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Records
Service Commission

Rebecca McDowell Cook

Secretary of State

4 CSR 220-2.030 Educational and Licensing Requirements. The board is amending section (6).

PURPOSE: This amendment updates subsection (6)(F) and delete subsections (6)(E) and (G) in order to institute new procedures.

6) Licensure Transfer.

[(E)] Applicants for licensure transfer are required to appear before one (1) or more members of the board before issuance of a pharmacist license.]

[(F)] (E) Applicants for licensure transfer must pass a written test on the laws and rules governing the practice of pharmacy in Missouri. If an applicant fails the examination on the first administration, s/he may retake the examination at the next scheduled administration. If the applicant fails the written law test two (2) consecutive times, [the application will be presented to] the applicant is required to meet with the full board at its next regular meeting for appropriate action.

[(G)] The board member, before whom the applicant for licensure transfer appears, will be responsible to review the applicant for—

1. Physical capability to perform the normal duties required of a pharmacist;
2. Moral character;
3. Educational status;
4. Effective communication skills; and
5. Other appropriate requirements.]

[(H)] (F) No person shall be eligible for licensure transfer against whom there is pending any indictment or any alleged violation of the laws governing the practice of pharmacy, alcohol or other regulated law or who has been convicted of any crime within the past ten (10) years.

[(I)] (G) All required fees must be paid prior to approval of a licensure transfer.

[(J)] (H) The Missouri Board of Pharmacy reserves the right to reject any licensure transfer application for good and just reasons and, in the event of so doing, the fee paid to it will be refunded.

[(K)] (I) No application for licensure transfer will remain valid if the applicant fails to complete the transfer process as outlined in this rule within one (1) year of receipt of the application by the board. Any failure by the applicant to complete the licensure transfer process will result in a forfeiture of all fees paid to the board.

[(L)] (J) Any application for licensure transfer which is pending for three (3) months or more and is still a valid application may require an additional review by the board of licensure information from any state in which the applicant holds a license.

[(M)] (K) Any application which is on file at the Missouri Board of Pharmacy on June 1, 1990, and which has been on file for one (1) year or longer, as defined in subsection (6) [(K)] (I) of this rule, shall be considered void and will not be processed. All fees related to any application considered void by this section shall be forfeited by the applicant.

AUTHORITY: sections 338.020, 338.030, 338.035, 338.040, 338.070, 338.140 and 338.280, RSMo (1994). This version of rule filed July 18, 1962, effective July 28, 1962. For intervening history, please consult the Code of State Regulations. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this Proposed Amendment with the Missouri Board of Pharmacy, Kevin E. Kinkade, R. Ph., Executive Director, P.O. Box 625, Jefferson City, MO 65102, (573) 751-0031. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

PROPOSED RESCISSION

4 CSR 240-2.115 Nonunanimous Stipulations and Agreements. This rule prescribed the proceeding which resulted when a nonunanimous stipulation and agreement had been presented to the commission.

PURPOSE: This rule is being rescinded in its entirety. No new rule is being proposed.

Auth: section 386.410, RSMo (1994). Original rule filed June 9, 1987, effective Sept. 15, 1987. Rescinded: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Rescission will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Rescission on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-300. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 10—Utilities**

PROPOSED RULE

4 CSR 240-10.080 Annual Report Filing Requirements

PURPOSE: This rule establishes standards for filing annual reports by utilities subject to the jurisdiction of the Missouri Public Service Commission, including procedures for filing annual report information under seal.

(1) All public utilities subject to the jurisdiction of the Missouri Public Service Commission shall file an annual report with the commission on or before April 15 of each year, except for private pay telephone providers which are exempted under the provisions of 4 CSR 240-2.060(3)(B).

(2) Electric utilities shall file their annual reports on a form provided by the commission. All requested information shall be included in the annual report where applicable.

(3) Gas utilities shall file their annual reports on a form provided by the commission. All requested information shall be included in the annual report where applicable.

(4) Telecommunications utilities shall file their annual reports on a form provided by the commission. All requested information shall be included in the annual report where applicable.

(5) Water utilities shall file their annual reports on a form provided by the commission. All requested information shall be included in the annual report where applicable.

(6) Sewer utilities shall file their annual reports on a form provided by the commission. All requested information shall be included in the annual report where applicable.

