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conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or disability when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

§ 1300.107 Financial interest exemptions.

In accordance with the provisions of 18 U.S.C. 208(b)(2), TVA has exempted the following financial interests of its employees from the requirements of 18 U.S.C. 208(a) upon the ground that such interests are too remote or too inconsequential to affect the integrity of such employees' services. When any of the following exemptions applies only to a limited range of official actions, rather than all official acts, the range of actions will be specified within the language of the exemption.

(a) An investment in a business enterprise in the form of ownership of bonds, notes, and other evidences of indebtedness which are not convertible into shares of preferred or common stock and have no warrants attached entitling the holder to purchase stock provided that the estimated market value of the interest does not exceed \$5,000;

(b) An investment in the form of shares in the ownership of enterprises, including preferred and common stocks whether voting or nonvoting, or warrants to purchase such shares, or evidences of indebtedness convertible into such shares provided that the estimated market value of the interest does not exceed \$5,000 and does not exceed 1 percent of the estimated market value of all the outstanding shares of the enterprise;

(c) Shares or investments in a well-diversified money market or mutual fund;

(d) Vested interests in a pension fund arising out of former employment and to which no further contributions are being made in the employee's behalf, provided that, if the pension plan is a

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defined benefit plan, the assets of the plan are diversified. For the purpose of this provision, payments are not considered to be made "in the employee's behalf" if they are made solely to maintain adequate plan funding rather than to provide specific benefits for the employee; or

(e) The interest an employee has by virtue of his or her personal or family use of electric power or through his or her interests in an organization using electric power generated or distributed by TVA, for purposes of his or her official actions at TVA in the process of developing or approving TVA power rate schedules.

PART 1301—PROCEDURES

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AUTHORITY: 5 U.S.C. 552 and 552a; 16 U.S.C. 831–831dd.

SOURCE: 64 FR 4044, Jan. 27, 1999, unless otherwise noted.

Subpart A—Freedom of Information Act

SOURCE: 82 FR 41511, Sept. 1, 2017, unless otherwise noted.

§ 1301.1 General provisions.

(a) This subpart contains the rules that the Tennessee Valley Authority (TVA) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget

(“OMB Guidelines”). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with TVA’s Privacy Act regulations as well as under this subpart.

(a) [Reserved]

§ 1301.2 Proactive disclosures.

Records that the FOIA requires agencies to make available for public inspection in an electronic format may be accessed through the TVA Web site. Each TVA organization is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each TVA organization shall ensure that its posted records and indices are reviewed and updated on an ongoing basis. TVA has a FOIA Requester Service Center and a FOIA Public Liaison who can assist individuals in locating TVA records. Contact information for the FOIA Requester Service Center and Public Liaison is available at <https://www.tva.com/Information/Freedom-of-Information/FOIA-Contacts>.

§ 1301.3 Requirements for making requests.

(a) *General information.* (1) TVA has a centralized system for responding to FOIA requests. To make a request for records, a requester should write directly to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (WT 7D), Knoxville, TN 37902–1401. TVA’s Guide to Information, which may be accessed on the TVA Web site at <https://www.tva.com/Information/Freedom-of-Information/A-Guide-to-Information-About-The-Tennessee-Valley-Authority> may be helpful in making your request.

(2) If you are making a request about yourself, see subpart B Privacy Act for additional requirements.

(3) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746

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by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.*, a copy of a death certificate or an obituary). As an exercise of administrative discretion, TVA may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable TVA personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help TVA identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Before submitting their requests, requesters may contact the TVA's FOIA Officer or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If after receiving a request the agency determines that the request does not reasonably describe the records sought, the agency shall inform the requester of what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the agency's FOIA Officer or FOIA Public Liaison. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) *Format of records sought.* Requests may specify the preferred form or format (including electronic formats) for the records you seek. TVA will accommodate your request if the record is readily reproducible in that form or format.

(d) *Requester contact information.* Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist the agency in communicating with them and providing released records.

§ 1301.4 Responsibility for responding to requests.

(a) *In general.* TVA's FOIA Officer or the FOIA Officer's designee is respon-

sible for responding to all FOIA requests. In determining which records are responsive to a request, TVA ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the agency will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* TVA's FOIA Officer or the FOIA Officer's designee is authorized to grant or to deny any requests for records that are maintained by TVA.

(c) *Consultation, referral and coordination.* When reviewing records located by TVA in response to a request, TVA will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, TVA shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the agency processing the request, but contain within them information of interest to another agency or other Federal Government office, the agency processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the agency processing the request believes that a different agency or component is best able to determine whether to disclose the record, the agency typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the agency processing the request and the originating agency jointly agree that the agency processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever an agency refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of

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the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(d) *Classified information.* On receipt of any request involving classified information, the agency must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the receiving agency must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an

agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the agency must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by TVA will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* TVA may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 1301.5 Timing of responses to requests.

(a) *In general.* TVA ordinarily will respond to requests according to their order of receipt and placement in an appropriate processing track as follows.

(b) *Multitrack processing.* TVA has established three tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time. Among the factors TVA may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. TVA will also designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. TVA will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(1) *Track 1.* Requests that can be answered with readily available records or information. These are the fastest to process. These requests ordinarily will be responded to within 20 working days of receipt of a proper request by the FOIA Officer. The 20 working day time limit provided in this paragraph may be extended by TVA for unusual circumstances, as defined in paragraph (c)

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of this section, upon written notice to the person requesting the records.

