

§ 1409.5

7 CFR Ch. XIV (1-1-01 Edition)

of this part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to—

- (1) Disclose matters that are:
 - (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and
 - (ii) In fact properly classified pursuant to such Executive order;
- (2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;
- (3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Involve accusing any person of a crime, or formally censuring any person;
- (6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
 - (i) Interfere with enforcement proceedings,
 - (ii) Deprive a person of a right to a fair trial or to an impartial adjudication,
 - (iii) Constitute an unwarranted invasion of personal privacy, or
 - (iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential

information furnished only by the confidential source,

- (v) Disclose investigative techniques and procedures, or
- (vi) Endanger the life or physical safety of law enforcement personnel;
- (8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (9) Disclose information the premature disclosure of which would be likely to:
 - (i) Lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution;
 - or
 - (ii) Significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or
- (10) Specifically concern Commodity Credit Corporation's participation in a civil action or proceedings.
 - (b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) *Procedure for closing a majority of the meetings.* (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of §1409.4(a) of this part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting

the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in §1409.4(a) of this part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and §1409.6, except §1409.6(e), of this part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) *Procedure for closing other meetings.*

(1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in §1409.4(a) of this part. The vote of each Director will be recorded and no proxy shall be allowed.

(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in §1409.4(a) of this part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public or with respect to the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in §1409.4(a) of this part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of §1409.4(a) of this part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting.

The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) *General counsel's certification.* Before every Board meeting closed on the basis of one or more of the exemptions in §1409.4(a) of this part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§ 1409.6 Notices to the public.

(a)(1) The Secretary of the Board will make a public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) subject matter of the meeting, except to the extent that such information is exempt from disclosure under §1409.4(a) of this part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors determine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b)(1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full written explanation of the Board's action in closing the