(7) Where a utility subject to this rule considers the information requested on the annual report form to be confidential, it must make a written request to the executive secretary to file that information under seal. The executive secretary shall then, through the general counsel, present that request to the commission for approval. The executive secretary shall inform the utility within three (3) days of the commission decision whether the request has been granted.

(8) A utility which is unable to meet the filing date established in section (1) of this rule shall make a written request to extend the filing date for its annual report to the executive secretary. The executive secretary, through the chief administrative law judge, shall present the report to the commission for approval. The executive secretary shall inform the utility in writing within three (3) days of the decision of the commission.

AUTHORITY: sections 392.210 and 393.140, RSMo (1994). Original rule filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Rule will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Rule on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 20—Electric Utilities

PROPOSED AMENDMENT

4 CSR 240-20.030 Uniform System of Accounts—Electrical Corporations. The commission is deleting section (5) and renumbering the remaining sections.

PURPOSE: The Public Service Commission proposes to amend this rule by removing section (5) concerning annual reports of electrical corporations. A new rule is being proposed which will set out annual report requirements for all utilities under the commission's

jurisdiction. This rule is being amended in order that the commission may place its requirements concerning annual reports for all utilities under its jurisdiction in one comprehensive rule.

[(5) Annual reports for all electrical corporations subject to regulation by this commission shall be filed by each electrical corporation with the commission on or before April 15 following the year for which the report is made.]

[(6)] (5) Each electrical corporation subject to the commission's jurisdiction shall submit a depreciation study, data base and property unit catalog to the manager of the commission's energy department and to the Office of the Public Counsel, as required by the terms of subsection [(6)] (5)(B).

(A) The depreciation study, data base and property unit catalog shall be compiled as follows:

1. The study shall reflect the average life and remaining life of each primary plant account or subaccount;

2. The data base shall consist of dollar amounts, by plant account or subaccount, representing—

A. Annual dollar additions and dollar retirements by vintage year and year retired, beginning with the earliest year of available data;

B. Reserve for depreciation;

C. Surviving plant balance as of the study date; and

D. Estimated date of final retirement and surviving dollar investment for each warehouse, electric generating facility, combustion turbine, general office building or other large structure; and

3. The property unit catalog shall contain a description of each retirement unit used by the company.

(B) An electrical corporation shall submit its depreciation study, data base and property unit catalog on the following occasions:

1. On or before the date adjoining the first letter of the name under which the corporation does business, excluding the word the, as indicated by the tariffs on file with the commission.

A. The alphabetical categories and submission due dates are as follows:

(I) A, B, C, D: January 1, 1994;

(II) E, F, G, H: July 1, 1994;

(III) I, J, K, L: January 1, 1995;

(IV) M, N, O, P: July 1, 1995;

(V) Q, R, S, T: January 1, 1996; and

(VI) U, V, W, X, Y, Z: July 1, 1996.

B. However—

(I) An electrical corporation need not submit a depreciation study, data base or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the due dates listed in subparagraph [(6)] (5)(B)1.A.;

(II) A utility with simultaneous due dates under 4 CSR 240-20.030 [(6)] (5)(B)1. and 4 CSR 240-40.040 [(6)] (5)(B)1. may postpone its due date with respect to one (1) of these rules by six (6) months. To exercise this option, the utility must give written notice of its intent to postpone compliance to the manager of the commission's energy department, and to the Office of the Public Counsel, before the utility's first due date;

2. When the utility files its tariff(s) with the commission proposing a general rate increase, as that term is used in the commission's rules pertaining to minimum filing requirements. However, an electrical corporation need not submit a depreciation study, data base or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the utility filing for a general rate increase; or

3. Before five (5) years have elapsed since the last time the commission's staff received a depreciation study, data base and property unit catalog from the utility.

[(7)] (6) The commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application.

AUTHORITY: section 393.140, RSMo [(1986)] (1994). Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Feb. 5, 1993, effective Oct. 10, 1993. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Amendment on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 30—Telephone Utilities**

PROPOSED AMENDMENT

4 CSR 240-30.040 Uniform System of Accounts—Class A and Class B telecommunications Companies. The commission is deleting section (4) and renumbering the remaining sections.