(2) *Track 2.* Requests where we need records or information from other offices throughout TVA, where we must consult with other Government agencies, or when we must process a submitter notice as described in §1301.8(d), but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) *Track 3.* Requests which require a decision or input from another office or agency, extensive submitter notifications because of the presence of Business Information as defined in §1301.8(b)(1), and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these requests will take the longest to process.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of “unusual circumstances,” and TVA extends the time limit on that basis, TVA will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which TVA estimates processing of the request will be completed. Where the extension exceeds 10 working days, TVA will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. TVA will make available its FOIA Officer or its FOIA Public Liaison for this purpose. A list of agency FOIA Public Liaisons is available at <https://www.foia.gov/report-makerequest.html>. TVA will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services. As used in this paragraph, “unusual circumstances” means, but only to the extent reasonable necessary to the proper processing of the particular requests:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, TVA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. TVA cannot aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) TVA will process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at any time. For a prompt determination, requests based on paragraphs (e)(1)(i) and (ii) of this section should be submitted to the TVA FOIA Officer. Requests based on paragraph (e)(1)(iii) of this section should be submitted in accordance with the agency’s requirements as described in §1301.3. When making a request for expedited processing of an administrative appeal, the request should be submitted to the TVA Chief FOIA Officer and Appeals Official.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing.

For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, TVA may waive the formal certification requirement.

(4) TVA will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, the agency must act on any appeal of that decision expeditiously.

§ 1301.6 Responses to requests.

(a) *In general.* TVA, to the extent practicable, will communicate with requesters having access to the Internet electronically, such as email.

(b) *Acknowledgments of requests.* TVA will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. TVA will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, TVA will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, TVA may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once TVA determines it will grant a request in full or in part, it will notify the requester in writing. TVA will also inform the requester of any fees charged under §1301.11 of this subpart and will disclose the requested records to the requester promptly upon payment of any applicable fees.

(e) *Adverse determinations of requests.* If TVA makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. In the event of an adverse determination, TVA will inform the requester of the availability of its FOIA Public Liaison to offer assistance to requesters.

(f) *Content of denial.* The denial must be signed by the head of the agency or their designee and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the agency in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under §1301.9(a) of this subpart, and a description of the appeal requirements.

(5) A statement notifying the requester of the assistance available

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from the agency's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(g) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(h) *Use of record exclusions.* (1) In the event that TVA identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), TVA will confer with the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

(2) If an exclusion is invoked, TVA will maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 1301.7 Exempt records.

(a) TVA's records will be disclosed to any person upon request as provided in this section, except records that are exempt and are not made available if they are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(i)(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; and

(ii) If enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information 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, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) 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; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonable necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records include bids and information concerning the identity and number of bids received prior to bid opening and award; and all negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

§ 1301.8 Confidential commercial information.

(a) *Definitions*—(1) *Confidential commercial information* means commercial or financial information obtained by TVA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) TVA will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if TVA determines that it may be

required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) TVA has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the agency may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) TVA determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, TVA will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.*

(1) TVA will specify a reasonable time period within which the submitter must respond to the notice referenced under paragraph (c)(1) of this section.

(2) If a submitter has any objections to disclosure, it should provide TVA a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why

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the information constitutes a trade secret or commercial or financial information that is confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. TVA is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* TVA will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever TVA decides to disclose information over the objection of a submitter, TVA will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as TVA intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, TVA will promptly notify the submitter.

(i) *Requester notification.* TVA will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1301.9 Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to TVA's office designated to receive FOIA appeals (FOIA Appeals Office). Examples of adverse determinations are provided in § 1301.6(e) of this subpart. Requesters can submit appeals by mail to TVA FOIA Appeals Official, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7C), Knoxville, TN 37902-

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1401. The requester must make the appeal in writing and to be considered timely it must be postmarked within 90 calendar days after the date of the initial response. The appeal should clearly identify the agency determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The TVA Chief FOIA Officer and FOIA Appeals Official or designee will act on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Chief FOIA Officer and FOIA Appeals Official will take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* TVA will provide its decision on an appeal in writing. A decision that upholds TVA's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If TVA's decision is remanded or modified on appeal, TVA will notify the requester of that determination in writing. TVA will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If TVA agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

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(e) *When appeal is required.* Before seeking review by a court of TVA's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 1301.10 Preservation of records.

TVA will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. TVA will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1301.11 Fees.

(a) *In general.* (1) TVA will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters:

- (i) Commercial use requesters;
- (ii) Non-commercial scientific or educational institutions or news media requesters; and
- (iii) All other requesters.

(2) Different fees are assessed depending on the category. Requesters may seek a fee waiver. TVA will consider requests for fee waivers in accordance with the requirements in paragraph (k) of this section. To resolve any fee issues that arise under this section, TVA may contact a requester for additional information. TVA will ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. TVA ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Tennessee Valley Authority, or by another method as determined by TVA.

(b) *Definitions.* For purposes of this section:

(1) Commercial use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests

through litigation. TVA's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. TVA will notify requesters of their placement in this category.

(2) Direct costs are those expenses that TVA incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. TVA may seek verification from the requester that the request is in furtherance of scholarly research and TVA will advise requesters of their placement in this category.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) Noncommercial scientific institution is an institution that is not operated on a “commercial” basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. TVA will advise requesters of their placement in this category.

(6) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester’s past publication record in making this determination. TVA will advise requesters of their placement in this category.

(7) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(8) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under §1301.7 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Charging fees.* In responding to FOIA requests, TVA will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, agencies should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. TVA will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. TVA may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged as follows: For time spent by clerical employees, the charge is \$14.90 per hour. For time spent by supervisory and professional employees, the charge is \$34.30 per hour.

(iii) TVA will charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. TVA must notify the requester of the costs associated with

creating such a program, and the requester must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by TVA at a Federal records center operated by the National Archives and Records Administration (NARA), TVA will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* TVA will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. TVA must honor a requester's preference for receiving a record in a particular form or format where TVA can readily reproduce it in the form or format requested. Where photocopies are supplied, TVA will provide one copy per request at the cost of 10 cents per page for sheets no larger than 8½ by 14 inches. For copies of records produced on tapes, disks, or other media, TVA will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, TVA will charge the direct costs.

