreements. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred

resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires a screening of supply-side resources that are further evaluated, along with demand-side resources, through an integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition of "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: The Role of Regional Transmission Organizations (RTOs) in Transmission Planning for Supply-Side Analysis. KCPL raises a general concern that the rule fails to recognize the important role regional transmission organizations play in transmission planning for the electric utilities. KCPL is concerned that it is not feasible to conduct a fully integrated supply-side analysis without recognizing that transmission to secure delivery of the electricity can only be developed with the cooperation of the RTOs. KCPL suggests that the commission modify the rule to better recognize the role of the RTOs.

RESPONSE: The commission recognizes that regional transmission organizations play an important part in transmission planning for the electric utilities. However, the commission also recognizes that the utilities themselves also play an important role in determining transmission planning for their utility. The commission does not believe that this rule requires the utility to take each of the supply-side options to its RTO to get a detailed estimate of the transmission necessary for each option. However, the commission does expect the utility to have the experience and expertise to be able to provide a reasonable estimate for each option as required by the rule. The commission will not make any changes to the rule based on this comment.

COMMENT #7: Changes to Sections 4 CSR 240-22.040(1) and (4). The Department of Natural Resources asks the commission to modify these two (2) sections to explicitly require electric utilities to include retirement of existing generating plants and other supply-side resources as potential supply-side resource options and supply-side candidate resource options as part of their supply-side analysis.

RESPONSE: The commission cannot see how retiring an existing

supply-side resource is a resource option. However, the commission expects the utilities to include analysis of retiring existing supply-side resources as an integral part of electric utility resource planning. In addition, the rule requires screening of all supply-side options. There is no need to change the rule in the manner requested by DNR.

COMMENT #8: Changes to Subsection 4 CSR 240-22.040(2)(A). Dogwood suggests this subsection be modified to ensure that cost rankings of potential supply-side options take into account the additional costs that will be incurred to assure reliable integration of intermittent or uncontrollable supply sources, such as solar and wind power. Dogwood claims that if such costs are disregarded, the utility's analysis will be incomplete. To correct this problem, Dogwood asks the commission to add an additional sentence to the end of this subsection.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood's suggestion and will modify this subsection accordingly.

COMMENT #9: Changes to Subsection 4 CSR 240-22.040(3)(A). Dogwood is concerned that the commission has inadvertently limited the scope of the analysis required by this subsection by including a specific list of six (6) supply-side options. Dogwood suggests the commission remove the specific list and instead include a more general requirement that the utility "provide an adequate foundation of basic information for decisions about supply-side resource alternatives."
RESPONSE AND EXPLANATION OF CHANGE: The commission believes the specific list of six (6) supply-side options should remain in the rule. However, it agrees that the utility's analysis should not be limited to those six (6) options. To correct the problem, the commission will retain the list but will add language to the end of subsection (3)(A) of this rule to clarify that the list is not exhaustive.

COMMENT #10: Changes to Section 4 CSR 240-22.040(5). The Department of Natural Resources urges the commission to modify this section to establish more specific criteria by which the electric utility is to forecast critical uncertain factors that affect forecasted values and probabilities.
RESPONSE: The commission does not believe the added prescriptiveness proposed by DNR is necessary and will not modify the section.

4 CSR 240-22.040 Supply-Side Resource Analysis

(2) The utility shall describe and document its analysis of each potential supply-side resource option referred to in section (1). The utility may conduct a preliminary screening analysis to determine a short list of preliminary supply-side candidate resource options, or it may consider all of the potential supply-side resource options to be preliminary supply-side candidate resource options pursuant to subsection (2)(C). All costs shall be expressed in nominal dollars.

(A) Cost rankings of each potential supply-side resource option shall be based on estimates of the installed capital costs plus fixed and variable operation and maintenance costs levelized over the useful life of the potential supply-side resource option using the utility discount rate. The utility shall include the costs of ancillary and/or back-up sources of supply required to achieve necessary reliability levels in connection with intermittent and/or uncontrollable sources of generation (i.e., wind and solar).

(3) The utility shall describe and document its analysis of the interconnection and any other transmission requirements associated with the preliminary supply-side candidate resource options identified in subsection (2)(C).

(A) The analysis shall include the identification of transmission constraints, as estimated pursuant to 4 CSR 240-22.045(3), whether within the Regional Transmission Organization's (RTO's) footprint, on an interconnected RTO, or a transmission system that is not part of an RTO. The purpose of this analysis shall be to ensure that the transmission network is capable of reliably supporting the preliminary supply-side candidate resource options under consideration, that the costs of the transmission system investments associated with preliminary supply-side candidate resource options, as estimated pursuant to 4 CSR 240-22.045(3), are properly considered and to provide an adequate foundation of basic information for decisions to include, but not be limited to, the following:

1. Joint ownership or participation in generation construction projects;

2. Construction of wholly-owned generation facilities;

3. Participation in major refurbishment, life extension, upgrading, or retrofitting of existing generation facilities;

4. Improvements on its transmission and distribution system to increase efficiency and reduce power losses;

5. Acquisition of existing generating facilities; and

6. Opportunities for new long-term power purchases and sales, and short-term power purchases that may be required for bridging the gap between other supply options, both firm and nonfirm, that are likely to be available over all or part of the planning horizon.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-22.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1749–1753). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the rule.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgement option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Comments of Commissioner Jeff Davis. Commissioner Jeff Davis filed written comments regarding this section of the Chapter 22 rules. Commissioner Davis explains that he originally questioned whether this new rule on transmission and distribution analysis planning was needed because it might duplicate at least some of the work going on at the Regional Transmission Organization (RTO) level. Commissioner Davis explains that he now believes the rule is necessary because events at the Southwest Power Pool (SPP), which is an RTO providing services to Empire and KCPL, have convinced him that the rule is needed to increase accountability for Missouri's electric utilities.

Davis suggests that the rule does not go far enough, and he urges the commission to expand the rule to include any transmission contemplated by any affiliate to the regulated utility, such as Union Electric's affiliate Ameren Transmission Company, as well as any projects the utility is considering assigning or "novating."

Davis also asks that the rule require the utility to provide a comprehensive list of all transmission projects the RTO is planning or considering in their respective service region or territory.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the concerns expressed by Commissioner Davis and will address those concerns along with similar concerns and suggestions by other stakeholders through the commission's responses to Comments #12, #15, #18, and #19 of this order of rulemaking.

COMMENT #7: Change to Section 4 CSR 240-22.045(1). Public counsel asks the commission to change a reference to "fundamental planning objectives" to the singular, "objective," reasoning that the rule only describes one (1) fundamental planning objective.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this section accordingly.

COMMENT #8: Change to Subsection 4 CSR 240-22.045(1)(A). At the hearing, Ameren Missouri proposed to insert language from section 4 CSR 240-22.040(7) of the current rule that makes it clear that the utility is not required to make a detailed line-by-line analysis of the transmission and distribution system. Ameren Missouri believes this change is necessary so the utilities can avoid doing more analysis than is necessary.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Ameren Missouri's comment and will modify this subsection accordingly.

COMMENT #9: Change to Subsection 4 CSR 240-22.045(1)(D). At the hearing, Ameren Missouri proposed a change to this subsection that would require the utility to consider improvements to the transmission and distribution networks that incorporate technologies that are "commercially available and field-tested at the time of filing."
RESPONSE: The commission will not modify this subsection as proposed by Ameren Missouri because to do so would create an inconsistent approach between this rule and the supply-side analysis rule, 4 CSR 240-22.050. Subsection 4 CSR 240-22.045(1)(D) requires that the utility assess transmission and distribution improvements that may become available during the planning horizon even though these improvements may not be commercially available and field-tested at the time of the filing.

COMMENT #10: KCPL's Comments Regarding the Proper Role of RTOs. KCPL is generally concerned that the proposed rule does not adequately recognize the magnitude of the role played by RTOs in the transmission planning process of an electric utility. KCPL asks the commission to modify several sections of the rule to better recognize the primary planning role of the RTO and the limitations on the ability of the utilities to plan for transmission. Specifically, KCPL asks the commission to modify subsections (1)(C), (1)(D), (3)(B), (3)(D), (4)(A), and (4)(C) and sections (3) and (4). KCPL did not offer any specific language to resolve its concern.
RESPONSE: None of the other electric utilities expressed a similar concern and KCPL provided no specific alternative language to address its concerns either in its written comments or during its comments offered at the public hearing. The commission does not believe that any modification is necessary and will make no change to the rule as a result of this comment.

COMMENT #11: Changes to Paragraph 4 CSR 240-22.045(3)(A)1. Public counsel asks the commission to add a reference to "congestion" as a factor that a utility must assess with regard to transmission upgrades.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.045(3)(A)4. Public counsel asks the commission to add language to this section to make it clear that utilities must also analyze transmission that will be built and owned by an affiliate of the utility. Staff proposed to achieve the same result by adding similar new language at section (5). Public counsel does not oppose staff's proposed language but believes its proposal is better.
RESPONSE AND EXPLANATION OF CHANGE: The commission will address staff's proposed new language at Comment #18 to this rule. The commission agrees with public counsel's proposed additional language for this paragraph and will incorporate that language, as modified by public counsel's witness at the hearing.

COMMENT #13: Changes to Paragraph 4 CSR 240-22.045(3)(A)6. Public counsel proposes a change in this subsection to recognize that an RTO generally does not build transmission itself, but instead approves transmission projects that are built by others. At the hearing, staff agreed to the change proposed by public counsel but suggested slightly modified language. Public counsel then agreed that staff's modified language was most appropriate. Public counsel also suggested that the word "primarily" be added before "economic reasons" to ensure that this provision does not apply solely to upgrades where one hundred percent (100%) of the benefits are considered to be economic benefits.
RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the modified language proposed by public counsel and staff.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.045(3)(B)2. Public counsel proposes to modify this paragraph to make it clear that Missouri utilities are to review RTO expansion plans to assess whether those plans are in the interests of the utility's "Missouri" customers.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this paragraph accordingly.

COMMENT #15: Changes to Paragraphs 4 CSR 240-22.045(3)(B)3., 4., and 5. Public counsel proposes to add additional language to ensure that necessary analysis is performed to assess the impact on planning objectives of transmission built and owned by an affiliate of the utility.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this subsection accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.045(3)(D)5. This subsection requires the planning utility to estimate the estimated total cost of each transmission upgrade and "estimated congestion costs." KCPL argues that it would be very difficult for a utility to estimate congestion costs and to do so would entail substantial cost and produce minimal value in the Integrated Resource Planning (IRP) process. For that reason, KCPL asks the commission to remove the requirement to estimate congestion costs from the paragraph.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the proposed change, but for a different reason. The subsection refers to transmission projects "needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network," instead of economic projects, where congestion cost analysis would be more valuable. For that reason, the commission will remove the requirement to estimate congestion costs from the paragraph.

COMMENT #17: Changes to Subsection 4 CSR 240-22.045(4)(C). Public counsel proposes changes to this subsection that would ensure that incremental benefits were calculated by comparing the benefits of one (1) approach to the benefits of another approach.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #18: New Section 4 CSR 240-22.045(5). Staff proposed to add a new section to require the utility to describe the transmission plans of affiliated transmission companies, as well as other transmission company projects that impact or that may be impacted by the electric utility.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

COMMENT #19: New Section 4 CSR 240-22.045(6). Staff proposes to add a new section that will require the utility to identify and describe any transmission projects under consideration by an RTO for the utility's service territory.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

4 CSR 240-22.045 Transmission and Distribution Analysis

(1) The electric utility shall describe and document its consideration of the adequacy of the transmission and distribution networks in fulfilling the fundamental planning objective set out in 4 CSR 240-22.010. Each utility shall consider, at a minimum, improvements to the transmission and distribution networks that—

(A) Reduce transmission power and energy losses. Opportunities to reduce transmission network losses are among the supply-side resources evaluated pursuant to 4 CSR 240-22.040(3). The utility shall assess the age, condition, and efficiency level of existing transmission and distribution facilities and shall analyze the feasibility and cost effectiveness of transmission and distribution network loss-reduction measures This provision shall not be construed to require a detailed line-by-line analysis of the transmission and distribution systems, but is intended to require the utility to identify and analyze opportunities for efficiency improvements in a manner that is consistent with the analysis of other supply-side resource options;

(3) Transmission Analysis. The utility shall compile information and perform analyses of the transmission networks pertinent to the selection of a resource acquisition strategy. The utility and the Regional Transmission Organization (RTO) to which it belongs both participate in the process for planning transmission upgrades.

(A) The utility shall provide, and describe and document, its—

1. Assessment of the cost and timing of transmission upgrades to reduce congestion and/or losses, to interconnect generation, to facilitate power purchases and sales, and to otherwise maintain a viable transmission network;

2. Assessment of transmission upgrades to incorporate advanced technologies;

3. Estimate of avoided transmission costs;

4. Estimate of the portion and amount of costs of proposed regional transmission upgrades that would be allocated to the utility, and if such costs may differ due to plans for the construction of facilities by an affiliate of the utility instead of the utility itself, then an estimate, by upgrade, of this cost difference;

5. Estimate of any revenue credits the utility will receive in the future for previously built or planned regional transmission upgrades; and

6. Estimate of the timing of needed transmission and distribution resources and any transmission resources being planned by the RTO primarily for economic reasons that may impact the alternative resource plans of the utility.

(B) The utility may use the RTO transmission expansion plan in its consideration of the factors set out in subsection (3)(A) if all of the following conditions are satisfied:

1. The utility actively participates in the development of the RTO transmission plan;

2. The utility reviews the RTO transmission overall expansion plans each year to assess whether the RTO transmission expansion plans, in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

3. The utility reviews the portion of RTO transmission expansion plans each year within its service territory to assess whether the RTO transmission expansion plans pertaining to projects that are partially- or fully-driven by economic considerations (i.e., projects that are not solely or primarily based on reliability considerations), in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

4. The utility documents and describes its review and assessment of the RTO overall and utility-specific transmission expansion plans; and

5. If any affiliate of the utility intends to build transmission within the utility's service territory where the project(s) are partially- or fully-driven by economic considerations, then the utility shall explain why such affiliate-built transmission is in the best interest of the utility's Missouri customers and describe and document the analysis performed by the utility to determine whether such affiliate-built transmission is in the interest of the utility's Missouri customers.

(D) The utility shall provide a report for consideration in 4 CSR 240-22.040(3) that identifies the physical transmission upgrades needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network, including:

1. A list of the transmission upgrades needed to physically interconnect a generation source within the RTO footprint;

2. A list of the transmission upgrades needed to enhance deliverability from a point of delivery within the RTO including requirements for firm transmission service from the point of delivery to the utility's load and requirements for financial transmission rights from a point of delivery within the RTO to the utility's load;

3. A list of transmission upgrades needed to physically interconnect a generation source located outside the RTO footprint;

4. A list of the transmission upgrades needed to enhance deliverability from a generator located outside the RTO including requirements for firm transmission service to a point of delivery within the RTO footprint and requirements for financial transmission rights to a point of delivery within the RTO footprint;

5. The estimated total cost of each transmission upgrade; and

6. The estimated fraction of the total cost and amount of each transmission upgrade allocated to the utility.

(4) Analysis Required for Transmission and Distribution Network Investments to Incorporate Advanced Technologies.

(C) The utility shall describe and document its optimization of investment in advanced transmission and distribution technologies based on an analysis of—

1. Total costs and benefits, including:

A. Costs of the advanced grid investments;

B. Costs of the non-advanced grid investments;

C. Reduced resource costs through enhanced demand response resources and enhanced integration of customer-owned generation resources; and

D. Reduced supply-side production costs;

2. Cost effectiveness, including:

A. The monetary values of all incremental costs of the energy resources and delivery system based on advanced grid technologies relative to the costs of the energy resources and delivery system based on non-advanced grid technologies;

B. The monetary values of all incremental benefits of the energy resources and delivery system based on advanced grid technologies relative to the costs and benefits of the energy resources and delivery system based on non-advanced grid technologies; and

C. Additional non-monetary factors considered by the utility;

3. Societal benefit, including:

A. More consumer power choices;

B. Improved utilization of existing resources;

C. Opportunity to reduce cost in response to price signals;

D. Opportunity to reduce environmental impact in response to environmental signals;

4. Any other factors identified by the utility; and

5. Any other factors identified in the special contemporary issues process pursuant to 4 CSR 240-22.080(4) or the stakeholder group process pursuant to 4 CSR 240-22.080(5).