PURPOSE: The Public Service Commission proposes to amend this rule by removing section (4) concerning annual reports of Class A and Class B telecommunications companies. A new rule is being proposed which will set out annual report requirements for all utilities under the commission's jurisdiction. This rule is being amended in order that the commission may place its requirements concerning annual reports for all utilities under its jurisdiction in one comprehensive rule.

[(14)] Annual reports for all Class A and Class B telecommunications companies subject to regulation by this commission shall be filed with the commission on or before April 15 following the year for which the report is made.]

[(15)] (4) Class B companies that desire more detailed accounting than is required of them under this rule may do so upon the submission of a written notification to the commission.

[(6)] (5) All Class B telecommunications companies shall keep their plant accounts in Part 32, Class A detail.

AUTHORITY: section 392.210, RSMo [Supp. 1987] (1994). Original rule filed June 15, 1964, effective June 30, 1964. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed July 16, 1979, effective Feb. 1, 1980. Rescinded and re-adopted: Filed May 17, 1988, effective Oct. 27, 1988. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Amendment on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities**

PROPOSED AMENDMENT

4 CSR 240-40.040 Uniform System of Accounts—Gas Corporations. The commission is deleting section (5) and renumbering the remaining sections.

PURPOSE: The Public Service Commission proposes to amend this rule by removing section (5) concerning annual reports of gas corporations. A new rule is being proposed which will set out annual report requirements for all utilities under the commission's jurisdiction. This rule is being amended in order that the commission may place its requirements concerning annual reports for all utilities under its jurisdiction in one comprehensive rule.

[(15)] Annual reports for all gas corporations shall be filed with the commission on or before April 15 following the year for which the report is made.]

[(6)] (5) Each gas corporation subject to the commission's jurisdiction shall submit a depreciation study, data base and property unit catalog to the manager of the commission's energy department, and to the Office of the Public Counsel, as required by the terms of subsection [(6)] (5)(B).

(A) The depreciation study, data base and property unit catalog shall be compiled as follows:

1. The study shall reflect the average life and remaining life of each primary plant account or subaccount;

2. The data base shall consist of dollar amounts, by plant account or subaccount, representing—

A. Annual dollar additions and dollar retirements by vintage year and year retired, beginning with the earliest year of available data;

B. Reserve for depreciation;

C. Surviving plant balance as of the study date; and

D. Estimated date of final retirement and surviving dollar investment for each warehouse, propane/air production facility, liquified natural gas facility, underground natural gas storage facility, general office building or other large structure;

3. The property unit catalog shall contain a description of each retirement unit used by the company.

(B) A gas company shall submit its depreciation study, data base and property unit catalog on the following occasions:

1. On or before the date adjoining the first letter of the name under which the corporation does business, excluding the word the, as indicated by the tariffs can file with the commission.

A. The alphabetical categories and submission due dates are as follows:

(I) A, B, C, D: January 1, 1994;

(II) E, F, G, H: July 1, 1994;

(III) I, J, K, L: January 1, 1995;

- (IV) M, N, O, P: July 1, 1995;
(V) Q, R, S, T: January 1, 1996;
(VI) U, V, W, X, Y, Z: July 1, 1996.

B. However—

(I) A gas company need not submit a depreciation study, data base or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the due dates listed in subparagraph ((6)) (5)(B)1.A.; or

(II) A utility with simultaneous due dates under 4 CSR 240-20.030 ((6)) (5)(B)1. and 4 CSR 240-40.040 ((6)) (5)(B)1. may postpone its due date with respect to one (1) of these rules by six (6) months. To exercise this option, the utility must give written notice of its intent to postpone compliance to the manager of the commission's energy department, and to the Office of the Public Counsel, before the utility's first due date;

2. When the utility files its tariff(s) with the commission proposing a general rate increase, as that term is used in the commission's rules pertaining to minimum filing requirements. However, a gas company need not submit a depreciation study, data base or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the utility filing for a general rate increase; or

3. Before five (5) years have elapsed since the last time the commission's staff received a depreciation study, data base and property unit catalog from the utility.

((7)) (6) The commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application.