(3) *Review.* TVA will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.*, the review conducted by TVA to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with an agency's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) When TVA determines that a requester is an educational institution, non-com-

mercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2)(i) If TVA fails to comply with the FOIA's time limits in responding to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(ii) through (iv) of this section.

(ii) If TVA has determined that unusual circumstances, as defined by the FOIA, apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If TVA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, TVA may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. TVA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and TVA must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, TVA may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, TVA must provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When TVA determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, TVA will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, TVA will advise the requester accordingly. If the request is not for non-commercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If TVA notifies the requester that the actual or estimated fees are in excess of \$25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. TVA is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but TVA estimates that the total fee will exceed that amount, TVA will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. TVA will inquire whether the requester wishes to revise the amount of fees the requester

is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) TVA will make available its FOIA Officer or FOIA Public Liaison to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if TVA chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* TVA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by TVA. TVA must follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When TVA reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, TVA may aggregate those requests and charge accordingly. TVA may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, TVA will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, TVA cannot require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies

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are sent to a requester) is not an advance payment.

(2) When TVA determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. TVA may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 calendar days of the billing date, TVA may require that the requester pay the full amount due, plus any applicable interest on that prior request, and TVA may require that the requester make an advance payment of the full amount of any anticipated fee before TVA begins to process a new request or continues to process a pending request or any pending appeal. Where TVA has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which TVA requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of TVA's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, TVA will inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely

to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) TVA will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. TVA will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, TVA will consider the following criteria:

(A) TVA must identify whether the requester has any commercial interest

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that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, TVA must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. TVA ordinarily will presume that when a news media requester has satisfied factors paragraphs (k)(2)(i) and (ii), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to TVA and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

§ 1301.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Privacy Act

AUTHORITY: 16 U.S.C. 831–831ee, 5 U.S.C. 552a.

SOURCE: 40 FR 45313, Oct. 1, 1975, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

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§ 1301.21 Purpose and scope.

(a) The regulations in §§1301.21 to 1301.34 implement section 3 of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to systems of records maintained by TVA. They provide procedures by which an individual may exercise the rights granted by the Act to determine whether a TVA system contains a record pertaining to him; to gain access to such records; to have a copy made of all or any portion thereof; and to request administrative correction or amendment of such records. They prescribe fees to be charged for copying records; establish identification requirements; list penalties provided by statute for certain violations of the Act; and establish exemptions from certain requirements of the Act for certain TVA systems or components thereof.

(b) Nothing in §§1301.21 to 1301.34 entitles an individual to any access to any information or record compiled in reasonable anticipation of a civil action or proceeding.

(c) Certain records of which TVA may have physical possession are the official records of another government agency which exercises dominion and control over the records, their content, and access thereto. In such cases, TVA's maintenance of the records is subject to the direction of the other government agency. Except for a request for a determination of the existence of the record, when TVA receives requests related to these records, TVA will immediately refer the request to the controlling agency for all decisions regarding the request, and will notify the individual making the request of the referral.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated and amended at 82 FR 51757, Nov. 8, 2017]

§ 1301.22 Definitions.

For purposes of §§1301.21 to 1301.34:

(a) The *Act* means section 3 of the Privacy Act of 1974, 5 U.S.C. 552a;

(b) The terms *individual*, *maintain*, *record*, *system of records*, *statistical record*, and *routine use* have the meaning provided for by the Act;

(c) The term *TVA system* means a system of records maintained by TVA;

(d) The term *TVA system notice* means a notice of a TVA system published in the FEDERAL REGISTER pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Records—TVA.
 Personnel Files—TVA.
 Discrimination Complaint Files—TVA.
 Work Injury Illness System—TVA.
 Employee Accounts Receivable—TVA.
 Health Records—TVA.
 Payroll Records—TVA.
 Travel History Records—TVA.
 Employment Applicant Files—TVA.
 Grievance Records—TVA.
 Employee Supplementary Vacancy Announcement Records—TVA.
 Consultant and Contractor Records—TVA.
 Nuclear Quality Assurance Personnel Records—TVA.
 Questionnaire—Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.
 Radiation Dosimetry Personnel Monitoring Records—TVA.
 Retirement System Records—TVA.
 Energy Program Participant Records—TVA.
 OIG Investigative Records—TVA.
 Call Detail Records—TVA.
 Project/Tract Files—TVA.
 Section 26a Permit Application Records—TVA.
 U.S. TVA Police Records—TVA.
 Wholesale, Retail, and Emergency Data Files—TVA.
 Nuclear Access Authorization and Fitness for Duty Records—TVA.

(e) The term *appellant* means an individual who has filed an appeal pursuant to §1301.29(a) from an initial determination refusing to amend a record on request of the individual;

(f) The term *reviewing official* means TVA's Senior Vice President, Chief Human Resources Officer (or incumbent of a successor position), or another TVA official designated by the Senior Vice President in writing to decide an appeal pursuant to §1301.29;

(g) The term *day*, when used in computing a time period, excludes Saturdays, Sundays, and legal public holidays.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30252, Aug. 11, 1988; 56 FR 9288, Mar. 6, 1991; 57 FR 33634, July 30, 1992; 57 FR 59803, Dec. 16, 1992; 75 FR 11736, Mar. 12, 2010; 81 FR 88999, Dec. 9, 2016. Redesignated and amended at 82 FR 51757, Nov. 8, 2017]

§ 1301.23 Procedures for requests pertaining to individual records in a record system.

(a) An individual may, in accordance with this section (1) request a TVA determination whether a record retrieved by the individual's name or other personal identifier is maintained in a TVA system, and (2) request access to such a record. A request for determination may be combined with a request for access.

