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PART II



DEPARTMENT OF DEFENSE

**Corps of Engineers,
Department of the Army**



ADMINISTRATIVE PROCEDURES

**Mississippi River Commission: Public
Observation of Commission Meetings**

PROPOSED RULES

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 209]

ADMINISTRATIVE PROCEDURES

Mississippi River Commission: Public Observation of Commission Meetings

In accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) the Commission proposes to implement the provisions of that Act by amending Title 33, Part 209 to add a new section entitled, "Mississippi River Commission: Public Observation of Commission Meetings."

Written comments concerning the proposed regulation are invited from all interested persons. Comments should be submitted to the Secretary, Mississippi River Commission, 1400 Walnut Street, Post Office Box 80, Vicksburg, Mississippi 39180. Written comments received not later than 14 February 1977 will be considered. Such comments will be made available for public inspection at the Office of the Secretary of the Commission.

The purpose of this regulation is to implement sections (b) through (g) of the Government in the Sunshine Act (5 U.S.C. 552b). This regulation is being proposed pursuant to section (g) of the Act.

This regulation, if adopted, will take effect on 12 March 1977.

The Mississippi River Commission has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 4, 1977.

F. P. KOISCH,
Major General, USA, President,
Mississippi River Commission.

(5 U.S.C. 552b)

Part 209 is amended by adding a new § 209.50 to read as follows:

§ 209.50 Mississippi River Commission: Public Observation of Commission Meetings.

(a) *Purpose.* (1) The purpose of this regulation is to afford to the public, to the fullest possible extent, information regarding the decisionmaking processes of the Mississippi River Commission and to open all meetings of the Mississippi River Commission to public observation except in instances where a portion or portions of a meeting may be closed to the public in accordance with this regulation in order to protect the rights of individuals and/or in order to permit the Mississippi River Commission to carry out its statutory and assigned functions and responsibilities. This regulation is issued in accordance with section (g) of the Government in the Sunshine Act and implements sections (b) through (f) of said Act [5 U.S.C. 552b (b) through (f)].

(2) Public observation of Mississippi River Commission meetings includes

public participation in the deliberations of the Commission only to the extent specifically provided in public notices of such meetings.

(b) *Definitions.* The following definitions apply to the regulation in this section.

(1) "Commission" means The Mississippi River Commission.

(2) "President" means the duly appointed President and Executive Officer of the Commission.

(3) "Commissioner" means a duly appointed member of the Commission.

(4) "Secretary" means the Secretary of the Commission.

(5) "Chief Legal Officer" means the Division Counsel or the acting Division Counsel of the Lower Mississippi Valley Division, Corps of Engineers.

(6) "Meeting" means the deliberations of at least a majority of the Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include:

(i) Deliberations of the Commission in determining whether or not to close a portion or portions of a meeting in accordance with paragraphs e(4) and e(5) of this section.

(ii) deliberations of the Commission in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting as provided in section e(4) and e(5) of this section.

(iii) deliberations of the Commission pertaining to changes in the subject matter of a meeting or changes in the determination to open or close a portion or portions of a meeting to the public following the public announcement of such meeting in accordance with paragraph d(4) of this section.

(iv) deliberations of the Commission in determining whether to waive the one-week public notice requirement in accordance with paragraph d(2) of this section.

(c) *Time, place and agenda of meetings.* (1) The meetings of the Commission, except those held on Government boats during inspection trips of the Commission, shall be held at Vicksburg, Mississippi. The time of such meetings shall be fixed by the President of the Commission, who shall cause due notice of such meetings to be given members of the Commission and the public.

(33 U.S.C. 646)

(2) The President shall, after consultation with the Commissioners, prepare a detailed agenda for planned Commission meetings at the earliest practicable time. Suggestions from the public of proposed agenda items are invited.

(d) *Public notices and Federal Register publication.* (1) At least one week before each Commission meeting the Secretary shall issue a public announcement which (i) States the time and place of the meeting, (ii) Lists the agenda items or subjects to be discussed at the meeting, (iii) States whether the meet-

ing or portions of the meeting are to be closed or open to public observation, (iv) States whether or not public participation in the meeting will be permitted, and (v) States the name and business phone number of the official who will respond to requests for information about the meeting.

(2) The one-week period for public notice required by paragraph d(1) of this section shall not be applicable when a majority of the entire membership of the Commission determines by a recorded vote that Commission business requires that a meeting be called at an earlier date. The Secretary shall, however, issue the public notice required by paragraph d(1) of this section at the earliest practicable time.