AUTHORITY: section 393.140, RSMo ((1986)) (1994). Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Feb. 5, 1993, effective Oct. 10, 1993. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Amendment on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 240—Public Service Commission
Chapter 50—Water Utilities**

PROPOSED AMENDMENT

4 CSR 240-50.030 Uniform Systems of Accounts—Water Companies. The commission is deleting section (5).

PURPOSE: The Public Service Commission proposes to amend this rule by removing section (5) concerning annual reports of water companies. A new rule is being proposed which will set out annual report requirements for all utilities under the commission's jurisdiction. This rule is being amended in order that the commission may

place its requirements concerning annual reports for all utilities under its jurisdiction in one comprehensive rule.

((5) Annual reports for all water corporations, subject to regulation by this commission, shall be filed by each water corporation, with the commission on or before April 15 next following the year for which the report is made.)

AUTHORITY: section 393.140, RSMo ((1986)) (1994). Original rule filed May 10, 1965, effective [off] May 20, 1965. Amended: Filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed July 13, 1979, effective Feb. 1, 1980. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Amendment on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 61—Records and Accounts
of Sewer Companies**

PROPOSED AMENDMENT

4 CSR 240-61.020 Uniform Systems of Accounts—Sewer Companies. The commission is deleting section (5).

PURPOSE: The Public Service Commission proposes to amend this rule by removing section (5) concerning annual reports of sewer companies. A new rule is being proposed which will set out annual report requirements for all utilities under the commission's jurisdiction. This rule is being amended in order that the commission may place its requirements concerning annual reports for all utilities under its jurisdiction in one comprehensive rule.

((5) Annual reports for all sewer companies, subject to regulation by this commission shall be filed by each sewer company, with the commission on or before April 15 following the year for which the report is made.)

AUTHORITY: section 393.140, RSMo ((1986)) (1994). Original rule filed Dec. 28, 1967, effective July 1, 1968. Amended: Filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed July 13, 1979, effective Feb. 1, 1980. Amended: Filed March 19, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Any interested person may file initial comments concerning this Proposed Amendment on or before June 5, 1996. The comments should be filed with an original and fourteen copies and refer to Case No. AX-96-301. The comments should be sent to David L. Rauch, Executive Secretary, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. Reply comments shall be filed on or before June 20, 1996, in the same quantity as initial comments.

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education**

PROPOSED AMENDMENT

5 CSR 70-742.140 Individuals With Disabilities Education Act, Public Law 94-142 Part B. The state board proposes to amend one of the appendices for this rule.

PURPOSE: This amendment changes procedures used by local school districts for referral of students to the State Board of Education for special education services in the State Schools for Severely Handicapped. Such procedures are incorporated in Appendix B of this rule.

Editor's Note: The following material is incorporated into this rule by reference:

1) State Plan for Part B of the Individuals With Disabilities Education Act (Jefferson City: Missouri Department of Elementary and Secondary Education, July 1994).

In accordance with section 136.013(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

AUTHORITY: sections 162.685 and 178.430, RSMo [(1986)] (1994). Original rule filed April 11, 1975, effective April 21, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed March 29, 1996.

PUBLIC ENTITY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this Proposed Amendment with the Department of Elementary and Secondary Education, John Hesber, Assistant Commissioner, Division of Special Education, P.O. Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received by June 5, 1996, after publication of this notice in the Missouri Register. Public hearings will be held on June 4, 1996, between 7:00 p.m.—9:00 p.m. at Lakeview Woods State School, 315 NE Gregory, Lee's Summit, MO and June 5, 1996, between 7:00 p.m.—9:00 p.m. at Boonslick State School, 321 Knauts Rd., St. Peters, MO.

**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 proposes to amend section (2).

PURPOSE: The commission proposes to rekind paragraph (2)(A)5, which disincorporates 40 CFR 261.3(c)(2)(ii)(C), and paragraph (2)(A)11, which disincorporates 40 CFR 261.4(b)(13). The commission feels that these disincorporations discourage legitimate recycling of K061, K062 and F006 hazardous wastes, and of tarne-plated oil filters without providing discernible additional protection of human health or the environment.

(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 10 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 section (2). For example, changes to 40 CFR part 261 subpart A will be located in 10 CSR 25-4.261(2)(A).)

(A) 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 as a solid waste, regardless of whether the material is recycled. This material is inherently waste-like as provided in 40 CFR 261.2(d) incorporated in this rule;

2. 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";

3. 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, the following 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;

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.)

5. [40 CFR 261.3(c)(2)(ii)(C) is not incorporated by reference in this rule.]

[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