(b) Requests under this section shall:

(1) Be in writing and signed by the individual seeking the determination or access;

(2) Include the individual's mailing address;

(3) Name the TVA system as listed in the TVA system notice;

(4) Include any additional identifying information specified in the paragraph headed "Notification procedure" in the applicable TVA system notice;

(5) Specify whether the request is for determination only or for both determination and access; and

(6) Include such proof of identity as may be required by §1301.24 and the applicable system notice. Requests may be presented in person or by mail. In-person requests shall be presented during normal TVA business hours, as set out in §1301.24(g).

(c) Requests for determination only shall be presented to the official designated in the paragraph headed "Notification procedure" in the TVA system notice for the TVA system concerned. Requests for both determination and access shall be presented to the official designated in the paragraph headed "Access procedure" in the TVA system notice for the TVA system concerned. Certain TVA system notices designate officials at field locations of TVA systems. With respect to such TVA systems, an individual who believes his record is located at the field location may present a request to the designated official at the field location. If the record is not available at that field location, the request will be forwarded to the appropriate TVA office.

(d) If a request is for determination only, the determination will normally be made within 10 days after receipt of

the request. If the determination cannot be made within 10 days after receipt of a request, the designated official will acknowledge the request in writing and state when the determination will be made. Upon making a determination, the designated official will notify the individual making the request whether the record exists. The notice will include any additional information necessary to enable the individual to request access to the record.

(e) A request which includes a request for access will be acknowledged within 10 days after receipt. If access can be granted as requested, the acknowledgment will provide a time and place for disclosure of the requested record. Disclosure will normally be made within 30 days of the date of the acknowledgement, but the designated official may extend the 30-day period for reasons found by him to be good cause. In case of an extension, TVA will notify the individual, in writing, that disclosure will be delayed, the reasons for delay, and the anticipated date on which the individual may expect the record to be disclosed. TVA will attempt to accommodate reasonable requests for disclosure at specified times and dates, as set forth in a request for access, so far as compatible with the conduct of TVA business.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated and amended at 82 FR 51757, Nov. 8, 2017]

§ 1301.24 Times, places, and requirements for identification of individuals making requests.

(a) TVA will require proof of identity, in accordance with this section, before it will disclose a record under § 1301.25 of this part to an individual requesting access to the record, and before it will disclose the existence of a record to a requester under § 1301.23 of this part, if TVA determines that disclosure of the existence of such record would constitute an unwarranted invasion of personal privacy.

(b) Identification normally required would be an identification card such as a valid state driver's license or TVA or other employee identification card. A comparison of the signature of the requester with either the signature on

the card or a signature in the record may be used to confirm identity.

(c) Because of the sensitivity of the subject matter in a TVA system, a TVA system notice may prescribe special identification requirements for the disclosure of the existence of or access to records in that TVA system. In such case, the special identification requirements prescribed in the TVA system notice shall apply in lieu of those prescribed by paragraph (b) of this section.

(d) If TVA deems it warranted by the nature of identification presented, the subject matter of the material to be disclosed, or other reasons found by TVA to be sufficient, TVA may require the individual requesting access to sign a statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(e) Where TVA is requested to provide access to records by mailing copies of records to the requester, the request shall contain or be accompanied by adequate identifying information to make it likely the requester is the person he purports to be and a notarized statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(f) Where sensitivity of record information may warrant (i.e., unauthorized access could cause harm or embarrassment to the individual) or disclosure by mail to third persons is requested, TVA may require in-person confirmation of identity. If in-person confirmation of identity is required, the individual may arrange with the designated TVA official to provide such identification at any of these TVA locations convenient to the individual: Knoxville, Nashville, and Chattanooga, Tennessee; Muscle Shoals, Alabama; Washington, DC, or another location agreed upon by the individual and the designated TVA official. Upon request the TVA official will provide an address and an appropriate time for such identification to be presented.

(g) In general, TVA offices located in the Eastern Time zone are open 8 a.m.

to 4:45 p.m., and those in the Central Time zone 7:30 a.m. to 4:15 p.m. Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988; 75 FR 11736, Mar. 12, 2010. Redesignated and amended at 82 FR 51757, Nov. 8, 2017]

§ 1301.25 Disclosure of requested information to individuals.

(a) All disclosure and examination of records shall normally be made in the presence of a TVA representative. If an individual wishes to be accompanied by a third person of the individual's choosing when the record is disclosed, TVA may require the individual to furnish TVA, in advance of disclosure of the record, a statement signed by the individual authorizing discussion and disclosure of the record in the presence of the accompanying person. If desired by the individual, TVA shall provide copies of any documents reviewed in the record which are requested at the time of review. Fees shall be charged for such copies in accordance with the fee schedule in §1301.31, and shall be payable prior to delivery of the copies to the individual.

(b) Where permitted by §1301.24, copies of an individual's record will be made available by mail. A charge for copies will be made in accordance with §1301.31 of this part. All fees due shall be paid prior to mailing of the materials. However, if TVA is unable to allow in-person review of the record, the first copy will be made available without charge.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated and amended at 82 FR 51757, Nov. 8, 2017]

§ 1301.26 Special procedures—medical records.

If, in the judgment of TVA, the transmission of medical records, including psychological records, directly to a requesting individual could have an adverse effect upon such individual,

TVA may refuse to disclose such information directly to the individual. TVA will, however, disclose this information to a licensed health care provider or legal representative designated by the individual in writing who should then provide the records to the individual along with any necessary interpretations.

[75 FR 11736, Mar. 12, 2010. Redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.27 Requests for correction or amendment of record.

(a) An individual may request amendment of records pertaining to him in a TVA system to the extent permitted by the Act in accordance with this section. A request for amendment shall:

- (1) Be in writing and signed by the individual seeking the amendment;
- (2) Name the TVA system in which the record is maintained;
- (3) Describe the item or items of information to be amended;
- (4) Describe the nature of the amendment requested; and
- (5) Give the reasons for the requested change.

(b) Requests shall be made to the official designated in the paragraph headed "Contesting record procedures" in the TVA system notice for the TVA system concerned. Before considering a request, TVA may require proof of identity of the requester similar to that required under §1301.24 to gain access to the record.

