

**AUTHORITY:** sections 99.845, RSMo Supp. 2005, and 99.865 RSMo 2000. Original rule filed May 23, 2006.

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

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

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, Daryl R. Hylton, General Counsel, PO Box 1157, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) 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 RULE**

**4 CSR 240-2.135 Confidential Information**

**PURPOSE:** This rule prescribes the procedures for handling confidential information in cases before the commission.

(1) The commission recognizes two (2) levels of protection for information that should not be made public.

(A) Proprietary information includes trade secrets and other confidential or private technical, financial, and business information.

(B) Highly confidential information includes:

1. Information relating directly to specific customers;
2. Employee-specific personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;
6. Strategies in contract negotiations; and
7. Information relating to the security of a company's facilities.

(2) When a party seeks discovery of information that the party from whom discovery is sought believes to be confidential, the party from whom discovery is sought may designate the information as proprietary or highly confidential.

(A) No order from the commission is necessary before a party in any case pending before the commission may designate material as proprietary or highly confidential and such information shall be protected as provided in this rule.

(B) The party that designates information as proprietary or highly confidential must inform, in writing, the party seeking discovery of the reason for the designation at the same time it responds to the discovery request. If the party seeking discovery disagrees with the designation placed on the information, it must utilize the informal discovery dispute resolution procedures set forth at 4 CSR 240-2.090(8). If the party seeking discovery continues to disagree with the designation placed on the information, it may file a motion challenging the designation.

(C) This rule does not require the disclosure of any information that would be protected from disclosure by any privilege, rule of the commission, or the Missouri Rules of Civil Procedure.

(3) Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(A) The party disclosing information designated as proprietary shall serve the information on the attorney for the requesting party.

(B) If a party wants any employee or outside expert to review proprietary information, the party must identify that person to the disclosing party by name, title, and job classification, before disclosure. Furthermore, the person to whom the information is to be disclosed must comply with the certification requirements of section (6) of this rule.

(4) Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(A) Employees, officers, or directors of any of the parties in a proceeding, or any affiliate of any party, may not be outside experts for purposes of this rule.

(B) The party disclosing highly confidential information, may, at its option, make such information available only on the furnishing party's premises, unless the discovering party can show good cause for the disclosure of the information off-premises.

(C) The person reviewing highly confidential information may not make copies of the documents containing the information and may make only limited notes about the information. Any such notes must also be treated as highly confidential.

(D) If a party wants an outside expert to review highly confidential information, the party must identify that person to the disclosing party before disclosure. Furthermore, the outside expert to whom the information is to be disclosed must comply with the certification requirements of section (6) of this rule.

(E) The party disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(5) If any party believes that information must be protected from disclosure more rigorously than would be provided by a highly confidential designation, it may file a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

(6) Any employee of a party that wishes to review proprietary information, or any outside expert retained by a party that wishes to review highly confidential or proprietary information must first certify in writing that he or she will comply with the requirements of this rule.

(A) The certification must include the signatory's full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting.

(B) The signed certificate shall be filed in the case.

(C) The party seeking disclosure of the highly confidential or proprietary information must provide a copy of the certificate to the disclosing party before disclosure is made.

(7) Attorneys possessing proprietary or highly confidential information or testimony may make such information or testimony available only to those persons authorized to review such information or testimony under the restrictions established in sections (3) and (4).

(8) If information to be disclosed in response to a discovery request is information concerning another entity—whether or not a party to the case—which the other entity has indicated is confidential, the disclosing party must notify the other entity of its intent to disclose the

information. If the other entity informs the disclosing party that it wishes to protect the material or information, the disclosing party must designate the material or information as proprietary or highly confidential under the provisions of this rule.

(9) Any party may use proprietary or highly confidential information in prefiled testimony, in a pleading, or at hearing, if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Before including nonpublic information that it has obtained outside this proceeding in its pleading or testimony, a party must ascertain from the source of the information whether that information is claimed to be proprietary or highly confidential.

(10) A party may designate portions of prefiled or live testimony as proprietary or highly confidential. Prefiled testimony that contains information designated as proprietary or highly confidential must be filed as follows:

(A) A public version of the prefiled testimony must be filed along with the proprietary or highly confidential version of the testimony. For the public version, the proprietary or highly confidential portions must be obliterated or removed. The proprietary pages must be marked "P" and the removal of proprietary information shall be indicated by one (1) asterisk before and after the information, e.g., \*proprietary information removed\*. The highly confidential pages must be marked "HC" with the removal of highly confidential information indicated by two (2) asterisks and underlining before and after the highly confidential information, e.g., \*\*highly confidential information removed\*\*. The designated information must be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the highly confidential and proprietary versions:

(B) For the nonpublic version of the prefiled testimony, the proprietary pages must be marked "P" and the proprietary information indicated by one (1) asterisk before and after the information, e.g., \*Proprietary\*. The highly confidential pages shall be stamped "HC" with the highly confidential information indicated by underlining and by two (2) asterisks before and after the highly confidential information, e.g., \*\*Highly Confidential\*\*;

(C) At the hearing, the party offering the prefiled testimony must present a public version of the testimony in which the proprietary or highly confidential portions are obliterated or removed. The public version of the testimony will be marked as Exhibit \_\_\_\_\_. The offering party must also present a separate copy of the prefiled testimony containing proprietary or highly confidential information, sealed in an envelope. The version of the testimony containing proprietary or highly confidential information will be marked as Exhibit \_\_\_\_P or HC, as appropriate.