(5) The electric utility shall identify and describe any affiliate or other relationship with transmission planning, designing, engineering, building, and/or construction management companies that impact or may be impacted by the electric utility. Any description and documentation requirements in sections (1) through (4) also apply to any affiliate transmission planning, designing, engineering, building, and/or construction management company or other transmission planning, designing, engineering, building, and/or construction management company currently participating in transmission works or transmission projects for and/or with the electric utility.

(6) The electric utility shall identify and describe any transmission projects under consideration by an RTO for the electric utility's service territory.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1753–1761). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed amendment was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it."

Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

This rule is much less prescriptive than the previous rule. The utility is allowed to determine the approach it will take to develop demand-side programs for screening. It does not require that demand-side programs be developed for a wide spectrum of customers and end-uses. It also removes the detailed description of how the utility should calculate avoided costs. It does prescribe what costs should be taken into account and requires that the utility carefully document its processes and results.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to use the total resource cost test to screen demand-side resources. All resources, that have passed the screening, (both supply-side and demand-side), are further evaluated through integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers. Demand-side programs that survive this rigorous screening should be the programs for which the utility requests the commission's approval for non-traditional rate-making treatment.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.
RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.
RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.
RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.050(1). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the Integrated Resource Planning (IRP) process.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section 3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #7: Changes to Subsection 4 CSR 240-22.050(1)(B). The Department of Natural Resources asks the commission to "establish a yardstick" at the integration phase that encourages utility diligence in efforts to identify measures for screening of all major end uses and to formulate aggressive implementation strategies.
RESPONSE: The commission does not agree that the "yardstick" suggested by DNR should be established in 4 CSR 240-22.060(3)(A)3. (see Comment #12 for Order of Rulemaking for 4 CSR 240-22.060) and, therefore, will not modify this subsection of this rule.

COMMENT #8: Changes to Paragraph 4 CSR 240-22.050(1)(A)4. Renew Missouri contends this subsection is inconsistent with the MEEIA definitions of "demand-side program" that reduces "net consumption of electricity" and "energy efficiency," which means "measures that reduce the amount of electricity required to achieve a given end use." Renew Missouri suggests the paragraph be deleted for that reason.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Renew Missouri and will delete this paragraph.

COMMENT #9: Maximum Achievable Potential Substituted for Technical Potential. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential at several points in this rule. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. In its comments, staff expressed support for adding a definition for maximum achievable potential to the rule, but does not support deleting the term technical potential entirely from the rule.
RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential entirely from the rule. The commission will add a definition of maximum achievable potential that matches the definition of that term from its MEEIA rules. That new definition has been added as 4 CSR 240-22.020(40). The commission will also add maximum achievable potential to the purpose statement and section (2) of this rule and will substitute "maximum achievable potential" for "technical potential" in subparagraphs (3)(G)5.B. and (4)(D)5.A. of this rule.

COMMENT #10: Addition of "Customer" Classes. Public counsel asks the commission to add the word "customer" before "class or classes" at several points in the rule to improve clarity.
RESPONSE: The commission will not modify its rule as suggested by public counsel because each of the places public counsel would add the word "customer" is between the words "major class" and major class is defined in the rule as a cost-of-service class of the utility. Thus the modification is unnecessary.

COMMENT #11: Changes to Subsection 4 CSR 240-22.050(3)(E). Public counsel asks the commission to add the term "such as rebates, financing, and direct installations" as examples of the types of multiple approaches referenced in the subsection.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel that providing these examples adds clarity to the subsection and will modify the subsection accordingly.

COMMENT #12: Changes to Subsection 4 CSR 240-22.050(3)(F). Public counsel asks the commission to add the term "describe and document the feasibility, cost–reduction potential and potential benefits of" to provide guidance on the type of analysis needed in this area.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subsection accordingly.

COMMENT #13: Changes to Subparagraph 4 CSR 240-22.050(3)(G)5.B. Public counsel asks the commission to add the concept of financing cost to this subsection to ensure that the costs associated with using financing to encourage customer participation in demand-side programs are included in the utility's calculation of the cost of incentives.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subparagraph accordingly.

COMMENT #14: Changes to Subsection 4 CSR 240-22.050(4)(F). Public counsel asks the commission to add language to this subsection to add guidance on the manner in which demand-side rates are considered by the utility's Regional Transmission Organization (RTO).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion except for the words "and any other considerations." Those words are unnecessary because section (4) requires the utility to describe and document its demand-side rate planning and design process and to, at the least, include specific activities and elements. Thus, the rule sets out the minimum standard; other considerations may be taken into account.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.050(5)(A)2. Public counsel would add the word "other" to this subsection to reflect the fact that fuel costs and emission allowance costs are within the broad category of costs referred to as "variable operating and maintenance costs."
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will make the suggested change.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.050(5)(B)4. The Department of Natural Resources would add language to this subsection to clarify that costs identified in this subsection are to be counted only to the extent they are intended to recover incremental costs other than lost revenues or utility incentive payments to customers.

Public counsel would address the same concern by moving this paragraph to .050(5)(C) as a new paragraph 3. because the costs of incentive payments to ratepayers by the utility are not a net increase in the cost to society so they should be included in the utility cost test described in subsection (5)(C).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and public counsel. Public counsel's suggestion to delete paragraph .050(5)(B)4. and move it to a new paragraph (5)(C)3. will best deal with the concern and the commission will do so.

COMMENT #17: Changes to Section 4 CSR 240-22.050(6). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the IRP process.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section

3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #18: Changes to Paragraphs 4 CSR 240-22.050(6)(C)1. and 2. Public counsel would add the term "achievable potential to each demand-side candidate resource option or portfolio and the likelihood of occurrence for the different customer participation levels" to both paragraphs to make it clear that both the range of possible outcomes plus the likelihood of outcomes at different points in the range is necessary to estimate "the impact of uncertainty."
RESPONSE AND EXPLANATION OF CHANGE: The commission does not believe the clarifying edits provided by public counsel on these paragraphs are necessary and will not modify the paragraphs to add the suggested language. However, the commission will modify paragraph (6)(C)1. to delete the word "technical" and substitute the words "maximum achievable" to increase the usefulness of the information derived from the subsection during the electric utility resource planning process.

COMMENT #19: Changes to Subsection 4 CSR 240-22.050(6)(C)2. Staff advises the commission to change the term "demand-side" to "end-use" measures to be consistent with usage in other parts of the rule. Public counsel supports that change.
RESPONSE AND EXPLANATION OF CHANGE: The commission will make the change proposed by staff.

COMMENT #20: Additional Edits Proposed by Public Counsel. As part of its comments, public counsel submitted a red-line version of the proposed rule that incorporated several proposed changes to the rule. Public counsel specifically commented on most of those changes, but also included a few edits that were not otherwise explained in its comments.
RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed these additional edits and found them to be appropriate. The commission has incorporated those edits in section (2), subsections (1)(B) and (4)(D), and subparagraph (4)(D)5.A.

4 CSR 240-22.050 Demand-Side Resource Analysis

PURPOSE: This rule specifies the principles by which potential demand-side resource options shall be developed and analyzed for cost-effectiveness, with the goal of achieving all cost-effective demand-side savings. It also requires the selection of demand-side candidate resource options that are passed on to integrated resource analysis in 4 CSR 240-22.060 and an assessment of their maximum achievable potentials, technical potentials, and realistic achievable potentials.

(1) The utility shall identify a set of potential demand-side resources from which demand-side candidate resource options will be identified for the purposes of developing the alternative resource plans required by 4 CSR 240-22.060(3). A potential demand-side resource consists of a demand-side program designed to deliver one (1) or more energy efficiency and energy management measures or a demand-side rate. The utility shall select the set of potential demand-side resources and describe and document its selection—

(A) To provide broad coverage of—

1. Appropriate market segments within each major class;

2. All significant decision-makers, including at least those who choose building design features and thermal integrity levels, equipment and appliance efficiency levels, and utilization levels of the energy-using capital stock; and

3. All major end uses, including at least the end uses which are to be considered in the utility's load analysis as listed in 4 CSR 240-22.030(4)(A)1.;

(B) To fulfill the goal of achieving all cost-effective demand-side savings, the utility shall design highly effective potential demand-side programs consistent with subsection (1)(A) that broadly cover the full spectrum of cost-effective end-use measures for all customer market segments;

(2) The utility shall conduct, describe, and document market research studies, customer surveys, pilot demand-side programs, pilot demand-side rates, test marketing programs, and other activities as necessary to estimate the maximum achievable potential, technical potential, and realistic achievable potential of potential demand-side resource options for the utility and to develop the information necessary to design and implement cost-effective demand-side programs and demand-side rates. These research activities shall be designed to provide a solid foundation of information applicable to the utility about how and by whom energy-related decisions are made and about the most appropriate and cost-effective methods of influencing these decisions in favor of greater long-run energy efficiency and energy management impacts. The utility may compile existing data or adopt data developed by other entities, including government agencies and other utilities, as long as the utility verifies the applicability of the adopted data to its service territory. The utility shall provide copies of completed market research studies, pilot programs, pilot rates, test marketing programs, and other studies as required by this rule and descriptions of those studies that are planned or in progress and the scheduled completion dates.

(3) The utility shall develop potential demand-side programs that are designed to deliver an appropriate selection of end-use measures to each market segment. The utility shall describe and document its potential demand-side program planning and design process which shall include at least the following activities and elements:

(E) Design a marketing plan and delivery process to present the menu of end-use measures to the members of each market segment and to persuade decision-makers to implement as many of these measures as may be appropriate to their situation. When appropriate, consider multiple approaches such as rebates, financing, and direct installations for the same menu of end-use measures;

(F) Evaluate, describe, and document the feasibility, cost-reduction potential, and potential benefits of statewide marketing and outreach programs, joint programs with natural gas utilities, upstream market transformation programs, and other activities. In the event that statewide marketing and outreach programs are preferred, the utilities shall develop joint programs in consultation with the stakeholder group;

(G) Estimate the characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side program, including:

1. An assessment of the demand and energy reduction impacts of each stand-alone end-use measure contained in each potential demand-side program;

2. An assessment of how the interactions between end-use measures, when bundled with other end-use measures in the potential demand-side program, would affect the stand-alone end-use measure impact estimates;

3. An estimate of the incremental and cumulative number of program participants and end-use measure installations due to the potential demand-side program;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side program; and

5. For each year of the planning horizon, an estimate of the costs, including:

A. The incremental cost of each stand-alone end-use measure;

B. The cost of incentives paid by the utility to customers or

utility financing to encourage participation in the potential demand-side program. The utility shall consider multiple levels of incentives paid by the utility for each end-use measure within a potential demand-side program, with corresponding adjustments to the maximum achievable potential and the realistic achievable potential of that potential demand-side program;

C. The cost of incentives to customers to participate in the potential demand-side program paid by the entities other than the utility;

D. The cost to the customer and to the utility of technology to implement a potential demand–side program;

E. The utility's cost to administer the potential demand-side program; and

F. Other costs identified by the utility;

(4) The utility shall develop potential demand-side rates designed for each market segment to reduce the net consumption of electricity or modify the timing of its use. The utility shall describe and document its demand-side rate planning and design process and shall include at least the following activities and elements:

(D) Estimate the input data and other characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side rate, including:

1. An assessment of the demand and energy reduction impacts of each potential demand-side rate;

2. An assessment of how the interactions between multiple potential demand-side rates, if offered simultaneously, would affect the impact estimates;

3. An assessment of how the interactions between potential demand-side rates and potential demand-side programs would affect the impact estimates of the potential demand-side programs and potential demand-side rates;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side rate; and

5. For each year of the planning horizon, an estimate of the costs of each potential demand-side rate, including:

A. The cost of incentives to customers to participate in the potential demand-side rate paid by the utility. The utility shall consider multiple levels of incentives to achieve customer participation in each potential demand-side rate, with corresponding adjustments to the maximum achievable potential and the realistic achievable potentials of that potential demand-side rate;

B. The cost to the customer and to the utility of technology to implement the potential demand-side rate;

C. The utility's cost to administer the potential demand-side rate; and

D. Other costs identified by the utility;

(F) Evaluate how each demand-side rate would be considered by the utility's Regional Transmission Organization (RTO) in resource adequacy determinations, eligibility to participate as a demand response resource in RTO markets for energy, capacity, and ancillary services; and

(5) The utility shall describe and document its evaluation of the cost effectiveness of each potential demand-side program developed pursuant to section (3) and each potential demand-side rate developed pursuant to section (4). All costs and benefits shall be expressed in nominal dollars.

(A) In each year of the planning horizon, the benefits of each potential demand-side program and each potential demand-side rate shall be calculated as the cumulative demand reduction multiplied by the avoided demand cost plus the cumulative energy savings multiplied by the avoided energy cost. These calculations shall be performed both with and without the avoided probable environmental costs. The utility shall describe and document the methods, data, and assumptions it used to develop the avoided costs.

1. The utility avoided demand cost shall include the capacity cost of generation, transmission, and distribution facilities, adjusted to reflect reliability reserve margins and capacity losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided demand cost, and the capacity cost chosen shall be consistent throughout the triennial compliance filing.

2. The utility avoided energy cost shall include the fuel costs, emission allowance costs, and other variable operation and maintenance costs of generation facilities, adjusted to reflect energy losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided energy cost, and the energy costs shall be consistent throughout the triennial compliance filing.

3. The avoided probable environmental costs include the effects of the probable environmental costs calculated pursuant to 4 CSR 240-22.040(2)(B) on the utility avoided demand cost and the utility avoided energy cost. The utility shall describe and document how it developed its avoided probable environmental cost.

(B) The total resource cost test shall be used to evaluate the cost effectiveness of the potential demand-side programs and potential demand-side rates. In each year of the planning horizon—

1. The costs of each potential demand-side program shall be calculated as the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions) plus utility costs to administer, deliver, and evaluate each potential demand-side program;

2. The costs of each potential demand-side rate shall be calculated as the sum of all incremental costs that are due to the rate (including both utility and participant contributions) plus utility costs to administer, deliver, and evaluate each potential demand-side rate; and

3. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues or utility incentive payments to customers.

(C) The utility cost test shall also be performed for purposes of comparison. In each year of the planning horizon—

1. The costs of each potential demand-side program and potential demand-side rate shall be calculated as the sum of all utility incentive payments plus utility costs to administer, deliver, and evaluate each potential demand-side program or potential demand-side rate;

2. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues; and

3. The costs shall include, but separately identify, the costs of any rate of return or incentive included in the utility's recovery of demand-side program costs.

(6) Potential demand-side programs and potential demand-side rates that pass the total resource cost test including probable environmental costs shall be considered as demand-side candidate resource options and must be included in at least one (1) alternative resource plan developed pursuant to 4 CSR 240-22.060(3).

(C) The utility shall describe and document its assessment of the potential uncertainty associated with the load impact estimates of the demand-side candidate resource options or portfolios. The utility shall estimate—

1. The impact of the uncertainty concerning the customer participation levels by estimating and comparing the maximum achievable potential and realistic achievable potential of each demand-side candidate resource option or portfolio; and

2. The impact of uncertainty concerning the cost effectiveness by identifying uncertain factors affecting which end-use resources are cost effective. The utility shall identify how the menu of cost-effective end-use measures changes with these uncertain factors and shall estimate how these changes affect the load impact estimates associated with the demand-side candidate resource options.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

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Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

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RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

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Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to model both demand-side and supply-side resources and complete risk analysis on demand-side and supply-side resource implementation. If a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the commission to approve MEEIA demand-side programs will be met through the requirements of this rule. The utility will use the integration model of its most recent preferred plan to screen demand-side programs that are not part of the utility's preferred plan to show that it is cost-effective as one of the requirements to acquire commission approval of a demand-side program.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.060(2)(A). Public counsel suggested several wording changes to this subsection that it believes would clarify the meaning of the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will incorporate the suggested edits.