(c) The individual requesting amendment has the responsibility of providing TVA with evidence of why his record should be amended, and must provide adequate evidence to TVA to justify his request.

(d) The provisions of §§1301.21 to 1301.34 of this part do not permit the alteration of evidence presented or to be presented in the course of judicial or administrative proceedings; neither do they permit collateral attack on a prior judicial or administrative action, or provide a collateral remedy for a matter otherwise judicially or administratively cognizable.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988. Redesignated and amended at 82 FR 51757, 51758, Nov. 8, 2017]

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§ 1301.28 TVA review of request for correction or amendment of record.

(a) TVA will acknowledge a request for amendment within 10 days of receipt. The acknowledgement will be in writing, will request any additional information TVA requires to determine whether to make the requested correction or amendment, and will indicate the date by which TVA expects to make its initial determination.

(b) TVA will, except in unusual circumstances, complete its consideration of requests to amend records within 30 days. If more time is deemed necessary, TVA will notify the individual of the delay and of the expected date of completion of the review.

(c) If TVA determines that a record should be corrected or amended, in whole or in part, in accordance with a request, it will advise the requesting individual in writing of its determination, and correct or amend the record accordingly. If an accounting of disclosures has been made, TVA will, to the extent of the accounting, inform prior recipients of the record of the fact that the correction was made and the substance of the correction.

(d) If TVA, after initial consideration of a request, determines that a record should not be corrected or amended, in whole or in part, in accordance with a request, it will notify the individual in writing of its refusal to amend the record and the reasons therefor. The notification will inform the individual that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.29 Appeals on initial adverse agency determination on correction or amendment.

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Privacy Act Reviewing Official, Tennessee Valley Authority, Knoxville, Tennessee

37902-1401. Such notice shall be signed by the appellant and shall state:

(1) That it is an appeal from a denial of a request to amend the individual's records under these regulations and under the Privacy Act of 1974;

(2) The reasons why the appellant believes the denial to have been erroneous;

(3) The date on which the denial was issued; and

(4) The date on which the denial was received by the appellant.

(b) Appeals shall be determined by a reviewing official. Such determination may be based on information provided for the initial determination; any additional information which TVA or the appellant may desire to provide; and any other material the reviewing official deems relevant to the determination. The reviewing official, in his sole discretion, may request TVA or the appellant to provide additional information deemed relevant to the appeal. The appellant will be given an opportunity to respond to any information provided by TVA or independently procured by the reviewing official. If in the sole discretion of the reviewing official a hearing is deemed necessary for resolution of the appeal, the reviewing official may conduct a hearing upon notice to TVA and the appellant, at which both TVA and the appellant shall be afforded an opportunity to be heard on the appeal. The rules governing any hearing will be set forth in the notice of hearing.

(c) The reviewing official shall make final determination on the appeal within 30 days after it is received unless such period is extended for good cause. If the reviewing official finds good cause for an extension, TVA will inform the appellant in writing of the reason for the delay and of the approximate date on which the reviewing official expects to complete his determination of the appeal.

(d) If the reviewing official determines that a record should be amended in whole or in part in accordance with an appellant's request, TVA will inform the appellant in writing of its determination and correct or amend the record. If an accounting of disclosures has been made, TVA will, to the extent

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of the accounting, inform prior recipients of the record of the fact that the correction was made and of the substance of the correction.

(e) If the reviewing official determines not to amend a record, in whole or in part, in accordance with a request, TVA will advise the individual:

(1) Of its refusal to amend and the reasons therefor;

(2) Of the appellant's right to file a concise statement of reasons for disagreement with the refusal as set out in paragraph (f) of this section;

(3) Of the procedures for filing a statement of disagreement;

(4) That any statement of disagreement will be made available to anyone to whom the record is subsequently disclosed together with any statement by TVA summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of his or her right to seek judicial review of the agency's refusal to amend a record.

(f) If the reviewing official's final determination of an appeal is a refusal to correct or amend a record, in whole or in part, in accordance with the request, the appellant may file with TVA a concise statement setting forth the reasons for his or her disagreement with the refusal of TVA to amend the records. Such statements normally should not exceed 100 words. A statement of disagreement should be submitted within 30 days of receipt of notice of the reviewing official's decision on the appeal, and should be sent to system manager. In any disclosure containing information about which the individual has filed a statement of disagreement which occurs after the filing of the statement, TVA will clearly note any portion of the record which is disputed and provide copies of the statement with the disclosure. Copies of the statement will also be furnished to persons or other agencies to whom the record has been disclosed to the extent that an accounting of disclosures was made. TVA may attach to the statement of disagreement a brief summary of TVA's reasons for refusing to amend

the record. Such summaries will be disclosed to the individual, but are not subject to amendment.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988; 57 FR 33634, July 30, 1992; 75 FR 11736, Mar. 12, 2010. Redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.30 Disclosure of record to persons other than individual to whom it pertains.

For purposes of §§1301.21 to 1301.34, the parent of any minor or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual. TVA may require proof of the relationship prior to allowing such action. The parent or legal guardian may not act where the individual concerned objects to the action of the parent or legal guardian, unless a court otherwise orders.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated and amended at 82 FR 51757, 51758, Nov. 8, 2017]

§ 1301.31 Fees.

(a) Fees to be charged, if any, to any individual for making copies of his or her record exclude the cost of any search and review of the record. The following fees are applicable:

(1) For reproduction of material consisting of sheets no larger than 8½ by 14 inches, ten cents per page; and

(2) For reproduction of other materials, the direct cost of photostats or other means necessarily used for duplication.

(b) [Reserved]

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.32 Penalties.

Section 552a(i), Title 5, United States Code provides that:

(1) *Criminal Penalties.* Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established

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thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and further redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.33 General exemptions.