(11) Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

(A) If the designation of the testimony is challenged, the party asserting that the information is proprietary or highly confidential must, not later than ten (10) days, unless a shorter time is ordered, file a pleading establishing the specific nature of the information that it seeks to protect and establishing the harm that may occur if that information is disclosed to the public.

(B) If the asserting party fails to file the pleading required by this section, the commission may order that the designated information be treated as public information.

(12) If a response to a discovery request requires the duplication of material that is so voluminous, or of such a nature that copying would be unduly burdensome, the furnishing party may require that the material be reviewed on its own premises, or at some other location, within the state of Missouri.

(13) If prefiled testimony includes information that has previously been designated as highly confidential or proprietary in another witness' prefiled testimony, that information must again be designated as highly confidential or proprietary.

(14) All live testimony, including cross-examination and oral argument, that reveals information that is designated as proprietary or highly confidential, may be offered only after the hearing room is cleared of all persons except those persons to whom the highly confidential or proprietary information is available under this rule. The transcript of such live testimony or oral argument will be kept under seal and copies will be provided only to the commission and the attorneys of record. The contents of such transcripts may not be disclosed to anyone other than those permitted access to the designated information under this rule.

(15) Proprietary or highly confidential information may not be quoted in briefs or other pleadings unless those portions of the briefs or other pleading are also treated as proprietary or highly confidential.

(16) All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided.

(17) After receiving an appropriate writ of review, the commission will deliver proprietary and highly confidential testimony constituting part of the record before the commission to the reviewing court under seal, unless otherwise directed by the court.

(18) Within ninety (90) days after the completion of the proceeding, including judicial review, all copies of all proprietary and highly confidential information, testimony, exhibits, transcripts or briefs in the possession of any party must be returned to the party claiming a confidential interest in such information, if that party requests that the information be returned. Otherwise, the information must be destroyed by the party possessing such information. Any notes pertaining to such information must be destroyed.

(19) The provisions of sections (3), (4), (6), (7), and (18) of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

(20) Outside experts of the staff of the commission or the Office of the Public Counsel who have been contracted to be witnesses in the proceeding have access to designated information and testimony on the same basis as the staff of the commission and the Office of the Public Counsel except that the outside expert must comply with the provisions of sections (6) and (18). Outside experts of the staff of the commission and the Office of the Public Counsel who have not been contracted to be witnesses in the proceeding are subject to all provisions of this rule.

(21) A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential. The commission may impose appropriate sanctions against any party or person that violates any provision of this rule, pursuant to Rule 61.01 of the Missouri Rules of Civil Procedure. In addition, the commission may

seek to recover penalties by bringing an action in circuit court as permitted by statute.

(22) The commission may waive or grant a variance from any provision of this rule for good cause shown.

**AUTHORITY:** sections 386.040 and 386.410, RSMo 2000. Original rule filed May 25, 2006.

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2003-0404. A public hearing is scheduled for 9:00 a.m., August 7, 2006 in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri.

## **Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

### **Division 30—Division of Administrative and Financial Services**

#### **Chapter 261—[Pupil] School Transportation**

#### **PROPOSED AMENDMENT**

**5 CSR 30-261.025 Minimum Requirements for School Bus Chassis and Body.** The State Board of Education is proposing to amend the Chapter name, section (1) and the incorporated by reference material.

**PURPOSE:** This amendment is a result of changes to the *National School Transportation Specifications and Procedures* and *Federal Motor Vehicle Safety Standards*, and recommendations from the 2007 *Missouri Minimum Standards for School Buses Committee*. The amendment will enhance the safety of schoolchildren being transported in school buses.

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

(1) The [2002] 2007 *Missouri Minimum Standards for School Buses*, is hereby incorporated by reference and made a part of this rule [to reflect] as published by the Department of Elementary and Secondary Education, School Governance, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions. The 2007 *Missouri Minimum Standards for School Buses* reflects the changing needs of pupil transportation in Missouri, changes in the national specifications for school buses and federal motor vehicle safety standards. The changes will enhance the safety of schoolchildren being transported in school buses.

**AUTHORITY:** section 304.060, RSMo 2000. This rule was previously filed as 5 CSR 40-261.025. Original rule filed Feb. 23, 1981, effective Oct. 1, 1981. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 30, 2006.

**PUBLIC COST:** The current public cost of this rule for the Department of Elementary and Secondary Education is estimated to be seven hundred ninety-three thousand one hundred twenty-eight dollars (\$793,128) for Fiscal Year 2009. The current public cost of this rule for the five hundred twenty-four (524) public school districts is estimated to be six hundred eighty-three thousand eight hundred thirty-two dollars (\$683,832) for Fiscal Year 2008. (School districts will incur the cost beginning in Fiscal Year 2008 for reimbursement in Fiscal Year 2009.) The costs will be recurring annually after Fiscal Year 2008 with an estimated increase of five percent (5%) per year for the life of the rule based upon yearly appropriations from the General Assembly.

**PRIVATE COST:** This proposed amendment will not cost private entities more than five hundred dollars (\$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 Department of Elementary and Secondary Education, ATTN: Tom Quinn, Director, School Governance, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.