COMMENT #7: Question About Subsection 4 CSR 240-22.060(2)(B). KCPL indicates it is unsure of the intended meaning of this subsection's use of the term "levelized," indicating its understanding that the term means "a simple average and not discounted."

RESPONSE: The commission does not agree with KCPL that "levelized" means a simple average, because proposed 4 CSR 240-22.020(28) defines levelized costs to mean the dollar amount of a fixed annual payment for which a stream of those payments over a specified period of time is equal to a specified present value based on a specified rate of interest. Therefore, the commission will not modify this subsection.

COMMENT #8: Changes to Section 4 CSR 240-22.060(3). Public counsel suggests that the phrase "and variation in the timing or resource acquisition" be added to this section to stress the importance of the timing of acquisition in alternative resource plans to help determine an optimal plan. Public counsel proposes a similar change to subsection (3)(A) for the same reason.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and believes this change will require the utility to think outside the box when developing its list of alternative resource plans. The commission will change this section as public counsel suggests.

COMMENT #9: Changes to Paragraph 4 CSR 240-22.060(3)(A)1. This subsection requires a utility's resource plan to minimally comply with "legal mandates for demand-side resources, renewable energy resources, and other mandated energy resources." KCPL contends this paragraph is unnecessary as compliance with legal mandates is a given.

RESPONSE: The commission does not agree with KCPL because the purpose of this paragraph is to develop a "compliance benchmark resource plan for planning purposes." The commission will not change the paragraph.

COMMENT #10: Changes to Paragraphs 4 CSR 240-22.060(3)(A)2., 3., and 4. Public counsel proposes to add the phrase "an optimal combination of" renewable energy resources, demand-side resources, and other energy resources in the various paragraphs. Public counsel argues this change is necessary to stress the concept of optimization.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not add the phrase "an optimal combination of" in these paragraphs, because to do so would materially change the intent of these paragraphs from assessing the range of options to somehow predetermining the optimal combination of resources which cannot be known when formulating the alternative resource plan in section (3). However, in paragraph (3)(A)3., the commission will change "technical potential" to "maximum achievable potential" to assess a more meaningful range of demand-side resources.

COMMENT #11: Aggressive Renewable Energy Resource Plan Case in Paragraph 4 CSR 240-22.060(3)(A)2. The Department of Natural Resources asks the commission to remove the requirement that only renewable energy resources may be included in the resource plan, permit the utility to continue current commitments to demand-side resources, and require that baseload or intermediate energy requirements that result from load growth or resource retirements be met by renewable energy sources.

RESPONSE: The commission will not modify this paragraph as requested by DNR, because the utility's current commitment to demand-side resources is accounted for in the utility load forecasts per 4 CSR 240-22.050(7). Further, this paragraph as written is intended to assess the aggressive renewable resource plan for planning purposes.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.060(3)(A)3. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. The Department of Natural Resources proposes a more extensive rewrite of this paragraph to establish a yardstick by which utilities measure whether they have utilized sufficient demand-side resources to achieve all cost-effective demand-side savings consistent with 4 CSR 240-20.094(2), the MEEIA rules.

In its comments, staff expressed support for adding a definition of maximum achievable potential to the rule, but does not support deleting the term technical potential from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential from its rule, but will add the definition of maximum achievable potential taken from its MEEIA rules in 4 CSR 240-22.020. Defining the aggressive demand-side resource plan as the maximum achievable plan should also reduce DNR's perceived need to establish a "yardstick."

COMMENT #13: Addition of "Demand-Side" Rate. Public counsel asks the commission to add the word "demand-side" before "rate" at several points in the rule to improve clarity.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the rule as public counsel suggests.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.060(3)(A)6. Staff and public counsel ask the commission to change the word "staff" to "commission" to be consistent with 4 CSR 240-22.080(4) in recognition that it is the commission rather than staff that will be specifying a special contemporary issue.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and its staff and will modify the paragraph accordingly.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.060(3)(C)2. Public counsel suggests the commission add the words "and other retrofits" to the existing term "equipment" in describing additions to generation plants to meet environmental requirements.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will modify the paragraph accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.060(4)(B)3. Public counsel and KCPL both proposed changes to this paragraph to modify the subsections reference to measuring capacity "at the customer's meter." KCPL suggests that phrase be changed to "capacity supplied to the transmission grid." At the hearing, public counsel changed its recommended language to that proposed by KCPL.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #17: Changes to Paragraph 4 CSR 240-22.060(4)(B)6. KCPL proposes a change to this subsection that would replace the phrase "energy at the customer's meters" with the phrase "energy supplied to the transmission grid, less losses." KCPL explains this change is necessary because physical energy cannot be assigned to an individual customer or group of customers.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #18: Changes to Subsection 4 CSR 240-22.060(4)(C). Public counsel would add the phrase "for demand-side resources" to better describe the utility financial incentives that are to be analyzed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subsection as public counsel suggests.

COMMENT #19: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.B. Public counsel suggests the phrase "impact on retail rates" be changed to "percentage increase in the average rate from the prior years."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #20: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.C. Public counsel suggests the addition of the phrase "and credit metrics."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #21: Changes to Paragraph 4 CSR 240-22.060(4)(C)2. Public counsel would add a reference to legal mandates to be consistent with the change to the definition of legal mandates it proposed for section 4 CSR 240-22.020(27).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as public counsel suggests.

COMMENT #22: Changes to Sections 4 CSR 240-22.060(5), (6), and (7) Relating to Critical Uncertain Factors. Public counsel would make changes to these three (3) sections to help clarify the distinction between "uncertain factors" and "critical uncertain factors" so that the process of determining which "uncertain factors" are deemed to be "critical uncertain factors" is easier to follow.

RESPONSE: The commission does not believe public counsel's suggestions constitute a material change that would improve the rule. Furthermore, no other stakeholder suggested changing these sections. The commission will not make the changes suggested by public counsel.

COMMENT #23: New Section 4 CSR 240-22.060(8) Relating to Covariant Risk Analysis. Dogwood would add a new section that would require utilities to take into account the interrelationship between risk factors through a covariant risk analysis. At the hearing, staff supported the concept of covariant risk analysis, but suggested the same result could be obtained by inserting language into section (6) of this rule that would require the utility to describe its assessment of the impacts "and inter-relationship" of critical uncertain factors.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood's emphasis about covariant risk analysis. However, it agrees with staff that Dogwood's purpose can be accomplished by inserting language into section (6) of this rule and does not require the addition of a new section. The commission will modify section (6) of this rule as suggested by staff.

4 CSR 240-22.060 Integrated Resource Plan and Risk Analysis

(2) Specification of Performance Measures. The utility shall specify, describe, and document a set of quantitative measures for assessing the performance of alternative resource plans with respect to resource planning objectives.

(A) These performance measures shall include at least the following:

1. Present worth of utility revenue requirements, with and without any rate of return or financial performance incentives for demand-side resources the utility is planning to request;

2. Present worth of probable environmental costs;

3. Present worth of out-of-pocket costs to participants in demand-side programs and demand-side rates;

4. Levelized annual average rates;

5. Maximum single-year increase in annual average rates;

6. Financial ratios (e.g., pretax interest coverage, ratio of total debt to total capital, ratio of net cash flow to capital expenditures) or other credit metrics indicative of the utility's ability to finance alternative resource plans; and

7. Other measures that utility decision-makers believe are appropriate for assessing the performance of alternative resource plans relative to the planning objectives identified in 4 CSR 240-22.010(2).

(3) Development of Alternative Resource Plans. The utility shall use appropriate combinations of demand-side resources and supply-side resources to develop a set of alternative resource plans, each of which is designed to achieve one (1) or more of the planning objectives identified in 4 CSR 240-22.010(2). Demand-side resources are the demand-side candidate resource options and portfolios developed in 4 CSR 240-22.050(6). Supply-side resources are the supply-side candidate resource options developed in 4 CSR 240-22.040(4). The goal is to develop a set of alternative plans based on substantively different mixes of supply-side resources and demand-side resources and variations in the timing of resource acquisition to assess their relative performance under expected future conditions as well as their robustness under a broad range of future conditions.

(A) The utility shall develop, and describe and document, at least one (1) alternative resource plan, and as many as may be needed to assess the range of options for the choices and timing of resources, for each of the following cases. Each of the alternative resource plans for cases pursuant to paragraphs (3)(A)1.–(3)(A)5. shall provide resources to meet at least the projected load growth and resource retirements over the planning period in a manner specified by the case. The utility shall examine cases that—

1. Minimally comply with legal mandates for demand-side resources, renewable energy resources, and other mandated energy resources. This constitutes the compliance benchmark resource plan for planning purposes;

2. Utilize only renewable energy resources, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally-compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes;

3. Utilize only demand-side resources, up to the maximum achievable potential of demand-side resources in each year of the planning horizon, if that results in more demand-side resources than the minimally-compliant plan. This constitutes the aggressive demand-side resource plan for planning purposes;

4. In the event that legal mandates identify energy resources other than renewable energy or demand-side resources, utilize only the other energy resources, up to the maximum potential capability of the other energy resources in each year of the planning horizon, if that results in more of the other energy resources than the compliance benchmark resource plan. For planning purposes, this constitutes the aggressive legally-mandated other energy resource plan;

5. Optimally comply with legal mandates for demand-side resources, renewable energy resources, and other targeted energy resources. This constitutes the optimal compliance resource plan, where every legal mandate is at least minimally met, but some resources may be optimally utilized at levels greater than the mandated minimums;

6. Any other plan specified by the commission as a special contemporary issue pursuant to 4 CSR 240-22.080(4);

7. Any other plan specified by commission order; and

8. Any additional alternative resource plans that the utility deems should be analyzed.

(C) The utility shall include in its development of alternative resource plans the impact of—

1. The potential retirement or life extension of existing generation plants;

2. The addition of equipment and other retrofits on generation plants to meet environmental requirements; and

3. The conclusion of any currently-implemented demand-side resources.

(4) Analysis of Alternative Resource Plans. The utility shall describe and document its assessment of the relative performance of the alternative resource plans by calculating for each plan the value of each performance measure specified pursuant to section (2). This calculation shall assume values for uncertain factors that are judged by utility decision-makers to be most likely. The analysis shall cover a planning horizon of at least twenty (20) years and shall be carried out on a year-by-year basis in order to assess the annual and cumulative impacts of alternative resource plans. The analysis shall be based on the assumption that rates will be adjusted annually, in a manner that is consistent with Missouri law. The analysis shall treat supply-side and demand-side resources on a logically-consistent and economically-equivalent basis, such that the same types or categories of costs, benefits, and risks shall be considered and such that these factors shall be quantified at a similar level of detail and precision for all resource types. The utility shall provide the following information:

(B) For each alternative resource plan, a plot of each of the following over the planning horizon:

1. The combined impact of all demand-side resources on the base-case forecast of summer and winter peak demands;

2. The composition, by program and demand-side rate, of the capacity provided by demand-side resources;

3. The composition, by supply-side resource, of the capacity supplied to the transmission grid provided by supply-side resources. Existing supply-side resources may be shown as a single resource;

4. The combined impact of all demand-side resources on the base-case forecast of annual energy requirements;

5. The composition, by program and demand-side rate, of the annual energy provided by demand-side resources;

6. The composition, by supply-side resource, of the annual energy supplied to the transmission grid, less losses, provided by supply-side resources. Existing supply-side resources may be shown as a single resource;

7. Annual emissions of each environmental pollutant identified pursuant to 4 CSR 240-22.040(2)(B);

8. Annual probable environmental costs; and

9. Public and highly-confidential forms of the capacity balance spreadsheets completed in the specified format;

(C) The analysis of economic impact of alternative resource plans, calculated with and without utility financial incentives for demand-side resources, shall provide comparative estimates for each year of the planning horizon—

1. For the following performance measures for each year:

A. Estimated annual revenue requirement;

B. Estimated annual average rates and percentage increase in the average rate from the prior year; and

C. Estimated company financial ratios and credit metrics; and

2. If the estimated company financial ratios in subparagraph (4)(C)1.C. are below investment grade in any year of the planning horizon, a description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating in each year of the planning horizon and the resulting performance measures in subparagraphs (4)(C)1.A.–(4)(C)1.C. of the alternative resource plans that are associated with the necessary changes in legal mandates and cost recovery mechanisms.

(6) The utility shall describe and document its assessment of the impacts and interrelationships of critical uncertain factors on the expected performance of each of the alternative resource plans developed pursuant to 4 CSR 240-22.060(3) and analyze the risks associated with alternative resource plans. This assessment shall explicitly describe and document the probabilities that utility decision-makers assign to each critical uncertain factor.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1766–1769). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.
RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.
RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to document its preferred resource plan and three (3)-year implementation plan. The MEEIA rules do not require a demand-side program to be part of the latest preferred plan, if a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the commission to approve MEEIA demand-side programs will be met through the requirements of this rule.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on

a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.070(1)(C). This subsection requires a utility to select a preferred resource plan that utilizes demand-side resources to the maximum amount that comply with legal mandates and in the judgment of the utility are in the public interest and achieve state energy policies. The Department of Natural Resources proposes additional language in subsection (1)(C) that would specifically give the commission authority to identify the state energy and environmental policies with which the utility is expected to comply. DNR's proposed language would also make it clear that the utility does not get to choose which energy and environmental policies it will attempt to achieve.

Ameren Missouri would also modify the language of this subsection by requiring the utility to choose a plan that is in the interest of shareholders as well as that of the public.

RESPONSE: Providing the commission authority to identify which energy and environmental policies shall apply, as proposed by DNR, does not change, and is included under the over-arching policy statement of proposed 4 CSR 240-22.010(2). Also, in response to Ameren Missouri's comment, the commission believes that it is not necessary to add utility shareholders to the list of consideration that makes up the public interest as shareholders are a part of the public interest. The commission will not modify this subsection.

COMMENT #7: Change to Subsection 4 CSR 240-22.070(4)(C). Public counsel would remove the word "fundamental" as the modifier of "the objectives in 4 CSR 240-22.010(2)."

RESPONSE AND EXPLANATION OF CHANGE: Public counsel's proposal is unnecessary as 4 CSR 240-22.010(2) specifically describes the fundamental objective of these rules and thus the reference is appropriate. However, public counsel's suggestion exposes a related problem in that the proposed rule refers to the plural fundamental objectives rather than the singular fundamental objective. The commission will remove the "s" from objectives to make it singular.

COMMENT #8: Changes to Subsection 4 CSR 240-22.070(7)(C). Public counsel suggests adding the words "identification of" to this subsection to clarify the meaning of the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will modify the subsection accordingly.

COMMENT #9: Changes to Section 4 CSR 240-22.070(8). This is the section of the rule that requires a utility to evaluate its demand-side programs and demand-side rates. Renew Missouri points out that the requirements of this section differ from those of the evaluation, measurement, and verification plans required by the MEEIA rules. Renew Missouri suggests this section be modified to match as closely as possible the similar provisions in the MEEIA rule.

In addition to the changes proposed by Renew Missouri, public counsel suggests minor edits throughout the section to improve the clarity of the section. Specifically, public counsel would add a requirement to evaluate cost-effectiveness to (8), would specify "future" cost-effectiveness screening in (8), would specify "demand-side" rate participants in (8)(B)1.A, add "hourly load data" to the list in (8)(B)2.A, and add "survey" data to (8)(B)2.B.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the suggestion of Renew Missouri that the evaluation, measurement, and verification plans for Chapter 22 rules and for the MEEIA rules should be aligned. The commission will modify this section.

The commission agrees with the edits proposed by public counsel and will modify the section accordingly.