Individuals may not have access to records maintained by TVA but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, TVA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

[75 FR 11736, Mar. 12, 2010. Redesignated at 82 FR 51757, Nov. 8, 2017]

§ 1301.34 Specific exemptions.

(a) The TVA system Nuclear Access Authorization and Fitness for Duty Records is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a (k)(5) and (6).

(b)(1) The TVA systems “Apprentice Training Record System-TVA,” “Consultant and Contractor Records-TVA,”

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“Employment Applicant Files-TVA,” “Personnel Files-TVA,” and “Nuclear Quality Assurance Personnel Records-TVA” are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(2) Each of these TVA systems contain reference letters and information concerning employees and other individuals who perform services for TVA. TVA has received this information in the past under both express and implied promises of confidentiality and consistent with the Privacy Act these promises will be honored. Pledges of confidentiality will be necessary in the future to ensure that unqualified or unsuitable individuals are not selected for TVA positions. Without the ability to make these promises, a potential source of information may be unwilling to provide needed information, or may not be sufficiently frank to be of value in personnel screening.

(c)(1) The TVA systems “Apprentice Training Record System-TVA,” “Consultant and Contractor Records-TVA,” “Employment Applicant Files-TVA,” and “Personnel Files-TVA,” are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(2) This material is exempted because its disclosure would reveal information about the testing process which would potentially give an individual an unfair

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competitive advantage in selection based on test performance.

(d) The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

(e) The TVA system TVA Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988; 56 FR 9288, Mar. 6, 1991; 61 FR 2111, Jan. 25, 1996; 62 FR 4644, Jan. 31, 1997; 75 FR 11736, Mar. 12, 2010; 81 FR 88999, Dec. 9, 2016. Redesignated at 82 FR 51757, Nov. 8, 2017]

Subpart C—Government in the Sunshine Act

AUTHORITY: 16 U.S.C. 831–831ee, 5 U.S.C. 552b.

SOURCE: 42 FR 14086, Mar. 15, 1977, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1301.41 Purpose and scope.

(a) The provisions of this subpart are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b, consistent with the purposes and provisions of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

(b) Nothing in this subpart expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552) and the provisions of Subpart A of this part, except that the exemptions set forth in § 1301.46 shall govern in the case of any request made pursuant to the Freedom of Information Act and Subpart A to copy or inspect the transcripts, recordings, or minutes described in § 1301.47.

(c) Nothing in this subpart authorizes TVA to withhold from any individual any record, including transcripts, recordings, or minutes required by this subpart, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a) and the provisions of Subpart B.

(d) The requirements of Chapter 33 of Title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 1301.47.

§ 1301.42 Definitions.

For the purposes of this subpart:

(a) The term *Board* means the Board of Directors of the Tennessee Valley Authority;

(b) The term *meeting* means the deliberations of five or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 1301.44 or § 1301.45;

(c) The term *member* means an individual who is a member of the TVA Board; and

(d) The term *TVA* means the Tennessee Valley Authority.

[42 FR 14086, Mar. 15, 1977, as amended at 75 FR 11737, Mar. 12, 2010]

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§ 1301.43 Open meetings.

Members shall not jointly conduct or dispose of TVA business other than in accordance with this subpart. Except as provided in §1301.46, every portion of every meeting of the agency shall be open to public observation, and TVA shall provide suitable facilities therefor, but participation in the deliberations at such meetings shall be limited to members and certain TVA personnel. The public may make reasonable use of electronic or other devices or cameras to record deliberations or actions at meetings so long as such use is not disruptive of the meetings.

[42 FR 21470, Apr. 27, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1301.44 Notice of meetings.

(a) TVA shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a TVA official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless a majority of the members determines by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if a majority of the entire membership determines by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

(d) Immediately following each public announcement required by this sec-

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tion, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the TVA official designated to respond to requests for information about the meeting shall be submitted for publication in the FEDERAL REGISTER.

[42 FR 14087, Mar. 15, 1977, as amended at 75 FR 11737, Mar. 12, 2010]

§ 1301.45 Procedure for closing meetings.

(a) Action under §1301.46 to close a meeting shall be taken only when a majority of the members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to §1301.46 or with respect to any information which is proposed to be withheld under §1301.46. A single vote 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 any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of §1301.46, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, TVA shall make publicly available in accordance with §1301.48 a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, TVA shall, within one day of the vote

taken pursuant to this section, make publicly available in accordance with §1301.48 a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(d) Prior to every meeting closed pursuant to §1301.46, there shall be a certification by the General Counsel of TVA stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by TVA and shall be made publicly available in accordance with §1301.48.

[42 FR 14087, Mar. 15, 1977, as amended at 75 FR 11737, Mar. 12, 2010]

§ 1301.46 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of §1301.43 shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of §§1301.44 and 1301.45(a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of an agency;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

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

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

(g) 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:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) 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,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would:

(1) In the case of any agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this provision shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

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(j) Specifically concern an agency's issuance of a subpoena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by an agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 1301.47 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 1301.46, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by TVA.

(b) TVA shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (h), (i)(1), or (j) of § 1301.46, TVA shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) TVA shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any TVA proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 1301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings pursuant to § 1301.44, written cop-

ies of votes to change the subject matter of meetings made pursuant to § 1301.44(c), written copies of votes to close meetings and explanations of such closings made pursuant to § 1301.45(c), and certifications of the General Counsel made pursuant to § 1301.45(d) shall be available for public inspection during regular business hours in the TVA Research Library, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902-1401.

(b) TVA shall make promptly available to the public at the location described in paragraph (a) of this section the transcript, electronic recording, or minutes (as required by § 1301.47(b)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as TVA determines to contain information which may be withheld under § 1301.46. Each request for such material shall be made to the Manager, Media Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499; state that it is a request for records pursuant to the Government in the Sunshine Act and this subpart; and reasonably describe the discussion or item of testimony, and the date of the meeting, with sufficient specificity to permit TVA to identify the item requested.

