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

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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.

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.

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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.

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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."

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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.*