COMMENT #10: Deletion of Section 4 CSR 240-22.070(9). Public counsel suggests this section is largely duplicative of section 4 CSR 240-22.080(12) and would delete most of it, while moving non-duplicative provisions to 4 CSR 240-22.080(12).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will delete the section.

4 CSR 240-22.070 Resource Acquisition Strategy Selection

(4) The utility shall describe and document its contingency resource plans in preparation for the possibility that the preferred resource plan should cease to be appropriate, whether due to the limits identified pursuant to 4 CSR 240-22.070(2) being exceeded or for any other reason.

(B) The utility shall develop a process to pick among alternative resource plans, or to revise the alternative resource plans as necessary, to help ensure reliable and low cost service should the preferred resource plan no longer be appropriate for any reason. The utility may also use this process to confirm the viability of contingency resource plans identified pursuant to subsection (4)(A).

(C) Each contingency resource plan shall satisfy the fundamental objective in 4 CSR 240-22.010(2) and the specific requirements pursuant to 4 CSR 240-22.070(1).

(7) The utility shall develop, describe and document, officially adopt, and implement a resource acquisition strategy. This means that the utility's resource acquisition strategy shall be formally approved by an officer of the utility who has been duly delegated the authority to commit the utility to the course of action described in the resource acquisition strategy. The officially adopted resource acquisition strategy shall consist of the following components:

(C) A set of contingency resource plans developed pursuant to the requirements of section (4) of this rule and identification of the point at which the critical uncertain factors would trigger the utility to move to each contingency resource plan as the preferred resource plan.

(8) Evaluation of Demand-Side Programs and Demand–Side Rates. The utility shall describe and document its evaluation plans for all demand-side programs and demand-side rates that are included in the preferred resource plan selected pursuant to 4 CSR 240-22.070(1). Evaluation plans required by this section are for planning purposes and are separate and distinct from the evaluation, measurement, and verification reports required by 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7); nonetheless, the evaluation plan should, in addition to the requirements of this section, include the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7). The evaluation plans for each program and rate shall be developed before the program or rate is implemented and shall be filed when the utility files for approval of demand-side programs or demand-side program plans with the tariff application for the program or rate as described in 4 CSR 240-20.094(3). The purpose of these evaluations shall be to develop the information necessary to evaluate the cost-effectiveness and improve the design of existing and future demand-side programs and demand-side rates, to improve the forecasts of customer energy consumption and responsiveness to demand-side programs and demand-side rates, and to gather data on the implementation costs and load impacts of demand-side programs and demand-side rates for use in future cost-effectiveness screening and integrated resource analysis.

(B) Impact Evaluation. The utility shall develop methods of estimating the actual load impacts of each demand-side program and demand-side rate included in the utility's preferred resource plan to a reasonable degree of accuracy.

1. Impact evaluation methods. At a minimum, comparisons of one (1) or both of the following types shall be used to measure program and rate impacts in a manner that is based on sound statistical principles:

A. Comparisons of pre-adoption and post-adoption loads of program or demand-side rate participants, corrected for the effects of weather and other intertemporal differences; and

B. Comparisons between program and demand-side rate participants' loads and those of an appropriate control group over the same time period.

2. The utility shall develop load-impact measurement protocols that are designed to make the most cost-effective use of the following types of measurements, either individually or in combination:

A. Monthly billing data, hourly load data, load research data, end-use load metered data, building and equipment simulation models, and survey responses; or

B. Audit and survey data on appliance and equipment type, size and efficiency levels, household or business characteristics, or energy-related building characteristics.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.080 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1769–1779). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 392.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Change to the Purpose Statement. The Missouri Department of Natural Resources proposes to add a sentence to the purpose statement regarding the commission's authority to acknowledge the reasonableness of the preferred resource plan or resource acquisition strategy.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and will modify the purpose statement.

COMMENT #7: Clarifications of Section 4 CSR 240-22.080(1). Staff proposes to delete a portion of this section to clarify that Kansas City Power and Light Company (KCP&L) and Greater Missouri Operations Company (GMO), even though they are affiliated utilities, will be required to file separate Integrated Resource Plans (IRPs). The rule will allow the utilities to file those IRPs at the same time in the same case file. Public counsel supports staff's interpretation and modification of the section. KCP&L and GMO responded at the hearing by pointing out that requiring separate IRPs from the two (2) affiliated utilities may result in individual company plans that do not exactly coincide with the corporate strategy of the holding company that controls both utilities.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff. So long as KCPL and GMO are operated as separate utilities, they should be required to file separate IRPs. The commission will modify the rule as staff requests.

COMMENT #8: Change to Subparagraph 4 CSR 240-22.080(2)(E)5.B. Public counsel would add language to this subparagraph to focus on the level of average retail rates and percentage change from the prior year.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify the subparagraph accordingly.

COMMENT #9: Change to Sections 4 CSR 240-22.080(7), (8), and (9). The Department of Natural Resources proposes multiple changes to this rule to implement its proposal to allow the commission an option to acknowledge a utility's preferred resource plan. DNR would extend the time for staff and other stakeholders to review the utility's filing and file a report from one hundred twenty (120) days to one hundred fifty (150) days to recognize the additional time required to consider acknowledgement of the utility's filing. Similarly, DNR would extend the time allowed for negotiation of a joint agreement to remedy deficiencies in section (9) from forty-five (45) to sixty (60) days. DNR would also allow for the identification of "substantive concerns" in line with the definition of "substantive concerns" that DNR proposed in 4 CSR 240-22.020(5). (See Comment #15 for that Order of Rulemaking).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR except for the need to add a definition for "substantive concern." The commission will modify the sections accordingly.

COMMENT #10: Changes to Sections 4 CSR 240-22.080(7) and (8). These sections allow staff and other interested parties one hundred twenty (120) days to review the IRP filings submitted by a utility. Section (7) applies to staff and section (8) applies to other interested parties. The proposed rule would require anyone who identifies a deficiency in a plan to provide at least one (1) suggested remedy for each identified deficiency and to provide workpapers within one (1) week. Public counsel asks the commission to remove the requirement to provide a suggested remedy, reasoning that being able to identify a problem does not necessarily imply the ability to develop a solution. Interested stakeholders, such as public counsel, may have only limited resources and requiring them to not only identify, but also propose solutions to problems might discourage them from raising concerns about legitimate deficiencies. Public counsel proposes to change the requirement to a permissive request by changing "shall" to "may." It would also remove the requirement to produce workpapers.

Staff accepts public counsel's concern about discouraging the identification of deficiencies without accompanying solutions, but would not totally remove the requirement. Instead, staff would modify section (8) to require other interested parties to make only a good faith effort to provide at least one (1) suggested remedy for each identified deficiency.
RESPONSE AND EXPLANATION OF CHANGE: Since staff indicates it is comfortable with a requirement that it propose at least one (1) suggested remedy for each identified deficiency, the commission will not modify this aspect of section (7). The commission agrees with staff's suggested change to section (8), which applies to public counsel and other interested parties, and will modify the section accordingly. The commission will also modify the requirement to produce workpapers to clarify that an interested party is required to provide only such workpapers as they possess and are not required to create workpapers just to comply with this section of the rule.

COMMENT #11: Changes to Section 4 CSR 240-22.080(12). This section requires a utility to notify the commission if between its triennial IRP filings, it determines that its business plan or acquisition strategy has become inconsistent with its preferred resource plan, or if it determines that its acquisition strategy or preferred resource plan is no longer appropriate. Dogwood asks the commission to add an express requirement that the utility also serve notice on all interested parties. Also, public counsel suggests that this section be modified to accommodate filing requirements contained in proposed 4 CSR 240-22.070(9), which at public counsel's suggestion, the commission has deleted.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood and public counsel and will modify the section accordingly.

COMMENT #12: Changes to Section 4 CSR 240-22.080(13). This section allows the commission to grant a variance from certain provisions of these rules upon written application made at least twelve (12) months before the compliance filing is due. Ameren Missouri suggests the commission add an exception to the section to allow a request for variance to be filed less than twelve (12) months before the compliance filing is due, upon a showing of good cause.

Staff does not oppose the concept of allowing a good cause exception, but contends the inclusion of such an exception in this section is unnecessary.
RESPONSE AND EXPLANATION OF CHANGE: The proposed rule would allow the commission to grant a variance from the provisions of 4 CSR 240-22.030 through 4 CSR 240-22.070. The commission agrees with Ameren Missouri that it should be able to grant a variance from the provisions of 4 CSR 240-22.080 as well. In addition, the commission will modify the section to allow the commission to grant a variance less than twelve (12) months prior to the filing upon a showing of good cause for the delay in filing the request for variance.

COMMENT #13: Changes to Section 4 CSR 240-22.080(16). The Department of Natural Resources would create a new subsection (16)(B) that would give the commission authority to acknowledge that a preferred resource plan or resource acquisition strategy seems reasonable in whole or in part at the time of the finding.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR's proposal to give the commission authority to acknowledge a preferred resource plan or resource acquisition strategy, but that authority would more appropriately appear in a new section 4 CSR 240-22.080(17). The subsequent section will be renumbered accordingly.

COMMENT #14: Staff's New Form. At the hearing, staff offered a reporting form that it failed to attach to the proposed amendment. The form describes the information the utility is expected to report regarding its forecast of Capacity Balance. Staff initially offered both public and confidential versions of the form, but after the commission's exchange with witnesses for KCPL and others at the public hearing, staff agrees that all information reported on the form should be confidential.
RESPONSE AND EXPLANATION OF CHANGE: Since all the information to be provided will be confidential, there is no reason to require a separate public version of the report. The commission will incorporate the highly confidential version of the form submitted by staff.

4 CSR 240-22.080 Filing Schedule, Filing Requirements, and Stakeholder Process

PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter. The purpose of the compliance review required by this chapter is not commission approval of the substantive findings, determinations, or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets the requirements of Chapter 22. However, if the commission determines that the filing substantially meets these requirements, the commission may further acknowledge that the preferred resource plan or resource acquisition strategy is reasonable in whole or in part at the time of the finding. This rule also establishes a mechanism for the utility to solicit and receive stakeholder input to its resource planning process.

(1) Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year 2009 shall make a filing with the commission every three (3) years on April 1. The electric utilities shall submit their triennial compliance filings on the following schedule:

(2) The utility's triennial compliance filings shall demonstrate compliance with the provisions of this chapter and shall include at least the following items:

(D) The forecast of capacity balance spreadsheet completed in the specified form, included herein, for the preferred resource plan and each candidate resource plan considered by the utility.

(E) An executive summary, separately bound and suitable for distribution to the public in paper and electronic formats. The executive summary shall be an informative non-technical description of the preferred resource plan and resource acquisition strategy. This document shall summarize the contents of the technical volume(s) and shall be organized by chapters corresponding to 4 CSR 240-22.030–4 CSR 240-22.070. The executive summary shall include:

1. A brief introduction describing the utility, its existing facilities, existing purchase power arrangements, existing demand-side programs, existing demand-side rates, and the purpose of the resource acquisition strategy;

2. For each major class and for the total of all major classes, the base load forecasts for peak demand and for energy for the planning horizon, with and without utility demand-side resources, and a listing of the economic and demographic assumptions associated with each base load forecast;

3. A summary of the preferred resource plan to meet expected energy service needs for the planning horizon, clearly showing the demand-side resources and supply-side resources (both renewable and non-renewable resources), including additions and retirements for each resource type;

4. Identification of critical uncertain factors affecting the preferred resource plan;

5. For existing legal mandates and approved cost recovery mechanisms, the following performance measures of the preferred resource plan for each year of the planning horizon:

A. Estimated annual revenue requirement;

B. Estimated level of average retail rates and percentage of change from the prior year; and

C. Estimated company financial ratios;

6. If the estimated company financial ratios in subparagraph (2)(E)5.C. of this rule are below investment grade in any year of the planning horizon, a description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating in each year of the planning horizon and the resulting performance measures of the preferred resource plan;

7. Actions and initiatives to implement the resource acquisition strategy prior to the next triennial compliance filing; and

8. A description of the major research projects and programs the utility will continue or commence during the implementation period; and

(7) The staff shall conduct a limited review of each triennial compliance filing required by this rule and shall file a report not later than one hundred fifty (150) days after each utility's scheduled triennial compliance filing date. The report shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and any other deficiencies and shall provide at least one (1) suggested remedy for each identified deficiency. Staff may also identify concerns with the utility's triennial compliance filing, may identify concerns related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy, and shall provide at least one (1) suggested remedy for each identified concern. Staff shall provide its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed. If the staff's limited review finds no deficiencies or no concerns, the staff shall state that in the report. A staff report that finds that an electric utility's filing is in compliance with this chapter shall not be construed as acceptance or agreement with the substantive findings, determinations, or analysis contained in the electric utility's filing.

(8) Also within one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter, and any other deficiencies. The report may also identify concerns with the utility's triennial compliance filing and may identify concerns related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy. Public counsel or intervenors shall make a good faith effort to provide at least one (1) suggested remedy for each identified deficiency or concern. Public counsel or any intervenor shall provide its workpapers, if any, related to each deficiency or concern to all parties within ten (10) days of the date its report is filed.

(9) If the staff, public counsel, or any intervenor finds deficiencies

in or concerns with a triennial compliance filing, it shall work with the electric utility and the other parties to reach, within sixty (60) days of the date that the report or comments were submitted, a joint agreement on a plan to remedy the identified deficiencies and concerns. If full agreement cannot be reached, this should be reported to the commission through a joint filing as soon as possible but no later than sixty (60) days after the date on which the report or comments were submitted. The joint filing should set out in a brief narrative description those areas on which agreement cannot be reached. The resolution of any deficiencies and concerns shall also be noted in the joint filing.

(12) If, between triennial compliance filings, the utility's business plan or acquisition strategy becomes materially inconsistent with the preferred resource plan, or if the utility determines that the preferred resource plan or acquisition strategy is no longer appropriate, either due to the limits identified pursuant to 4 CSR 240-22.070(2) being exceeded or for other reasons, the utility, in writing, shall notify the commission within sixty (60) days of the utility's determination and shall serve notice on all parties to the most recent triennial compliance filing. The notification shall include a description of all changes to the preferred plan and acquisition strategy, the impact of each change on the present value of revenue requirement, and all other performance measures specified in the last filing pursuant to 4 CSR 240-22.080 and the rationale for each change.

(A) If the utility decides to implement any of the contingency resource plans identified pursuant to 4 CSR 240-22.070(4), the utility shall file for review a revised resource acquisition strategy. In this filing, the utility shall specify the ranges or combinations of outcomes for the critical uncertain factors that define the limits within which the new alternative resource plan remains appropriate.

(B) If the utility decides to implement a resource plan not identified pursuant to 4 CSR 240-22.070(4) or changes its acquisition strategy, it shall give a detailed description of the revised resource plan or acquisition strategy and why none of the contingency resource plans identified in 4 CSR 240-22.070(4) were chosen. In this filing, the utility shall specify the ranges or combinations of outcomes for the critical uncertain factors that define the limits within which the new alternative resource plan remains appropriate.

(13) Upon written application made at least twelve (12) months prior to a triennial compliance filing, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of 4 CSR 240-22.030–4 CSR 240-22.080 for good cause shown. The commission may grant an application for waiver or variance filed less than twelve (12) months prior to the triennial compliance filing upon a showing of good cause for the delay in filing the application for waiver or variance.

(17) If the commission finds that the filing achieves substantial compliance with the requirements outlined in section (16), the commission may acknowledge the utility's preferred resource plan or resource acquisition strategy as reasonable at a specific date. The commission may acknowledge the preferred resource plan or resource acquisition strategy in whole, in part, with exceptions, or not at all. Acknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects. In proceedings where the reasonableness of resource acquisitions are considered, consistency with an acknowledged preferred resource plan or resource acquisition strategy may be used as supporting evidence but shall not be considered any more or less relevant than any other piece of evidence in the case. Consistency with an acknowledged preferred resource plan or resource acquisition strategy does not create a rebuttable presumption of prudence and shall not be considered to be dispositive of the issue. Furthermore, in such proceedings, the utility bears the burden of proof that past or proposed actions are consistent with an acknowledged preferred resource plan or resource acquisition strategy and must explain and justify why it took any actions inconsistent with an acknowledged preferred resource plan or resource acquisition strategy.