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Senior Manager, Media Relations, for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularity for the Senior Manager, Media Relations, to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Senior Manager, Media Relations, or his/her designee

shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's Senior Vice President, Communications, and the time limits thereof.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's Senior Vice President, Communications. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Senior Manager, Media Relations, and is taken by delivering a written notice of appeal to the Senior Vice President, Communications, Tennessee Valley Authority, Knoxville, Tennessee 37902-1401. Such notice shall include a statement that it is an appeal from a denial of a request under §1301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's Senior Vice President, Communications, or the Senior Vice President's designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in §1301.46. TVA shall immediately give written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

(e) Copies of materials available for public inspection under this section shall be furnished to any person at the actual cost of duplication or transcription.

[42 FR 14086, Mar. 15, 1977. Redesignated at 44 FR 30682, May 29, 1979, and amended at 56 FR 55452, Oct. 28, 1991; 75 FR 11737, Mar. 12, 2010]

Subpart D—Testimony by TVA Employees, Production of Official Records, and Disclosure of Official Information in Legal Proceedings

SOURCE: 72 FR 60548, Oct. 25, 2007, unless otherwise noted.

§ 1301.51 Purpose and scope.

(a) *Purpose.* This part sets forth the procedures to be followed when TVA or a TVA employee is served with a demand to provide testimony and/or produce or disclose official information or records in a legal proceeding in which TVA or the United States is not a party, and where such appearance arises out of, or is related to, the individual's employment with TVA.

(b) *Scope.* This part applies when, in a judicial, administrative, legislative, or other legal proceeding, a TVA employee is served with a demand to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce official information and/or records.

§ 1301.52 Definitions.

The following definitions apply to this part:

(a) *Appearance* means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

(b) *Demand* means a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g. an administrative or State legislative body), for the production, disclosure, or release of TVA records or information or for the appearance of TVA personnel as witnesses in their official capacities.

(c) *Employee* means any members of the Board of Directors, officials, officers, directors, employees or agents of TVA, except as TVA may otherwise determine in a particular case, and includes former TVA employees to the extent that the information sought was acquired in the performance of official duties for TVA.

(d) *General Counsel* means the General Counsel of TVA or a person to

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whom the General Counsel has delegated authority under this part.

(e) *Legal proceeding* means any and all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(f) *Records or official records and information* means all information in the custody and control of TVA, relating to information in the custody and control of TVA, or acquired by a TVA employee in performance of his or her official duties or because of his or her official status while the individual was employed by TVA.

(g) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 1301.53 General.

(a) No employee shall appear, in response to a demand for official records or information, in any proceeding to which this part applies to provide testimony and/or produce records or other official information without prior authorization as set forth in this part.

(b) This part is intended only to provide procedures for responding to demands for testimony or production of records or other official information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against TVA and the United States.

§ 1301.54 Requirements for a demand for records or testimony.

(a) *Service of demands.* Only TVA's General Counsel or his/her designee is authorized to receive and accept demands sought to be served upon TVA or its employees. All such documents should be delivered in person or by United States mail to the Office of the General Counsel, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902.

(b) *Time limit for serving demands.* The demand must be served at least 30 days

prior to the scheduled date of testimony or disclosure of records, in order to ensure that the General Counsel has adequate time to consider the demand and prepare a response, except in cases of routine requests for personnel and payroll records located on-site in Knoxville, where service 15 days prior will normally be considered sufficient. The General Counsel may, upon request and for good cause shown, waive the requirement of this paragraph.

(c) *Form of Demand.* A demand for testimony or production of records or other official information must comply with the following requirements:

(1) The demand must be in writing and submitted to the General Counsel.

(2) The demand must include the following information:

(i) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved.

(ii) If production of records or other official information is sought, a list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the records sought.

(iii) If testimony is sought, a description of the intended use of the testimony, a detailed description of how the testimony sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony sought.

(iv) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on TVA to produce the documents or testimony.

(v) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a TVA employee, such as a retained expert.

(vi) The name, address, and telephone number of counsel to each party in the case.

(d) *Additional information.* TVA reserves the right to require additional information to complete the request where appropriate or to waive any of

the requirements of this section at its sole discretion.

§ 1301.55 Responding to demands.

Generally, authorization to provide the requested material or testimony shall not be withheld unless their disclosure is prohibited by law or for other compelling reasons, provided the request is reasonable and in compliance with the requirements of this part, and subject to the following conditions:

(a) *Demands for testimony.* TVA's practice is to provide requested testimony of TVA employees by affidavit only. TVA will provide affidavit testimony in response to demands for such testimony, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the testimony to be withheld. The General Counsel may waive this restriction when necessary.

(b) *Demands for production of records or official information.* TVA's practice is to provide requested records or official information, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the records or official information to be withheld.

(c) *Factors to be considered in determining whether requested testimony or records or official information must be withheld.* The General Counsel shall consider the following factors, among others, in deciding whether requested testimony or materials must be withheld:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose;

(3) Whether the material requested is relevant to the matter at issue;

(4) Whether allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(5) Whether disclosure would violate a statute, Executive Order, or regulation, including, but not limited to, the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(6) Whether disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(7) Whether disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent;

(8) Whether disclosure would unduly interfere with the orderly conduct of TVA's functions;

(9) Whether the records or testimony can be obtained from other sources;

(10) Whether disclosure would result in TVA appearing to favor one litigant over another;

(11) Whether the demand or request is within the authority of the party making it; and

(12) Whether a substantial Government interest is implicated.

(d) *Restrictions on testimony or production of records or official information.* When necessary or appropriate, the General Counsel may impose restrictions or conditions on the production of testimony or records or official information. These restrictions may include, but are not limited to:

(1) Limiting the area of testimony;

(2) Requiring that the requester and other parties to the legal proceeding agree to keep the testimony under seal;

(3) Requiring that the testimony be used or made available only in the legal proceeding for which it was requested;

(4) Requiring that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure of produced records or official information.

