

## 10 CSR 10-6.210 Confidential Information

(1) Application. This rule shall apply to all business information requested to be designated confidential by the Missouri Air Conservation Commission. This rule shall not apply to emission data included in the information that shall not be entitled to confidential treatment, as provided by section 643.050.4., RSMo.

(2) General. Any information submitted pursuant to this rule or other rules of the Missouri Air Conservation Commission that contains or from which could be derived, confidential business information, shall be kept confidential by the commission and employees and agents of the Department of Natural Resources if a timely request for confidentiality is made by the person submitting the information.

(3) Definitions.

(A) Definitions for key words used in this rule may be found in 10 CSR 10-6.020(2).

(B) Additional definitions specific to this rule are as follows:

1. Confidential business information: Secret processes, secret methods of manufacture or production, trade secrets and other information possessed by a business that, under existing legal concepts, the business has a right to preserve as confidential, and to limit its use by not disclosing it to others in order that the business may obtain or retain business advantages it derives from its rights in the information; and

2. Emission data.

A. The identity, amount, frequency, concentration or other characteristics (related to air quality) of any air contaminant which

(I) Has been emitted from an emission unit;

(II) Results from any emission by the emissions unit;

(III) Under an applicable standard or limitation, the emissions unit was authorized to emit; or

(IV) Is a combination of any of the parts (3)(B)2.A.(I), (II) or (III) of this rule;

B. The name, address (or description of the location) and the nature of the emissions unit necessary to identify the emission units

including, a description of the device, equipment, or operation constituting the emissions unit; and

C. The results of any emission testing or monitoring required to be reported under this rule or other rules of the commission.

(4) Procedures.

(A) An owner or operator who wishes to claim confidentiality for any information submitted pursuant to this rule or other rules of the commission shall submit a claim of confidentiality within ten (10) working days following the time the information is submitted. Failure to submit a claim of confidentiality within the required time shall result in a waiver of any claim to confidentiality.

(B) The claim of confidentiality shall be accompanied by a justification that the information is entitled to confidential treatment.

(C) Upon receipt of a timely claim of confidentiality, the director shall evaluate the claim and inform the owner or operator that the claim has been granted, or that a preliminary decision has been made to deny the claim in whole or in part. Until that time in which the claim is reviewed it shall be held in confidence.

(D) The owner or operator shall have fifteen (15) working days from the receipt of the preliminary decision to deny the claim in which to submit further justification or comments to the director. The director shall inform the owner or operator of his/her final decision on whether the claim will be denied in whole or in part within ten (10) working days.

(E) The owner or operator may appeal to the commission from the director's final decision to deny a claim of confidentiality in whole or part by filing a notice of appeal with the staff director within twenty (20) working days after receipt of the director's final decision. Upon the timely filing of a notice of appeal, the confidentiality of the information shall be preserved until the entry of a final order by the commission.

(F) If the commission's final decision is to deny the claim of confidentiality in whole or in part, the director shall treat the information as subject to public disclosure unless the owner or operator files a timely action for judicial review pursuant to section 536.110, RSMo. If a timely action for judicial review is filed, the confidentiality of the information shall be preserved until adjudication of the matter upon judicial review.

(G) A claim of confidentiality under this rule shall be granted if:

1. The owner or operator has asserted a business confidentiality claim that has not expired by its terms, been waived or withdrawn;

2. The owner or operator has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take those measures;

3. The information is not, and has not been, reasonably obtained without the owner's or operator's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special needs in a judicial or quasi-judicial proceeding);

4. No statute specifically requires public disclosure of the information;

5. The information is not emission data; and

6. The owner or operator has satisfactorily shown that public disclosure of the information<sup>o</sup>

A. Is likely to cause substantial harm to the business' competitive position; or

B. Was voluntarily submitted and its disclosure would be likely to impair the director's ability to obtain necessary information in the future. Information is voluntarily submitted if the director has not statutory, regulatory or contractual authority to obtain some benefit or avoid some disadvantage under the Missouri Air Conservation Law and implementing rules (for example, information required to obtain a permit or other approval is submitted to obtain a benefit from the Missouri Air Conservation Commission).

(5) Conditions for Any Disclosure.

(A) Public Request. Upon receipt of a request from a member of the public for release of any information submitted under a claim of confidentiality, and for which the claim has not been finally denied, the director shall inform both the person making the request and the owner or operator that the request for the information is denied or that a tentative decision has been made to release the information. A preliminary decision to release the information shall be treated in the same manner as a preliminary decision to deny a claim of confidentiality under subsections (4)(C)<sup>o</sup>(G) of this rule.

(B) Confidential and Public Information. If the information submitted under a claim of confidentiality contains both information which is entitled to confidential treatment and emission data or other information not entitled to confidential treatment, the director may take reasonable steps to segregate that information entitled to confidential treatment from that subject to public disclosure. These steps may include, without limitation, photocopying for the public file only portions of the submitted information or applying techniques that would result in confidential information being blacked out in the photocopying process. If information entitled to confidentiality cannot reasonably be separated from emission data, all the information must be treated as subject to public disclosure.

(C) Public Release. The director and his/her designees shall not release to the public, or place in the public file, any information for which a timely claim of confidentiality has been made until the procedures under subsections (4)(C) and (5)(A) of this rule have been observed.

(D) Disclosure to Local Agencies. Information submitted under a claim of confidentiality, and where the claim has not been finally denied, may be disclosed to local air pollution control agencies if:

1. The owner or operator is given prior notice fifteen (15) working days in which to obtain an order from a court of competent jurisdiction restraining or enjoining the disclosure to the local agency, and if no such order is obtained, or obtained and later dissolved; or

2. The local agency has ordinances or regulations respecting the treatment of confidential business information that is equivalent to this rule, the director provides notice to the owner or operator that the information is being disclosed to the local agency, and the director informs the local agency that the information is subject to a claim of confidentiality.

(E) Disclosure to Administrator. Information submitted under a claim of confidentiality, and the claim has not been finally denied, may be disclosed to the administrator provided the administrator agrees, pursuant to 40 CFR 2.215, that the information will be kept confidential.

(F) Subpoenas for Confidential Information. The director shall respond to subpoenas and discovery requests for information submitted under a claim of confidentiality, if the claim has not been finally denied, in a manner that is designed to preserve the claim of confidentiality until a confidentiality determination is made by a court or other tribunal of competent jurisdiction.

## 10 CSR 10-6.210

### EPA Rulemakings

CFR: 40 C.F.R. 52.1320(c)(86)(i)(A)  
FRM: 61 FR 7714 (2/29/96)  
PRM: 60 FR 16824 (4/3/95)  
State Submission: 3/31/94  
State Proposal: 19 MR 585 (2/15/94)  
State Final: 10 C.S.R. 10-6 (1/27/95)  
APDB File: MO-103, MO-111  
Description: The EPA approved a new regulation which transferred in their entirety the confidential information provisions previously found in 10 C.S.R. 10-6.110. This rule provides procedures and conditions for handling confidential information.

---

### Difference Between the State and EPA-Approved Regulation

None.