(A) The utility shall notify the commission pursuant to 4 CSR 240-22.080(12) in the event there is material reason why any plan acknowledged by the commission is no longer viable.

(B) Any interested stakeholder group may file a notice in the utility's most recent Chapter 22 compliance file with the commission if a substantial change in circumstances has occurred that it believes may result in the invalidation of any aspect of a preferred resource plan or portion of a resource acquisition strategy previously acknowledged by the commission.

(C) The utility about which a stakeholder group files a notice described in the previous section may file its response within fifteen (15) working days of the date the notice is filed.

(18) In all future cases before the commission which involve a requested action that is affected by electric utility resources, preferred resource plan, or resource acquisition strategy, the utility must certify that the requested action is substantially consistent with the preferred resource plan specified in the most recent triennial compliance filing or annual update report. If the requested action is not substantially consistent with the preferred resource plan, the utility shall provide a detailed explanation.

Forecast of Capacity Balance (MW) - HIGHLY CONFIDENTIAL

Name of Utility: _____

Year of Electric Utility Resource Planning Filing: _____

	Year 1	Year 2	Year 3	Year 4	Year 5	.....	Year 20
A. System Generation Capacity							
Base Capacity							
Unit 1							
Unit 2							
Unit 3							
Unit 4							
.....							
Unit i							
Total Base Capacity							
Intermediate Capacity							
Unit i+1							
Unit i+2							
Unit i+3							
Unit i+4							
.....							
Unit j							
Total Intermediate Capacity							
Peaking Capacity							
Unit j+1							
Unit j+2							
Unit j+3							
.....							
Unit k							
Total Peaking Capacity							
Intermittent Capacity							
Wind							
Solar							
Total Intermittent Capacity							
Percent Accredited Intermittent Capacity							
Total Accredited Intermittent Capacity							
Total Generation Capacity = TGC							
B. Capacity Transactions							
Purchases							
Source 1							
Source 2							
Source 3							
.....							
Source t							
Total Purchases = P							
Sales							
Party 1							
Party 2							
.....							
Party s							
Total Sales = S							
Net Transactions = NT = P - S							
Total System Capacity = TSC = TGC + NT							
C. System Peaks & Reserves							
Peak Demands							
Forecasted Peak							
less DSM							
Peak Forecast less DSM = PF							
Capacity Reserves = CR = TSC - PF							
D. Capacity Needs							
% Reserve Margin = RM							
% Capacity Margin = CM = RM/(1 + RM)							
Required Capacity = RC = PF/(1-CM)							
Capacity Balance = TSC - RC							

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 8—Design Guides

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, the Clean Water Commission amends a rule as follows:

10 CSR 20-8.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2010 (35 MoReg 1454–1475). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held January 12, 2011, and the public comment period ended January 19, 2011. At the public hearing, the Water Protection Program staff explained the proposed amendment. The department received four (4) written comments from one (1) individual and four (4) department staff comments.

COMMENT #1: David Cavender, P.E., with Horner & Shifrin, Inc., requested that 10 CSR 20-8.020 Design of Small Sewage Works, may be applied to treatment facilities with design flows up to one hundred thousand (100,000) gallons per day (gpd).
RESPONSE: This request is outside of the purview of this amendment change. The department does plan on amending 10 CSR 20-8.020 in the future to apply to wastewater treatment facilities with design flows less than one hundred thousand (100,000) gpd. Until that time, consultants may request deviations and the department will review those on a case-by-case basis. No changes have been made to the rule as a result of this comment.

COMMENT #2: David Cavender, P.E., with Horner & Shifrin, Inc., requested changing the word "must" to "should" in subsection (3)(C): "Engineering reports or facility plans must be approved by the department prior to the submittal of the design drawings, specifications, and the appropriate permit applications and fees."
RESPONSE: The requirement of an engineering report or facility plan is the basis for the rulemaking amendment and for the public and private fiscal notes. Requiring an engineering report or facility plan approval prior to the submittal of plans and specifications results in better designed wastewater treatment facilities and collection systems. Approval of engineering reports or facility plans will reduce project delays and expensive design changes. No changes have been made to the rule as a result of this comment.

COMMENT #3: David Cavender, P.E., with Horner & Shifrin, Inc., suggested adding the following statement to the end of paragraph (4)(B)3.: "A stress test is recommended for treatment facilities where existing wet weather flows are problematic."
RESPONSE: The purpose of this paragraph is to provide guidance on what information shall be contained in an engineering report. The proposed text requires the impact on the treatment facility be evaluated due to the proposed collection system project. A stress test would provide information on the capacity the treatment facility is capable of handling. This would be good information, but the intent of the regulation is to determine the impact of the proposed collection system project. No changes have been made to the rule as a result of this comment.

COMMENT #4: David Cavender, P.E., with Horner & Shifrin, Inc., suggested adding the following statement to the end of part (4)(C)4.B.(III): "A stress test is recommended for treatment facilities where existing wet weather flows are problematic."
RESPONSE: The purpose of this regulation is to require hydraulic data and the method to determine hydraulic capacity of a wastewater treatment facility for a facility plan. A stress test on an existing facility is a good idea; however, these tests can be difficult, expensive, or impractical for certain facilities. If a facility wishes to perform a stress test and provide the results to the department, they are welcome to do so. No changes have been made to the rule as a result of this comment.

COMMENT #5: Department staff suggested simplifying the fifth sentence in the purpose statement.
RESPONSE AND EXPLANATION OF CHANGE: Staff agreed and removed text from the fifth sentence in the purpose. This was determined to be an improvement of the rule language.

COMMENT #6: Department staff discovered a typo in part (4)(C)4.C.(III) of the rule.
RESPONSE AND EXPLANATION OF CHANGE: Staff recognized the typo as "services lines," which will be changed to remove the "s" from service. Correcting this minor typographical error improved and clarified the rule language.

COMMENT #7: Department staff discovered a wrong citation in subparagraph (4)(C)8.J.
RESPONSE AND EXPLANATION OF CHANGE: Staff recognized this wrong citation and changed it to paragraph (6)(A)5. Correcting this citation error improved and clarified the rule language.

COMMENT #8: Department staff suggested clarifying subsection (7)(A) and compare and compose it to agree with the 2004 version of the "Recommended Standards for Wastewater Facilities" (otherwise known as the 10 States Standards) Paragraph 21 developed by the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.
RESPONSE AND EXPLANATION OF CHANGE: Staff decided to divide subsection (7)(A) into two (2) sentences for clarification. Staff also changed the language in subsection (7)(A) to more closely align the text to the 10 States Standards.

10 CSR 20-8.110 Engineering—Reports, Plans, and Specifications

PURPOSE: The following criteria have been prepared as a guide for the preparation of engineering reports or facility plans and detail plans and specifications. This rule is to be used with rules 10 CSR 20-8.120 through 10 CSR 20-8.220 for the planning and design of the complete treatment facility. This rule reflects the minimum requirements of the Missouri Clean Water Commission in regard to adequacy of design, submission of plans, approval of plans, and approval of completed wastewater treatment facilities. It is not reasonable or practical to include all aspects of design in these standards. The design engineer should obtain appropriate reference materials which include but are not limited to: copies of all ASTM International standards, design manuals such as Water Environment Federation's Manuals of Practice (MOPs), and other sewer and wastewater treatment design manuals containing principles of accepted engineering practice. Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation. These criteria are taken largely from the 2004 edition of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers ***Recommended Standards for Wastewater Facilities*** *and are based on the best information presently available. These criteria were originally filed as 10 CSR 20-8.030. It is anticipated that they will be subject to review and revision periodically as additional information and methods appear.*

(4) Engineering Report or Facility Plan.

(C) Facility Plans. Facility plans shall contain the following and other pertinent information as required by the department:

1. Problem evaluation and existing facility review—

A. Descriptions of existing system, including condition and evaluation of problems needing correction; and

B. Summary of existing and previous local and regional wastewater facility and related planning documents, if applicable;

2. Planning and service area. Drawings identifying the planning area, the existing and potential future service area, the site of the project, and anticipated location and alignment of proposed facilities are required;

3. Population projection and planning period. Present and predicted population shall be based on a twenty (20)-year planning period. Phased construction of wastewater facilities shall be considered in rapid growth areas. Sewers and other facilities with a design life in excess of twenty (20) years shall be designed for the extended period;

4. Hydraulic capacity.

A. Flow definitions and identification. The following flows for the design year shall be identified and used as a basis for design for sewers, pump stations, wastewater treatment facilities, treatment units, and other wastewater handling facilities. Where any of the terms defined in this section are used in these design standards, the definition contained in this section applies.

(I) Design average flow—The design average flow is the average of the daily volumes to be received for a continuous twelve (12)-month period expressed as a volume per unit time. However, the design average flow for facilities having critical seasonal high hydraulic loading periods (e.g., recreational areas, campuses, and industrial facilities) shall be based on the daily average flow during the seasonal period.

(II) Design maximum daily flow—The design maximum daily flow is the largest volume of flow to be received during a continuous twenty-four (24)-hour period expressed as a volume per unit time.

(III) Design peak hourly flow—The design peak hourly flow is the largest volume of flow to be received during a one (1)-hour period expressed as a volume per unit time.

(IV) Design peak instantaneous flow—The design peak instantaneous flow is the instantaneous maximum flow rate to be received.

B. Hydraulic capacity for existing collection and treatment systems.

(I) Projections shall be made from actual flow data to the extent possible.

(II) The probable degree of accuracy of data and projections shall be evaluated. This reliability estimation shall include an evaluation of the accuracy of existing data, based on no less than one (1) year of data, as well as an evaluation of the reliability of estimates of flow reduction anticipated due to infiltration/inflow (I/I) reduction or flow increases due to elimination of sewer overflows and backups.

(III) Critical data and methodology used shall be included. Graphical displays of critical peak wet weather flow data (refer to parts (4)(C)4.A.(II), (III), and (IV) of this rule) shall be included for a sustained wet weather flow period of significance to the project.

C. Hydraulic capacity for new collection and treatment systems.

(I) The sizing of wastewater facilities receiving flows from new wastewater collection systems shall be based on an average daily flow of one hundred (100) gallons (0.38 m^3) per capita per day plus wastewater flow from industrial facilities and major institutional and commercial facilities unless water use data or other justification upon which to better estimate flow is provided.

(II) The one hundred (100) gallons (0.38 m^3) per capita per day figure shall be used, which, in conjunction with a peaking factor from the following Figure 1, included herein, is intended to cover normal infiltration for systems built with modern construction techniques. Refer to 10 CSR 20-8.120.

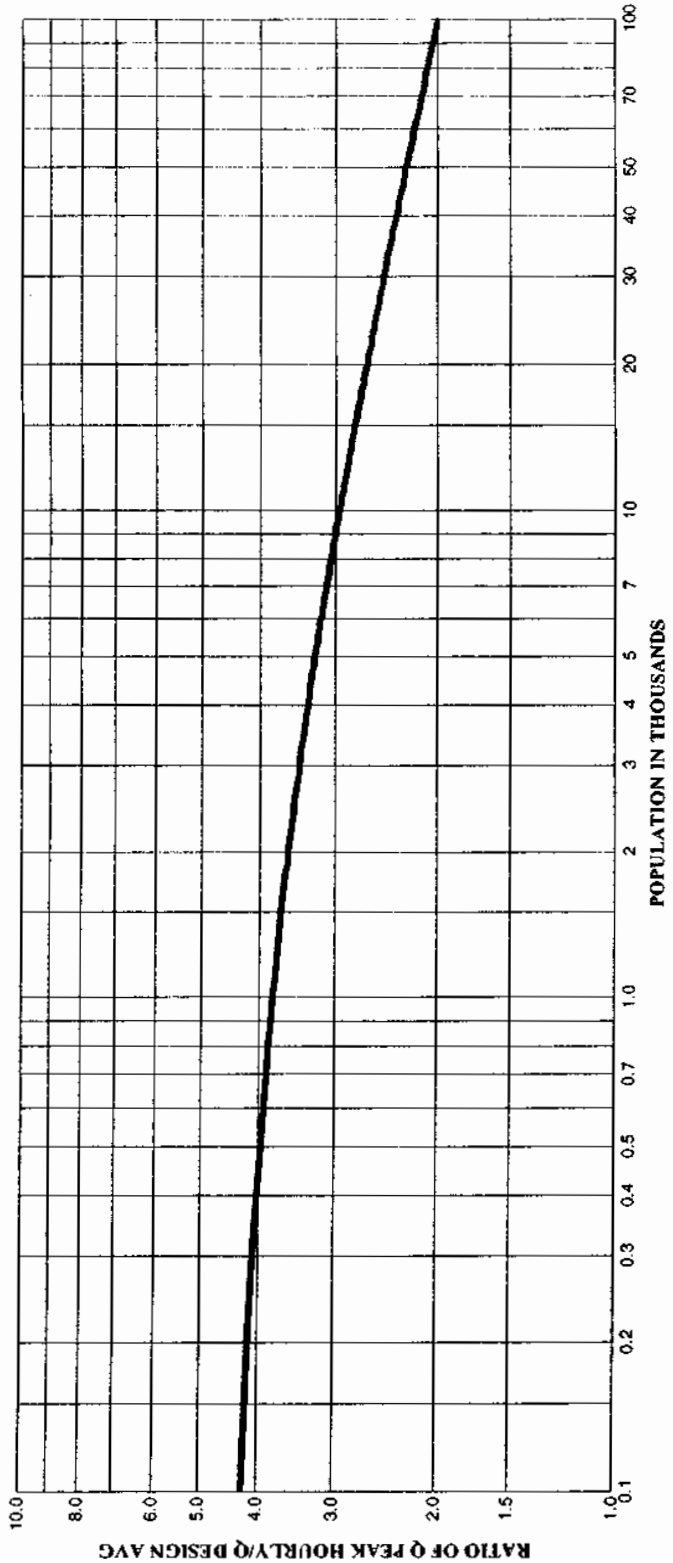

Figure 1. Ratio of peak hourly flow to design average flow.

where

Q peak hourly = Maximum Rate of Wastewater Flow (Peak Hourly Flow)
Q design avg = Design Average Daily Wastewater Flow

Equation: Q Peak Hourly/Q Design Avg = $\frac{18 + \sqrt{P}}{4 + \sqrt{P}}$

where

P = population in thousands

(III) If the new collection system is to serve existing development, the likelihood of infiltration/inflow (I/I) contributions from existing service lines and non-wastewater connections to those service lines shall be evaluated and wastewater facilities designed accordingly.

D. Combined sewer interceptors. In addition to the above requirements, interceptors for combined sewers shall have capacity to receive sufficient quantity of combined wastewater for transport to treatment facilities to ensure attainment of the appropriate water quality standards;

5. Organic capacity.

A. Organic load definitions and identification. The following organic loads for the design year shall be identified and used as a basis for design of wastewater treatment facilities. Where any of the terms defined in this section are used in these design standards, the definition contained in this section applies.

(I) Biochemical Oxygen Demand—The five (5)-day Biochemical Oxygen Demand (BOD_5) is defined as the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5)-day period.

(a) Total five (5)-day Biochemical Oxygen Demand ($TBOD_5$) is equivalent to BOD_5 and is sometimes used in order to differentiate carbonaceous plus nitrogenous oxygen demand from strictly carbonaceous oxygen demand.

(b) The carbonaceous five (5)-day Biochemical Oxygen Demand ($CBOD_5$) is defined as BOD_5 less the nitrogenous oxygen demand of the wastewater.

(II) Design average BOD_5—The design average BOD_5 is generally the average of the organic load received for a continuous twelve (12)-month period for the design year expressed as weight per day. However, the design average BOD_5 for facilities having critical seasonal high loading periods (e.g., recreational areas, campuses, and industrial facilities) shall be based on the daily average BOD_5 during the seasonal period.