(e) *Fees for Production.* Fees will be charged for production of TVA records and information. The fees will be the same as those charged by TVA pursuant to its Freedom of Information Act regulations, 16 CFR 1301.10.

§ 1301.56 Final determination.

The General Counsel makes the final determination whether a demand for testimony or production of records or official testimony in a legal proceeding in which TVA is not a party shall be granted. All final determinations are

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within the sole discretion of the General Counsel. The General Counsel will notify the requesting party and, when necessary, the court or other authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the production of testimony or records or official information.

§ 1301.57 Waiver.

The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of TVA or the United States, or for other good cause.

Subpart E—Protection of National Security Classified Information

SOURCE: 76 FR 39261, July 6, 2011, unless otherwise noted.

§ 1301.61 Purpose and scope.

(a) *Purpose.* These regulations, taken together with the Information Security Oversight Office's implementing directive at 32 CFR part 2001, Classified National Security Information, provide the basis for TVA's security classification program implementing Executive Order 13526, "Classified National Security Information," as amended ("the Executive Order").

(b) *Scope.* These regulations apply to TVA employees, contractors, and individuals who serve in advisory, consultant, or non-employee affiliate capacities who have been granted access to classified information.

§ 1301.62 Definitions.

The following definitions apply to this part:

(a) "Original classification" is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (i.e., national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) "Classified national security information" or "classified information" means information that has been determined pursuant to Executive Order

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13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

§ 1301.63 Senior agency official.

(a) The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. TVA's senior agency official is the Director, TVA Police & Emergency Management.

(b) Questions with respect to the Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Senior Agency Official.

[76 FR 39261, July 6, 2011, as amended at 83 FR 48373, Sept. 25, 2018]

§ 1301.64 Original classification authority.

(a) Original classification authority is granted by the Director of the Information Security Oversight Office. TVA does not have original classification authority.

(b) If information is developed that appears to require classification, or is received from any foreign government information as defined in section 6.1(s) of Executive Order 13526, the individual in custody of the information shall immediately notify the Senior Agency Official and appropriately protect the information.

(c) If the Senior Agency Official believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level

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of classification pending a determination by an original classification authority.

§ 1301.65 Derivative classification.

(a) In accordance with Part 2 of Executive Order 13526 and directives of the Information Security Oversight Office, the incorporation, paraphrasing, restating or generation in new form of information that is already classified, and the marking of newly developed material consistent with the classification markings that apply to the source information, is derivative classification.

(1) Derivative classification includes the classification of information based on classification guidance.

(2) The duplication or reproduction of existing classified information is not derivative classification.

(b) Authorized individuals applying derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents the pertinent classification markings.

(3) For information derivatively classified based on multiple sources, the authorized individuals shall carry forward:

(i) The date or event for declassification that corresponds to the longest period of classification among the sources; and

(ii) A listing of these sources on or attached to the official file or record copy.

(c) Documents classified derivatively shall bear all markings prescribed by 32 CFR 2001.20 through 2001.23 and shall otherwise conform to the requirements of 32 CFR 2001.20 through 2001.23.

§ 1301.66 General declassification and downgrading policy.

(a) TVA does not have original classification authority.

(b) TVA personnel may not declassify information originally classified by other agencies.

§ 1301.67 Mandatory review for declassification.

(a) Reviews and referrals in response to requests for mandatory declassification

shall be conducted in compliance with section 3.5 of Executive Order 13526, 32 CFR 2001.33, and 32 CFR 2001.34.

(b) Any individual may request a review of classified information and material in possession of TVA for declassification. All information classified under Executive Order 13526 or a predecessor Order shall be subject to a review for declassification by TVA, if:

(1) The request describes the documents or material containing the information with sufficient specificity to enable TVA to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(2) The information requested is not the subject of pending litigation.

(c) Requests shall be in writing, and shall be sent to: Director, TVA Police & Emergency Management, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

[76 FR 39261, July 6, 2011, as amended at 83 FR 48373, Sept. 25, 2018]

§ 1301.68 Identification and marking.

(a) Classified information shall be marked pursuant to the standards set forth in section 1.6, Identification and Marking, of the Executive Order; Information Security Oversight Office implementing directives in 32 CFR part 2001, subpart B; and internal TVA procedures.

(b) Foreign government information shall retain its original classification markings or be marked and classified at a U.S. classification level that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(c) Information assigned a level of classification under predecessor executive orders shall be considered as classified at that level of classification.

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§ 1301.69 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) The Executive Order and the Information Security Oversight Office implementing directive provides information on the protection of classified information. Specific controls on the use, processing, storage, reproduction, and transmittal of classified information within TVA to provide protection for such information and to prevent access by unauthorized persons are contained in internal TVA procedures.

(c) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to their supervisor and the Senior Agency Official, who shall conduct an immediate inquiry into the matter.

PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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APPENDIX A TO PART 1302—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

AUTHORITY: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831-831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1.

SOURCE: 30 FR 311, Jan. 9, 1965, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1302.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the

Civil Rights Act 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from TVA.

§ 1302.2 Application of this part.

This part applies to any program for which financial assistance is provided by TVA. The types of Federal financial assistance to which this part applies are listed in appendix A of this part. Financial assistance, as used in this part, includes the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions. This part does not apply to:

- (a) Any financial assistance by way of insurance or guaranty contracts,
- (b) Money paid, property transferred, or other assistance extended before the effective date of this part,
- (c) Any assistance to any individual who is the ultimate beneficiary, or
- (d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, unless such practice exists in a program where a primary objective of the TVA financial assistance is to provide employment; or where such practice subjects persons to discrimination in the provision of services and benefits on the grounds of race, color, or national origin in a program or activity receiving Federal financial assistance from TVA.

The fact that a type of Federal financial assistance is not listed in appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance may be added to