(3) When due to unforeseen circumstances it is necessary to change the time or place of a meeting following the public announcement required by paragraph d(1) of this section, the Secretary will publicly announce such change at the earliest practicable time.

(4) The subject matter of a meeting, or the determination of the Commission to open or close a portion or portions of a meeting to the public, may be changed following the public announcement required by paragraph d(1) of this section only if (i) a majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Secretary publicly announces such change and the vote of each member on such change at the earliest practicable time.

(5) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether a portion or portions of the meetings are open or closed to public observation, any change in one of the preceding, and the name and business telephone number of the official of the Commission who will respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

(e) *Closing a portion or portions of a meeting.* (1) All Commission meetings shall be open to the public except when the Commission determines that public disclosure of information to be discussed in a portion or portions of a meeting is likely to:

(i) Disclose matters that are (A) Specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (B) In fact properly classified pursuant to such Executive order;

(ii) Relate solely to the internal personnel rules and practices of the Commission;

(iii) Disclose matters specifically exempted from disclosure by statute [other than the Freedom of Information Act (5 U.S.C. 552)], provided that such statute (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the

issue, or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Involve accusing any person of a crime, or formally censuring any person;

(vi) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(vii) 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: (A) Interfere with enforcement proceedings, (B) Deprive a person of a right to a fair trial or to an impartial adjudication, (C) Constitute an unwarranted invasion of personal privacy, or (D) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-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;

(viii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except: (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) When the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(ix) Specifically concerns the Commission's participation in a civil action or proceeding.

(2) Although one or more of the reasons listed in paragraph (e) (1) of this section for closing a portion or portions of a meeting may apply to the subject or subjects to be discussed, the Commission may not take such action when it determines that the public interest requires that such portion or portions of a meeting be open to the public.

(3) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (e) (1) (v), (vi) or (vii) of this section, the Commission, upon the request of any one of its members, shall vote by recorded vote whether to close such meeting.

(4) Action to close a portion or portions of a meeting for one or more of the reasons listed in paragraphs (e) (1) (i) through (ix) of this section, or to withhold information from the public for one or more of the reasons listed in paragraphs (e) (1) (i) through (ix) of this section shall be taken only when a majority of the entire membership of the Commission votes to take such action.

(5) A separate recorded vote of the Commission shall be taken with respect to each meeting a portion or portions of which the Commission proposes to close to the public, and a separate vote of the members of the Commission shall be taken to determine whether to withhold information from the public. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(6) Within one day of any vote taken pursuant to paragraphs (e) (4) and (e) (5) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion or portions of a meeting are to be closed to the public, the Commission shall within one day of the vote taken pursuant to paragraphs (e) (4) and (e) (5) of this section make publicly available a written explanation of its action in closing a portion or portions of the meeting together with a list of all persons expected to attend the meeting and their affiliations.

(7) For every portion or portions of a meeting closed pursuant to paragraphs (e) (1) (i) through (ix) of this section, the Chief Legal Officer of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from

the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained in the Commission files.

(f) *Records.* (1) The Secretary shall maintain in the official files:

(i) A complete transcript or electronic recording (disclosing the identity of each speaker) adequate to record fully the proceedings of the Commission at a portion or portions of a meeting closed to the public for the reasons specified in paragraphs (e) (1) (i) through (ix) of this section.

(ii) The statement of the presiding officer of each Commission meeting, a portion or portions of which were closed to the public, as required by paragraph (e) (7) of this section.

(iii) The certification of the Chief Legal Officer, as required by paragraph (e) (7) of this section, for each Commission meeting, a portion or portions of which were closed to the public.

(2) The records required by paragraph (f) (1) of this section shall be retained for at least two years following any meeting or not less than one year following conclusion of Commission action with respect to any matter discussed at such meeting, whichever occurs later.

(g) *Public access to records.* (1) All records required to be maintained in accordance with the provisions of (f) (1) of this section shall promptly be made available to the public by the Secretary except for information which the Commission has determined may be withheld from the public for the reasons stated in paragraphs (e) (1) (i) through (ix) of this section.

(2) Public inspection of such records shall take place at the headquarters of the Mississippi River Commission, 1400 Walnut Street, Vicksburg, Mississippi 39180.

(3) The Secretary shall provide (subject to withholding of information for the reasons stated in paragraphs (e) (1) (i) through (ix) of this section) upon request of any person, copies of the records required by the provisions of (f) (1) of this section, including transcriptions of electronic recordings at the actual cost of transcription or duplication.

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