(III) Design maximum day BOD_5—The design maximum day BOD_5 is the largest amount of organic load to be received during a continuous twenty-four (24)-hour period expressed as weight per day.

(IV) Design peak hourly BOD_5—The design peak hourly BOD_5 is the largest amount of organic load to be received during a one (1)-hour period expressed as weight per day.

B. Design of organic capacity of wastewater treatment facilities to serve existing collection systems.

(I) Projections shall be made from actual wasteload data to the extent possible.

(II) Projections shall be compared to subparagraph (4)(C)5.C. of this rule and an accounting made for significant variations from those values.

(III) Impact of industrial sources shall be documented.

C. Organic capacity of wastewater treatment facilities to serve new collection systems.

(I) Domestic wastewater treatment design shall be on the basis of at least 0.17 pounds (0.08 kg) of BOD_5 per capita per day and 0.20 pounds (0.09 kg) of suspended solids per capita per day, unless information is submitted to justify alternate designs.

(II) Impact of industrial sources shall be documented.

(III) Data from similar municipalities may be utilized in the case of new systems. However, thorough investigation that is adequately documented shall be provided to the department to establish the reliability and applicability of such data;

6. Wastewater treatment facility design capacity. The wastewater treatment facility design capacity is the design average flow at the design average BOD_5. Refer to paragraphs (4)(C)4. and (4)(C)5. of this rule for peaking factors that will be required.

A. Engineering criteria. Engineering criteria and assumptions used in the design of the project shall be provided in the facility plan. Refer to subsection (4)(D) of this rule for additional information.

B. If the project includes the land application of wastewater, the requirements in 10 CSR 20-8.220 must be included with the facility plan;

7. Initial alternative development. For projects receiving funding through the grant and loan programs in 10 CSR 20-4, the process of selection of wastewater treatment and collection system alternatives for detailed evaluation shall be discussed. All wastewater management alternatives considered and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation shall be included;

8. Detailed alternative evaluation. The following shall be included for the alternatives to be evaluated in detail.

A. Sewer system revisions. Proposed revisions to the existing sewer system including adequacy of portions not being changed by the project.

B. Wet weather flows. Facilities to transport and treat wet weather flows in a manner that complies with state and local regulations must be provided. The design of wastewater treatment facilities and sewers shall provide for transportation and treatment of all flows including wet weather flows unless the owner's National Pollutant Discharge Elimination System (NPDES) permit authorizes a bypass.

C. Site evaluation. When a site must be used which is critical with respect to these items, appropriate measures shall be taken to minimize adverse impacts.

(I) Compatibility of the treatment process with the present and planned future land use, including noise, potential odors, air quality, and anticipated sludge processing and disposal techniques, shall be considered. Non-aerated lagoons should not be used if excessive sulfate is present in the wastewater. Wastewater treatment facilities should be separate from habitation or any area likely to be built up within a reasonable future period and shall be separated in accordance with state and local requirements.

(II) Zoning and other land use restrictions shall be identified.

(III) An evaluation of the accessibility and topography of the site shall be submitted.

(IV) Area for future plant expansion shall be identified.

(V) Direction of prevailing wind shall be identified.

(VI) Flood considerations, including the twenty-five (25)-year and one hundred (100)-year flood levels, impact on floodplain and floodway, and compliance with applicable regulations in 10 CSR 20-8 regarding construction in flood-prone areas, shall be evaluated.

(VII) Geologic information, depth to bedrock, karst features, or other geologic considerations of significance to the project shall be included. A copy of a geological site evaluation from the department's Division of Geology and Land Survey providing stream determinations (gaining or losing) must be included for all new wastewater treatment facilities. A copy of a geological site evaluation providing site collapse and overall potentials from the department's Division of Geology and Land Survey must be included for all earthen basin structures. Earthen basin structures shall not be located in areas receiving a severe overall geological collapse potential rating.

(VIII) Protection of groundwater including public and private wells is of utmost importance. Demonstration that protection will be provided must be included. If the proposed wastewater facilities will be near a water source or other water facility, as determined by the department's Division of Geology and Land Survey or by the department's Public Drinking Water Branch addressing the allowable distance between these wastewater facilities and the water source must be included with the facility plan. Refer to 10 CSR 20-8.130 and 10 CSR 20-8.140.

(IX) Soil type and suitability for construction and depth to normal and seasonal high groundwater shall be determined.

(X) The location, depth, and discharge point of any field tile in the immediate area of the proposed site shall be identified.

(XI) Present and known future effluent quality and monitoring requirements determined by the department shall be included.

Refer to subparagraph (4)(C)8.N. of this rule.

(XII) Access to receiving stream for the outfall line shall be discussed and displayed.

(XIII) A preliminary assessment of site availability shall be included.

D. Unit sizing. Unit operation and preliminary unit process sizing and basis shall be discussed.

E. Flow diagram. A preliminary flow diagram of treatment facilities including all recycle flows shall be provided.

F. Emergency operation. Emergency operation requirements as outlined in 10 CSR 20-8.130 and 10 CSR 20-8.140 shall be discussed and provided.

G. The no-discharge option must be examined and included as an alternative in the facility plan.

H. Technology not included in these standards. 10 CSR 20-8.140 outlines procedures for introducing and obtaining approval to use technology not included in these standards. Proposals to use technology not included in these standards must address the requirements of 10 CSR 20-8.140.

I. Biosolids. The solids disposal options considered and method selected must be included. This is critical to completion of a successful project. Compliance with requirements of 10 CSR 20-8.170 and any conditions in the owner's National Pollutant Discharge Elimination System (NPDES) permit must be assured.

J. Treatment during construction. A plan for the method and level of treatment to be achieved during construction shall be developed and included in the facility plan that must be submitted to the department for review and approval. This approved treatment plan must be implemented by inclusion in the plans and specifications to be bid for the project. Refer to paragraph (6)(A)5. and subsection (7)(D) of this rule.

K. Operation and maintenance. Portions of the project which involve complex operation or maintenance requirements shall be identified, including laboratory requirements for operation, industrial sampling, and self monitoring.

L. Cost estimates. Cost estimates for capital and operation and maintenance (including basis) must be included for projects receiving funding through the grant and loan programs in 10 CSR 20-4.

M. Environmental review.

(I) Compliance with planning requirements of local government agencies must be documented.

(II) Any additional environmental information meeting the criteria in 10 CSR 20-4.050, for projects receiving funding through the state grant and loan programs.

N. Water quality reports. Include all reviews, studies, or reports required by 10 CSR 20-7, Water Quality, and approved by the department. Any information or sections in an approved study or report required by 10 CSR 20-7 that addresses the requirements in subsection (4)(C) of this rule can be incorporated into the facility plan in place of these sections;

9. Final project selection. The project selected from the alternatives considered under paragraph (4)(C)10. of this rule shall be set forth in the final facility plan document to be forwarded to the department for review and approval, including the financing considerations and recommendations for implementation of the plan; and

10. It is preferred that any request for a deviation from 10 CSR 20-8 be addressed along with the engineering justifications in the facility plan. Otherwise, all requests for deviations along with the engineering justification from 10 CSR 20-8.120 through 10 CSR 20-8.220 must accompany the plans and specifications.

(7) Specifications.

(A) Complete signed, sealed, and dated technical specifications shall be submitted for the construction of sewers, wastewater pumping stations, wastewater treatment plants, and all other appurtenances. Technical specifications shall accompany the plans.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 4—Membership and Creditable Service

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2010, the board of trustees hereby amends a rule as follows:

16 CSR 10-4.010 Membership Service Credit **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 18, 2011 (36 MoReg 230–231). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENT: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 6—The Public Education Employee Retirement System of Missouri

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.610, RSMo Supp. 2010, the board of trustees hereby amends a rule as follows:

16 CSR 10-6.040 Membership Service Credit **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 18, 2011 (36 MoReg 231). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENT: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.010 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.030 Contributions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.070 Vesting and Service **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 527–528). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.080 Plan Administration **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 528). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Nursing under sections 324.001.10 and 335.036, RSMo Supp. 2010 and section 335.046, RSMo 2000, the board amends a rule as follows:

20 CSR 2200-4.010 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2011 (36 MoReg 831–833). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 528–536). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 528 and the public was given thirty (30) days from the date of publication to submit written comment. Six (6) public comments were received.

COMMENT #1: A representative of UMR commented regarding this proposed amendment that Missouri Consolidated Health Care Plan's (MCHCP's) 2011 State Handbook and 22 CSR 10-2.075 contain a definition of adverse benefit determination. For consistency this definition should be included in 22 CSR 10-2.010.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board will clarify the intent in the handbook in connection with the term adverse benefit determination in the context of utilization review.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that the definition of handbook refers to the 2010 State Member Handbook. It should reference the 2011 State Handbook and Enrollment Guide.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment the board amended the reference to the State Member Handbook as suggested.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification and consistency in both the proposed rules and the member handbook that there are no longer lifetime limits for members.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board believes no member has ever been termed or denied benefits as a result of a member having reached the lifetime maximum on the dollar value of non-network essential benefits. Nevertheless, we have included a notice in our handbook stating that there is no longer a lifetime maximum on the dollar value of non-network essential benefits.

COMMENT #4: A representative of UMR commented regarding this proposed amendment that UMR would like clarification regarding what is meant by "responsibility for health care" under "foster child" and "grandchild" in the definitions regarding dependents.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board removed "responsibility for health care" under "foster child" and "grandchild" definitions.

COMMENT #5: A representative of UMR commented regarding this proposed amendment that UMR would like clarification on the scope of coverage based on guardianship of minors when the minor reaches the age of majority. Does MCHCP stop covering individuals who were dependents under the guardianship of a minor category when they reach the age eighteen (18) or does the plan intend to cover these individuals to age twenty-six (26)?
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board has clarified its intention to allow for continued coverage of a dependent child based upon guardianship of a minor after the guardianship ends until age twenty-six (26) provided the guardianship was in effect the day before the dependent child under the guardianship turns eighteen (18) years of age.

COMMENT #6: Representatives on behalf of the Pharmaceutical Research and Manufacturers of America commented in opposition to the amendment to the definition of "generic drug" to include "therapeutic equivalent."
RESPONSE AND EXPLANATION OF CHANGE: The board has already clarified by emergency statement and clarifies here the decision to return to the previous definition of generic drug to prevent confusion and unintended consequences regarding the generic drugs covered by the plan.

22 CSR 10-2.010 Definitions

(29) Dependent child. Any child under the age of twenty-six (26) that is a natural child, legally adopted or placed for adoption child, or a child with one (1) of the following legal relationships with the member, so long as such legal relationship remains in effect:

(A) Stepchild;

(B) Foster child;

(C) Grandchild for whom the employee has legal guardianship or legal custody; and

(D) Other child for whom the employee is the court-ordered legal guardian.

1. Except for a disabled child as described in 22 CSR 10-2.010(89), a dependent child is eligible from his/her eligibility date to the end of the month he/she attains age twenty-six (26) (see paragraph 22 CSR 10-2.020(3)(D)2. for continuing coverage on a handicapped child beyond age twenty-six (26)).

2. A child who is a dependent child under a guardianship of a minor will continue to be a dependent child when the guardianship ends by operation of law when the child becomes eighteen (18) years of age if such child was an MCHCP member the day before the child becomes eighteen (18) years of age.

(49) Generic drug. The chemical equivalent of a brand-name drug with an expired patent. The color or shape may be different, but the active ingredients must be the same for both.

(51) Handbook. The summary plan document prepared for members explaining the terms, conditions, and all material aspects of the plan and benefits offered under the plan, a copy of which is incorporated by reference into this rule. The full text of material incorporated by reference is available to any interested person at the Missouri Consolidated Health Care Plan, 832 Weathered Rock Court, Jefferson City, MO 65101, 2011 State Member Handbook (March 15, 2011) or online at www.mchcp.org. It does not include any later amendments or additions.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 536–542). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 536 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: A representative of UMR commented that 22 CSR 10-2.020(2)(B)1.A. contradicts Missouri Consolidated Health Care Plan's (MCHCP's) 2011 State Member Handbook and Enrollment Guide and practices. He commented that MCHCP's current practice is to allow ninety (90) days for members to obtain proof of eligibility documentation for newborns.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified in the rules and MCHCP handbook for the statutory requirements on MCHCP under section 376.406, RSMo, and member requirements to meet eligibility criteria for continued newborn coverage beyond thirty-one (31) days from date of birth under the plan document.

COMMENT #2: A representative with UMR commented that the rules do not indicate how MCHCP computes deadlines for enrollment and eligibility information and that MCHCP's 2011 State and Public Entity Handbooks and Enrollment Guides and practices adhere to the following guideline: "Unless specifically stated otherwise, when MCHCP computes deadlines identified in this handbook, it counts Day One as the first day after the qualifying event. If the last day falls on a weekend or state holiday, MCHCP may receive required information on the first working day after the weekend or state holiday."
RESPONSE AND EXPLANATION OF CHANGE: The computation of deadline language was inadvertently removed from the 2011 State and Public Entity Handbooks and Enrollment Guides and, in response to this comment, has been reinserted into both documents.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-2.020 General Membership Provisions

(2) The effective date of participation shall be determined, subject to the effective date provision in subsection (2)(C), as follows:

(B) Dependent Coverage. Dependent participation cannot precede the subscriber's participation except when coverage is added as a life event with birth of a child or adoption of a child at birth. The effective date for a newborn is the date of birth. The subscriber and/or dependent's effective date is the first day of the calendar month coinciding with or following the date of the enrollment. Enrollment for participants must be made in accordance with the following provisions. Effective dates for all dependent coverage is wholly dependent upon—

1. Proof of eligibility documentation is required for all dependents. The plan reserves the right to request that such proof of eligibility be provided at any time upon request. If such proof is not received or is unacceptable as determined by the plan administrator, coverage for the applicable dependent will either be terminated or will never take effect.

A. For the addition of dependents: Required documentation should accompany the enrollment for coverage, except when adding a newborn. Failure to provide acceptable documentation with the enrollment will result in the dependent not having coverage until such proof is received, subject to the following:

(I) If proof of eligibility is not received with the enrollment, such proof will be requested by letter sent to the subscriber. Documentation shall be received no later than thirty (30) days from the date of the letter requesting such proof. Failure to provide the required documentation in a timely manner will result in the dependent being ineligible for coverage until the next open enrollment period unless a life event occurs; and

(II) Coverage is provided for a newborn of a member from the moment of birth.The member must notify the plan of the birth verbally or in writing within thirty-one (31) days of the birth date. The plan will notify the member of the steps to continue coverage. The member is allowed an additional ten (10) days from the date of the plan notice to return the enrollment form. Coverage will not continue unless the enrollment form is received within thirty-one (31) days of the birth date or ten (10) days from the date of the notice, whichever is later. Newborn proof of eligibility must be submitted with ninety (90) days of the date of birth. If proof of eligibility is not received, coverage will terminate on day ninety-one (91) from the date of birth;

2. Documentation is also required when a subscriber attempts to terminate a dependent's coverage in the case of divorce or death;

3. Acceptable forms of proof of eligibility are included in the following chart:

Circumstance	Documentation
Birth of dependent(s)	• Government-issued birth certificate or other government-issued or legally-certified proof of eligibility
Addition of step-child(ren)	• Marriage license to biological parent of child(ren); and • Birth certificate for child(ren) that names the subscriber's spouse as a parent
Addition of foster child(ren)	• Placement papers in subscriber's care
Adoption of dependent(s)	• Adoption papers; • Placement papers; or • Filed petition for adoption
Legal guardianship of dependent(s)	• Court-documented guardianship papers (Power of Attorney is not acceptable)
Newborn of covered dependent	• Government-issued birth certificate for newborn listing covered dependent as parent with baby's name and birth date
Marriage	• Marriage license; • Marriage certificate; or • Newspaper notice of the wedding
Divorce	• Final divorce decree; or • Notarized letter from spouse stating he/she is agreeable to termination of coverage pending divorce
Death	• Death certificate

4. For family coverage, once a subscriber is participating with respect to dependents, newly acquired dependents are automatically covered on their effective dates as long as the plan administrator is notified within thirty-one (31) days of the person becoming a dependent. First eligible dependents must be added within thirty-one (31) days of such qualifying event. The employee is required to notify the plan administrator on the appropriate form of the dependent's name, date of birth, eligibility date, and Social Security number. Members who are eligible for Medicare benefits under Part A, B, or D must notify the plan administrator of their eligibility and provide a copy of the member's Social Security and Medicare cards within thirty-one (31) days of eligibility of Medicare. Claims will not be processed until the required information is provided;

5. If an employee makes concurrent enrollment for dependent participation on or before the date of eligibility or within thirty-one (31) days thereafter, participation for dependent will become effective on the date the employee's participation becomes effective;

6. When an employee participating in the plan first becomes eligible with respect to a dependent child(ren), coverage may become effective on the eligibility date or the first day of the month coinciding with or following the date of eligibility if enrollment is made within thirty-one (31) days of the date of eligibility and provided any required contribution for the period is made; and

7. Survivors, retirees, vested subscribers, and long-term disability subscribers may only add dependents to their coverage when the dependent is first eligible for coverage, add dependents under the age of twenty-six (26) at open enrollment for the 2011 plan year only, add a newborn of a covered dependent, or when a dependent's employer-sponsored coverage ends due to one (1) of the following:

A. Termination of employment;

B. Retirement; or

C. Termination of group coverage by the employer. Coverage must have been in place for twelve (12) months immediately prior to the loss, and coverage must be requested within sixty (60) days from the termination date of the previous coverage;

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.045 Plan Utilization Review Policy **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 543–544). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-2.050 Copay Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 544). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.051 PPO 300 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 544–548). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.052 PPO 600 Plan Benefit Provisions and Covered Charges **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 549–552). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.053 High Deductible Health Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 553–556). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.054 Medicare Supplement Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 557–560). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.055 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 561–577). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 561 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: J. Esteban Varela, MD, Associate Professor of Surgery with Washington University Physicians commented in opposition to the dropping of bariatric surgery coverage for Missouri state employees who are severely obese and that "[e]xtending coverage of bariatric surgery care would promote Universal healthcare, decrease the overall direct medical state costs and improve health."

In support of his comment, Dr. Varela gave background information on the costs of obesity. Including that obesity is associated with other serious conditions, including Type 2 Diabetes Mellitus, cardiovascular disease, osteoarthritis, sleep apnea, premature death, and cancer. He also stated that ten percent (10%) of all medical costs, or $147 billion, in the U.S. are related to obesity.

Dr. Varela also commented that savings from bariatric surgery could be recouped in two (2) to four (4) years after surgery from reductions in prescription drug costs, physician visit costs, and hospital costs.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

COMMENT #2: A representative with UMR commented that UMR would like clarification regarding the coverage of X rays and lab services that are included under preventive services, in particular, the language stating "For benefits to be covered as preventative, including X rays and lab services, they must be coded by your physician as routine, without any indication of an injury or illness."

RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent to have routine lab and X-ray services ordered as part of an annual physical exam (well man, woman, and child) included as part of the one hundred percent (100%) coverage as long as the services are coded as routine, without indication of an injury or illness.

COMMENT #3: The president-elect of the Missouri Chapter of the American Society of Metabolic and Bariatric Surgery commented in opposition to the withdrawal of bariatric surgery benefits from Missouri Consolidated Health Care Plan (MCHCP) for 2011. In support of his comment, he also stated MCHCP will save money in the long run in reduced health care costs and increased employee productivity and longevity.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

22 CSR 10-2.055 Medical Plan Benefit Provisions and Covered Charges

(2) Covered Charges Applicable to the PPO 300, PPO 600, and HDHP Plans.

(D) Plan benefits for the PPO 300, PPO 600, and HDHP plans are as follows:

EDITOR'S NOTE: The only change to the State Benefits chart is in the Preventive Services section. This section is reprinted here. The remainder of the State Benefits chart remain as originally published.

Preventive Services
- Services recommended by the U.S. Preventive Services Task Force (categories A and B)
- Immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention
- Preventive care and screenings for infants, children, and adolescents supported by the Health Resources and Services Administration
- Preventive care and screenings for women supported by the Health Resources and Services Administration

Annual physical exams (Well man, woman, and child) and routine lab and X-ray services ordered as part of the annual exam - one per calendar year

Age-specific cancer screenings:
- Mammograms
- Pap smears
- Prostate cancer screenings
- Colorectal screenings
- Colonoscopy and sigmoidoscopy screenings

For benefits to be covered as preventive, including X-rays and lab services, they must be coded by your physician as routine, without indication of an injury or illness.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, and section 103.080.3, RSMo Supp. 2010, the director amends a rule as follows:

22 CSR 10-2.060 PPO 300 Plan, PPO 600 Plan, and HDHP Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 578–581). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-2.064 HMO Summary of Medical Benefits **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 582). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.075 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 582–587). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 582 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT #1: A representative with UMR commented that UMR would like clarification of the time frames for the first and second level appeals so there is consistency for Missouri Consolidated Health Care Plan (MCHCP) members in the rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified the time frames applicable to first and second level appeals.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-2.075 Review and Appeals Procedure

(3) Appeal Process for Medical and Pharmacy Determinations.

(A) Definitions. Notwithstanding any other rule in this chapter to the contrary, for purposes of a member's right to appeal any adverse benefit determination made by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor, relating to the provision of health care benefits, other than those provided in connection with the plan's dental or vision benefit offering, the following definitions apply.

1. Adverse benefit determination. An adverse benefit determination means any of the following:

A. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit, including any denial, reduction, termination, or failure to provide or make payment that is based on a determination of an individual's eligibility to participate in the plan;

B. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate; or

C. Any rescission of coverage once an individual has been covered under the plan.

2. Appeal (or internal appeal). An appeal or internal appeal means review by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor of an adverse benefit determination.

3. Claimant. Claimant means an individual who makes a claim under this subsection. For purposes of this subsection, references to claimant include a claimant's authorized representative.

4. External review. External review means a review of an adverse benefit determination (including a final internal adverse benefit determination) by the Missouri Department of Insurance, Financial Institutions and Professional Registration, Division of Consumer Affairs (DIFP) regarding covered medical and pharmacy benefits administered by plan vendors, UMR, Mercy Health Plans, or Express Scripts Inc., in accordance with state law and regulations promulgated by DIFP and made applicable to the plan by agreement and between the plan and DIFP pursuant to Technical Guidance from the U.S. Department of Health and Human Services dated September 23, 2010.

5. Final internal adverse benefit determination. A final internal

adverse benefit determination means an adverse benefit determination that has been upheld by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor at the completion of the internal appeals process under this subsection, or an adverse benefit determination with respect to which the internal appeals process has been deemed exhausted by application of applicable state or federal law.

6. Final external review decision. A final external review decision means a determination rendered under the DIFP external review process at the conclusion of an external review.

7. Rescission. A rescission means a termination or discontinuance of medical or pharmacy coverage that has retroactive effect except that a termination or discontinuance of coverage is not a rescission if—

A. The termination or discontinuance of coverage has only a prospective effect;

B. The termination or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or

C. The termination or discontinuance of coverage is effective retroactively at the request of the member in accordance with applicable provisions of this chapter regarding voluntary cancellation of coverage.

(B) Internal Appeals.

1. Eligibility, termination for failure to pay, or rescission. Adverse benefit determinations denying or terminating an individual's coverage under the plan based on a determination of the individual's eligibility to participate in the plan or the failure to pay premiums, or any rescission of coverage based on fraud or intentional misrepresentation of a member or authorized representative of a member are appealable exclusively to the Missouri Consolidated Health Care Plan (MCHCP) Board of Trustees (board).

A. The internal review process for appeals relating to eligibility, termination for failure to pay, or rescission shall consist of one (1) level of review by the board.

B. Adverse benefit determination appeals to the board must identify the eligibility, termination, or rescission decision being appealed and the reason the claimant believes the MCHCP staff decision should be overturned. The member should include with his/her appeal any information or documentation to support his/her appeal request.

C. The appeal will be reviewed by the board in a meeting closed pursuant to section 610.021, RSMo, and the appeal will be responded to in writing to the claimant within sixty (60) days from the date the board received the written appeal.

D. Determinations made by the board constitute final internal adverse benefit determinations and are not eligible for external review by DIFP.

2. Medical and pharmacy services. Members may request internal review of any adverse benefit determination relating to urgent care, pre-service claims, and post-service claims made by the plan's medical and pharmacy vendors.

A. Appeals of adverse benefit determinations shall be submitted in writing to the vendor that issued the original determination giving rise to the appeal at the applicable address set forth in this rule.

B. The internal review process for adverse benefit determinations relating to medical services consists of two (2) levels of internal review provided by the medical vendor that issued the adverse benefit determination.

(I) First level appeals must identify the decision being appealed and the reason the member believes the original claim decision should be overturned. The member should include with his/her appeal any additional information or documentation to support the reason the original claim decision should be overturned.

(II) First level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. First level medical appeals will be responded to in writing to the member within thirty (30) days for post-service claims and fifteen (15) days for pre-service claims from the date the vendor received the first level appeal request.

(III) An expedited appeal of an adverse benefit determination may be requested when a decision is related to a pre-service claim for urgent care. Expedited appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. Expedited appeals will be responded to within seventy-two (72) hours after receiving a request for an expedited review with written confirmation of the decision to the member within three (3) working days of providing notification of the determination.

(IV) Second level appeals must be submitted in writing within sixty (60) days of the date of the first level appeal decision letter that upholds the original adverse benefit determination. Second level appeals should include any additional information or documentation to support the reason the member believes the first level appeal decision should be overturned. Second level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision or first level appeal and will include consultation with a qualified medical professional if a medical judgment is involved. Second level medical appeals shall be responded to in writing to the member within thirty (30) days for post-service claims and within fifteen (15) days for pre-service claims from the date the vendor received the second level appeal request.

(V) For members with medical coverage through UMR—

(a) First level appeals must be submitted in writing to—

UMR Claims Appeal Unit
PO Box 30546
Salt Lake City, UT 84130-0546

(b) Second level appeals must be sent in writing to—

UMR Claims Appeal Unit
PO Box 8086
Wausau, WI 54402-8086

(c) Expedited appeals must be communicated by calling UMR telephone 1-866-868-7758 or by submitting a written fax to 1-866-912-8464, Attention: Appeals Unit.

(VI) For members with medical coverage through Mercy Health Plans—

(a) First and second level appeals must be submitted in writing to—

Mercy Health Plans
Attn: Corporate Appeals
14528 S. Outer 40 Road, Suite 300
Chesterfield, MO 63017

(b) Expedited appeals must be communicated by calling Mercy Health Plans telephone 1-800-830-1918, ext. 2394 or by submitting a written fax to 1-314-214-3233, Attention: Corporate Appeals.

C. The internal review process for adverse benefit determinations relating to pharmacy consists of one (1) level of internal review provided by the pharmacy vendor.

(I) Pharmacy appeals must identify the matter being appealed and should include the member's (and dependent's, if applicable) name, the date the member claimant attempted to fill the prescription, the prescribing physician's name, the drug name and quantity, the cost of the prescription, if applicable, the reason the claimant believes the claim should be paid, and any other written documentation to support the claimant's belief that the original decision should be overturned.

(II) All pharmacy appeals must be submitted in writing to—

Express Scripts
Clinical Appeals—MH3
6625 West 78th Street, BL0390
Bloomington, MN 55439
or by fax to 1-877-852-4070

(III) Pharmacy appeals will be reviewed by someone who was not involved in the original decision and the reviewer will consult with a qualified medical professional if a medical judgment is involved. Pharmacy appeals will be responded to in writing to the member within sixty (60) days for post-service claims and thirty (30) days for pre-service claims from the date the vendor received the appeal request.

D. Members may seek external review only after they have exhausted all applicable levels of internal review or received a final internal adverse benefit determination.

3. For all internal appeals of adverse benefit determinations, the plan or the vendor reviewing the appeal will provide the member, free of charge, with any new or additional evidence or rationale considered, relied upon, or generated by the plan or the vendor in connection with reviewing the claim or the appeal and will give the member an opportunity to respond to such new evidence or rationale before issuing a final internal adverse determination.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.090 Pharmacy Benefit Summary **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 588–591). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.091 Wellness Program Coverage, Provisions, and Limitations **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 592). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.092 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 593–596). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 593 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT: Lynn Pyle, Regional Vice President of Delta Dental Missouri, commented in opposition to this rule, stating that the proposed rule contradicts Delta Dental of Missouri's contract language with Missouri Consolidated Health Care Plan. The contract states that Delta Dental of Missouri will cover the allowed amount of a removable partial denture, not the cost of a removable partial denture.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent for coverage of the allowed amount for a removable partial denture.

22 CSR 10-2.092 Dental Benefit Summary

(4) Alternative Treatment. If alternative treatment plans are available, this dental plan will be liable for the least costly, professionally satisfactory course of treatment. This includes, but is not limited to, services such as composite resin fillings on molar teeth, in which case the benefits are based on the cost of the amalgam (silver) filling. This also includes fixed bridges, in which case the benefits will be based on the allowed amount of a removable partial denture.

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ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.093 Vision Benefit Summary **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36

MoReg 597–603). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 604–611). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 604 and the public was given thirty (30) days from the date of publication to submit written comment. Six (6) public comments were received.

COMMENT #1: A representative of UMR commented regarding this proposed amendment that Missouri Consolidated Health Care Plan's (MCHCP's) 2011 Public Entity Handbook and 22 CSR 10-3.075 contain a definition of adverse benefit determination. For consistency this definition should be included in 22 CSR 10-3.010.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board will clarify the intent in the handbook in connection with the term adverse benefit determination in the context of utilization review.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that the definition of handbook refers to the 2010 Public Entity Member Handbook. It should reference the 2011 Public Entity Handbook and Enrollment Guide.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment the board amended the reference to the Public Entity Member Handbook as suggested.

COMMENT #3: A representative of UMR commented regarding this proposed amendment that UMR would like clarification and consistency in both the proposed rules and the member handbook that there are no longer lifetime limits for members.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board believes no member has ever been termed or denied benefits as a result of a member having reached the lifetime maximum on the dollar value of non-network essential benefits. Nevertheless, we have included a notice in our handbook stating that there is no longer a lifetime maximum on the dollar value of non-network essential benefits.

COMMENT #4: A representative of UMR commented regarding this proposed amendment that UMR would like clarification regarding what is meant by "responsibility for health care" under "foster child" and "grandchild" in the definitions regarding dependents.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board removed "responsibility for health care" under "foster child" and "grandchild" definitions.

COMMENT #5: A representative of UMR commented regarding this proposed amendment that UMR would like clarification on the scope of coverage based on guardianship of minors when the minor reaches the age of majority. Does MCHCP stop covering individuals who were dependents under the guardianship of a minor category when they reach the age eighteen (18) or does the plan intend to cover these individuals to age twenty-six (26)?
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment, the board has clarified its intention to allow for continued coverage of a dependent child based upon guardianship of a minor after the guardianship ends until age twenty-six (26) provided the guardianship was in effect the day before the dependent child under the guardianship turns eighteen (18) years of age.

COMMENT #6: Representatives on behalf of the Pharmaceutical Research and Manufacturers of America commented in opposition to the amendment to the definition of "generic drug" to include "therapeutic equivalent."
RESPONSE AND EXPLANATION OF CHANGE: The board has already clarified by emergency statement and clarifies here the decision to return to the previous definition of generic drug to prevent confusion and unintended consequences regarding the generic drugs covered by the plan.

22 CSR 10-3.010 Definitions

(29) Dependent child. Any child under the age of twenty-six (26) that is a natural child, legally adopted or placed for adoption child, or a child with one (1) of the following legal relationships with the member, so long as such legal relationship remains in effect:

(A) Stepchild;

(B) Foster child;

(C) Grandchild for whom the employee has legal guardianship or legal custody; and

(D) Other child for whom the employee is court-ordered legal guardian.

1. Except for a disabled child as described in 22 CSR 10-3.010(88), a dependent child is eligible from his/her eligibility date to the end of the month he/she attains age twenty-six (26).

2. A child who is a dependent child under a guardianship of a minor will continue to be a dependent child when the guardianship ends by operation of law when the child becomes eighteen (18) years of age if such child was an MCHCP member the day before the child becomes eighteen (18) years of age.

(49) Generic drug. A chemical equivalent of a brand-name drug with an expired patent. The color or shape may be different, but the active ingredients must be the same for both.

(51) Handbook. The summary plan document prepared for members explaining the terms, conditions, and all material aspects of the plan and benefits offered under the plan, a copy of which is incorporated by reference into this rule. The full text of material incorporated by reference is available to any interested person at the Missouri Consolidated Health Care Plan, 832 Weathered Rock Court, Jefferson City, MO 65101, 2011 Public Entity Member Handbook (March 15, 2011) or online at www.mchcp.org. It does not include any later amendments or additions.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.045 Plan Utilization Review Policy **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 611–612). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.050 Copay Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 612). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.051 PPO 300 Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director rescinds a rule as follows:

22 CSR 10-3.052 PPO 500 Plan Benefit Provisions and Covered Charges **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.053 PPO 1000 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 613–617). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.054 PPO 2000 Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 618–621). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, and section 103.080.3, RSMo Supp. 2010, the director amends a rule as follows:

22 CSR 10-3.055 High Deductible Health Plan Benefit Provisions and Covered Charges **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 622–625). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.056 PPO 600 Plan Benefit Provisions and Covered Charges **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 626–630). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.057 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 631–647). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the Missouri Register on February 1, 2011, Vol. 36, No. 3, on page 631 and the public was given thirty (30) days from the date of publication to submit written comment. Three (3) public comments were received.

COMMENT #1: J. Esteban Varela, MD, Associate Professor of Surgery with Washington University Physicians commented in opposition to the dropping of bariatric surgery coverage for Missouri employees who are severely obese and that "[e]xtending coverage of bariatric surgery care would promote Universal healthcare, decrease the overall direct medical state costs and improve health."

In support of his comment, Dr. Varela gave background information on the costs of obesity. Including that obesity is associated with other serious conditions, including Type 2 Diabetes Mellitus, cardiovascular disease, osteoarthritis, sleep apnea, premature death, and cancer. He also stated that ten percent (10%) of all medical costs, or $147 billion, in the U.S. are related to obesity.

Dr. Varela also commented that savings from bariatric surgery could be recouped in two (2) to four (4) years after surgery from reductions in prescription drug costs, physician visit costs, and hospital costs.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

COMMENT #2: A representative with UMR commented that UMR would like clarification regarding the coverage of X rays and lab services that are included under preventive services, in particular, the language stating "For benefits to be covered as preventative, including X rays and lab services, they must be coded by your physician as routine, without any indication of an injury or illness."

RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent to have routine lab and X-ray services ordered as part of an annual physical exam (well man, woman, and child) included as part of the one hundred percent (100%) coverage as long as the services are coded as routine, without indication of an injury or illness.

COMMENT #3: The president-elect of the Missouri Chapter of the American Society of Metabolic and Bariatric Surgery commented in opposition to the withdrawal of bariatric surgery benefits from Missouri Consolidated Health Care Plan (MCHCP) for 2011. In support of his comment, he also stated MCHCP will save money in the long run in reduced health care costs and increased employee productivity and longevity.

RESPONSE: In response to this comment, the board is not including bariatric coverage as a benefit at this time. Due to budget constraints and rising coverage costs, coverage of bariatric surgery was removed from 2011 covered benefits.

22 CSR 10-3.057 Medical Plan Benefit Provisions and Covered Charges

(2) Covered Charges Applicable to the PPO 600, PPO 1000, PPO 2000, and HDHP Plans.

(D) Plan benefits for the PPO 600, PPO 1000, PPO 2000, and HDHP Plans are as follows:

EDITOR'S NOTE: The only change to the Public Entity Benefits chart is in the Preventive Services section. This section is reprinted here. The remainder of the Public Entity Benefits chart remain as originally published.

Preventive Services
- Services recommended by the U.S. Preventive Services Task Force (categories A and B)
- Immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention
- Preventive care and screenings for infants, children, and adolescents supported by the Health Resources and Services Administration
- Preventive care and screenings for women supported by the Health Resources and Services Administration

Annual physical exams (Well man, woman, and child) and routine lab and X-ray services ordered as part of the annual exam - one per calendar year

Age-specific cancer screenings:
- Mammograms
- Pap smears
- Prostate cancer screenings
- Colorectal screenings
- Colonoscopy and sigmoidoscopy screenings

For benefits to be covered as preventive, including X-rays and lab services, they must be coded by your physician as routine, without indication of an injury or illness.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.060 PPO 600 Plan, PPO 1000 Plan, PPO 2000 Plan, and HDHP Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 648–651). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.075 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 652–656). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed amendment was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 652 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was made.

COMMENT #1: A representative with UMR commented that UMR would like clarification of the time frames for the first and second level appeals so there is consistency for Missouri Consolidated Health Care Plan (MCHCP) members in the rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: The board has clarified the time frames applicable to first and second level appeals.

COMMENT #2: A representative of UMR commented regarding this proposed amendment that UMR would like clarification, for consistency, on how rescission is applied and defined both in the proposed rules and member handbook.
RESPONSE AND EXPLANATION OF CHANGE: In response to this comment MCHCP has clarified, in 22 CSR 10-2.010(51), 22 CSR 10-2.075(3)(A)C., 22 CSR 10-3.075(3)(A)C., and the handbook, that rescissions are appealable in accordance with other applicable laws.

22 CSR 10-3.075 Review and Appeals Procedure

(3) Appeal Process for Medical and Pharmacy Determinations.

(A) Definitions. Notwithstanding any other rule in this chapter to the contrary, for purposes of a member's right to appeal any adverse benefit determination made by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor, relating to the provision of health care benefits, other than those provided in connection with the plan's dental or vision benefit offering, the following definitions apply.

1. Adverse benefit determination. An adverse benefit determination means any of the following:

A. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit, including any denial, reduction, termination, or failure to provide or make payment that is based on a determination of an individual's eligibility to participate in the plan;

B. A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate; or

C. Any rescission of coverage once an individual has been covered under the plan.

2. Appeal (or internal appeal). An appeal or internal appeal means review by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor of an adverse benefit determination.

3. Claimant. Claimant means an individual who makes a claim under this subsection. For purposes of this subsection, references to claimant include a claimant's authorized representative.

4. External review. External review means a review of an adverse benefit determination (including a final internal adverse benefit determination) by the Missouri Department of Insurance, Financial Institutions and Professional Registration, Division of Consumer Affairs (DIFP) regarding covered medical and pharmacy benefits administered by plan vendors, UMR, Mercy Health Plans, or Express Scripts Inc., in accordance with state law and regulations promulgated by DIFP and made applicable to the plan by agreement and between the plan and DIFP pursuant to Technical Guidance from the U.S. Department of Health and Human Services dated September 23, 2010.

5. Final internal adverse benefit determination. A final internal adverse benefit determination means an adverse benefit determination that has been upheld by the plan, the plan administrator, a claims administrator, or a medical or pharmacy benefit vendor at the completion of the internal appeals process under this subsection, or an adverse benefit determination with respect to which the internal appeals process has been deemed exhausted by application of applicable state or federal law.

6. Final external review decision. A final external review decision means a determination rendered under the DIFP external review process at the conclusion of an external review.

7. Rescission. A rescission means a termination or discontinuance of medical or pharmacy coverage that has retroactive effect except that a termination or discontinuance of coverage is not a rescission if—

A. The termination or discontinuance of coverage has only a prospective effect;

B. The termination or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or

C. The termination or discontinuance of coverage is effective retroactively at the request of the member in accordance with applicable provisions of this chapter regarding voluntary cancellation of coverage.

(B) Internal Appeals.

1. Eligibility, termination for failure to pay, or rescission. Adverse benefit determinations denying or terminating an individual's

coverage under the plan based on a determination of the individual's eligibility to participate in the plan or the failure to pay premiums, or any rescission of coverage based on fraud or intentional misrepresentation of a member or authorized representative of a member are appealable exclusively to the Missouri Consolidated Health Care Plan (MCHCP) Board of Trustees (board).

A. The internal review process for appeals relating to eligibility, termination for failure to pay, or rescission shall consist of one (1) level of review by the board.

B. Adverse benefit determination appeals to the board must identify the eligibility, termination, or rescission decision being appealed and the reason the claimant believes the MCHCP staff decision should be overturned. The member should include with his/her appeal any information or documentation to support his/her appeal request.

C. The appeal will be reviewed by the board in a meeting closed pursuant to section 610.021, RSMo, and the appeal will be responded to in writing to the claimant within sixty (60) days from the date the board received the written appeal.

D. Determinations made by the board constitute final internal adverse benefit determinations and are not eligible for external review by DIFP.

2. Medical and pharmacy services. Members may request internal review of any adverse benefit determination relating to urgent care, pre-service claims, and post-service claims made by the plan's medical and pharmacy vendors.

A. Appeals of adverse benefit determinations shall be submitted in writing to the vendor that issued the original determination giving rise to the appeal at the applicable address set forth in this rule.

B. The internal review process for adverse benefit determinations relating to medical services consists of two (2) levels of internal review provided by the medical vendor that issued the adverse benefit determination.

(I) First level appeals must identify the decision being appealed and the reason the member believes the original claim decision should be overturned. The member should include with his/her appeal any additional information or documentation to support the reason the original claim decision should be overturned.

(II) First level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. First level medical appeals will be responded to in writing to the member within thirty (30) days for post-service claims and fifteen (15) days for pre-service claims from the date the vendor received the first level appeal request.

(III) An expedited appeal of an adverse benefit determination may be requested when a decision is related to a pre-service claim for urgent care. Expedited appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision and will consult with a qualified medical professional if a medical judgment is involved. Expedited appeals will be responded to within seventy-two (72) hours after receiving a request for an expedited review with written confirmation of the decision to the member within three (3) working days of providing notification of the determination.

(IV) Second level appeals must be submitted in writing within sixty (60) days of the date of the first level appeal decision letter that upholds the original adverse benefit determination. Second level appeals should include any additional information or documentation to support the reason the member believes the first level appeal decision should be overturned. Second level appeals will be reviewed by the vendor who will have someone review the appeal who was not involved in the original decision or first level appeal and will include consultation with a qualified medical professional if a medical judgment is involved. Second level medical appeals shall be responded to in writing to the member within thirty (30) days for post-service claims and within fifteen (15) days for pre-service claims from the date the vendor received the second level appeal request.

(V) For members with medical coverage through UMR—

(a) First level appeals must be submitted in writing to—

UMR Claims Appeal Unit
PO Box 30546
Salt Lake City, UT 84130-0546

(b) Second level appeals must be sent in writing to—

UMR Claims Appeal Unit
PO Box 8086
Wausau, WI 54402-8086

(c) Expedited appeals must be communicated by calling UMR telephone 1-866-868-7758 or by submitting a written fax to 1-866-912-8464, Attention: Appeals Unit.

(VI) For members with medical coverage through Mercy Health Plans—

(a) First and second level appeals must be submitted in writing to—

Mercy Health Plans
Attn: Corporate Appeals
14528 S. Outer 40 Road, Suite 300
Chesterfield, MO 63017

(b) Expedited appeals must be communicated by calling Mercy Health Plans telephone 1-800-830-1918, ext. 2394 or by submitting a written fax to 1-314-214-3233, Attention: Corporate Appeals.

C. The internal review process for adverse benefit determinations relating to pharmacy consists of one (1) level of internal review provided by the pharmacy vendor.

(I) Pharmacy appeals must identify the matter being appealed and should include the member's (and dependent's, if applicable) name, the date the member claimant attempted to fill the prescription, the prescribing physician's name, the drug name and quantity, the cost of the prescription, if applicable, the reason the claimant believes the claim should be paid, and any other written documentation to support the claimant's belief that the original decision should be overturned.

(II) All pharmacy appeals must be submitted in writing to—

Express Scripts
Clinical Appeals—MH3
6625 West 78th Street, BL0390
Bloomington, MN 55439
or by fax to 1-877-852-4070

(III) Pharmacy appeals will be reviewed by someone who was not involved in the original decision and the reviewer will consult with a qualified medical professional if a medical judgment is involved. Pharmacy appeals will be responded to in writing to the member within sixty (60) days for post-service claims and thirty (30) days for pre-service claims from the date the vendor received the appeal request.

D. Members may seek external review only after they have exhausted all applicable levels of internal review or received a final internal adverse benefit determination.

3. For all internal appeals of adverse benefit determinations, the plan or the vendor reviewing the appeal will provide the member, free of charge, with any new or additional evidence or rationale considered, relied upon, or generated by the plan or the vendor in connection with reviewing the claim or the appeal and will give the member an opportunity to respond to such new evidence or rationale before issuing a final internal adverse determination.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.090 Pharmacy Benefit Summary **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2011 (36 MoReg 657–660). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.092 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 661–666). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This proposed rule was printed in the *Missouri Register* on February 1, 2011, Vol. 36, No. 3, on page 661 and the public was given thirty (30) days from the date of publication to submit written comment. One (1) public comment was received.

COMMENT: Lynn Pyle, Regional Vice President of Delta Dental Missouri, commented in opposition to this rule, stating that the proposed rule contradicts Delta Dental of Missouri's contract language with Missouri Consolidated Health Care Plan. The contract states that Delta Dental of Missouri will cover the allowed amount of a removable partial denture, not the cost of a removable partial denture. RESPONSE AND EXPLANATION OF CHANGE: The board has clarified its intent for coverage of the allowed amount for a removable partial denture.

22 CSR 10-3.092 Dental Benefit Summary

(4) Alternative Treatment. If alternative treatment plans are available, this dental plan will be liable for the least costly, professionally satisfactory course of treatment. This includes, but is not limited to, services such as composite resin fillings on molar teeth, in which case the benefits are based on the cost of the amalgam (silver) filling. This also includes fixed bridges, in which case the benefits will be based on the allowed amount of a removable partial denture.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-3.093 Vision Benefit Summary **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2011 (36 MoReg 667–673). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

NOTIFICATION OF REVIEW: APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for July 11, 2011. These applications are available for public inspection at the address shown below.

Date Filed
Project Number: Project Name
City (County)
Cost, Description

04/22/11

#4628 RS: King City Manor
King City (Gentry County)
$2,087,049, Establish 24-bed assisted living facility (ALF)

04/27/11

#4629 RS: Advance Assisted Living
Advance (Stoddard County)
$2,642,000, Establish 44-bed ALF

04/28/11

#4635 RS: McCrite Plaza at Briarcliff Assisted Living
Kansas City (Clay County)
$4,547,417, Establish 40-bed ALF

#4627 RS: Valley View Memory Care II
Lee's Summit (Jackson County)
$2,000,000, Establish 17-bed ALF

04/29/11

#4676 HS: Kindred Hospital Kansas City
Kansas City (Jackson County)
$181,504, Replace hyperbaric oxygen chambers

#4660 HS: Lafayette Regional Health Center
Lexington (Lafayette County)
$40,000,000, Establish 32-bed critical access hospital

#4662 HS: Barnes-Jewish Hospital
St. Louis (St. Louis City)
$1,763,076, Acquire endovascular lab

#4622 RS: Prive' Living Well
St. Louis (St. Louis County)
$5,616,443, Establish 120-bed ALF

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by June 1, 2011. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
Post Office Box 570
Jefferson City, MO 65102

For additional information, contact
Donna Schuessler, (573) 751-6403.