

**§ 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**

Sec.

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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

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this list by notice published in the FEDERAL REGISTER.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 20481, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

### § 1302.3 Definitions.

(a) *TVA* as used in these regulations, refers to the Tennessee Valley Authority, as created by the Tennessee Valley Authority Act of 1933, 48 Stat. 58, *as amended*, 16 U.S.C. 831-831dd. *See also* paragraph (e) of § 1302.6.

(b) *Recipient* refers to any person, group, or other entity which either receives financial assistance from TVA, or which has been denied such assistance.

(c) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, Department of Justice.

(d) *Title VI* refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*

(e) *Program or activity* and *program* refer to all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education,

health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

[49 FR 20481, May 15, 1984; 49 FR 47383, Dec. 4, 1984, as amended at 68 FR 51355, Aug. 26, 2003]

### § 1302.4 Discrimination prohibited.

(a) *General*. 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 Federal financial assistance from TVA. For the purposes of this part, the following definitions of race and ethnic group apply:

(1) *Black, not of Hispanic origin*. A person having origins in any of the black racial groups of Africa;

(2) *Hispanic*. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) *Asian or Pacific Islander*. A person having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa;

(4) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(5) *White, not of Hispanic origin*. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Additional subcategories based on national origin or primary language spoken may be used where appropriate.

(b) *Specific discriminatory actions prohibited*. (1) A recipient receiving Federal financial assistance from TVA may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

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(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any manner related to that individual's receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program has been satisfied.

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford that individual an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding individuals from, de-

nying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of the financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17944, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20481, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

### § 1302.5 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part in programs or activities receiving Federal financial assistance from TVA. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or in

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the case of a subsequent transfer, the transferee, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient for the period during which the recipient retains ownership or possession of the property. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreements, and the extent to which an agreement shall be applicable to subgrantees, contractors and sub-contractors, transferees, successors in interest, and other participants.

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or

improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17944, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20481, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

### § 1302.6 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

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(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives financial assistance, and make such information available to them in such manner as TVA finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(Information collection requirements appearing in §1302.6 were approved by the Office of Management and Budget under control number 3316-0077)

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979. Redesignated at 49 FR 20481, May 15, 1984, and amended at 51 FR 9649, Mar. 20, 1986; 68 FR 51355, Aug. 26, 2003]

### § 1302.7 Compliance reviews and conduct of investigations.

(a) *Preaward compliance reviews.* (1) Prior to approval of financial assistance, TVA will make a determination as to whether the proposed recipient is in compliance with Title VI and the requirements of this part with respect to a program or activity for which it is seeking Federal financial assistance from TVA. The basis for such a determination shall be submission of an assurance of compliance and a review of the data and information submitted by the proposed recipient, any relevant compliance review reports on file with TVA, and any other information available to TVA. Where a determination cannot be made from this data, TVA will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials, protected class organizations, and onsite reviews.

(2) No proposed recipient shall be approved unless it is determined that the proposed recipient is in compliance with Title VI and this part or has agreed in writing to take necessary specified steps within a stated period of time to come into compliance with Title VI and this part. Such an agreement must be approved by TVA and made a part of the conditions of the

agreement under which the financial assistance is provided.

(3)(i) Where TVA finds that a proposed recipient may not be in compliance with Title VI and this part, TVA shall notify the proposed recipient and the Assistant Attorney General for Civil Rights in writing of:

(A) The preliminary findings setting forth the alleged noncompliance;

(B) Suggested actions for correcting the alleged noncompliance; and

(C) The fact that the proposed recipient has 10 days to correct the alleged noncompliance or to provide during this time a written submission responding to or rebutting the preliminary findings or suggested corrective actions set forth in the notice.

(ii) If within this 10-day period the proposed recipient has not agreed to the suggested actions set forth or to other actions that would correct the alleged noncompliance under paragraph (a)(3)(i)(B) of this section, or the preliminary findings set forth in paragraph (a)(3)(i)(A) of this section have not been rebutted to TVA's satisfaction, or voluntary compliance has not been otherwise secured, TVA shall make a formal determination of compliance or noncompliance, notify the proposed recipient, and the Assistant Attorney General for Civil Rights and institute proceedings (including provision of an opportunity for a hearing) under § 1302.8 of this part.

(b) *Postaward compliance reviews.* (1) TVA may periodically conduct compliance reviews of selected recipients in their programs or activities receiving TVA financial assistance, including the request of data and information, and may conduct onsite reviews where it has reason to believe that discrimination may be occurring in such programs or activities.

(2) Selection for review shall be made on the basis of the following criteria among others:

(i) The number and nature of discrimination complaints filed against a recipient with TVA or other Federal agencies;

(ii) The scope of the problem revealed by an investigation commenced on the basis of a complaint filed with TVA against a recipient; and

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(iii) The amount of assistance provided to the recipient.

(3) Within 15 days after selection of a recipient for review, TVA shall inform the recipient that it has been selected for review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(i) The practices to be reviewed;

(ii) The programs or activities affected by the review;

(iii) The opportunity to make, at any time prior to receipt of the final TVA findings with respect to the review pursuant to paragraph (b)(6) of this section, a documentary submission responding to TVA which explains, validates, or otherwise addresses the practices under review; and

(iv) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(4) Within 180 days of initiation of a review, TVA shall advise the recipient, in writing of:

(i) Its preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance;

(iii) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time it notifies the recipient of any matter where recommendations for achieving voluntary compliance are made.

(5) TVA's General Manager may extend the 180-day period set out in paragraph (b)(4) of this section for good cause shown.

(6) If, within 50 days of the recipient's notification under paragraph (b)(4) of this section, TVA's recommendations for compliance are not met or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a final determination of compliance or noncompliance. The determination is to be made no later than 14 days after the conclusion of the 50-day negotiation period. TVA's General Manager may extend the 14-day period for good cause shown.

(7) Where TVA makes a formal determination of noncompliance on a postaward review, the recipient and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under § 1302.8 of this part.

(8) All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(c) *Complaint investigation.* (1) TVA shall investigate complaints of discrimination in a program or activity receiving Federal financial assistance from TVA that allege a violation of Title VI or this part.

(2) No complaint will be investigated if it is received by TVA more than 180 days after the date of the alleged discrimination unless the time for filing is extended by TVA for good cause shown. Where a complaint is accepted for investigation, TVA will initiate an investigation. The complainant shall be notified in writing as to whether the complaint has been accepted or rejected.

(3) TVA shall conduct investigations of complaints as follows:

(i) Within 10 days of receipt of a complaint, the Director of Equal Opportunity Compliance shall:

(A) Determine whether TVA has jurisdiction under paragraphs (c) (1) and (2) of this section;

(B) If jurisdiction is not found, wherever possible refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(C) If jurisdiction is found, notify the recipient alleged to be in violation of the receipt and acceptance of the complaint; and

(D) Initiate the investigation.

(ii) The investigation will ordinarily be initiated by a letter to the recipient requesting data pertinent to the complaint and informing the recipient of:

(A) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant;

(B) The programs or activities affected by the complaint;

(C) The opportunity to make, at any time prior to receipt of TVA's final findings under paragraph (c)(5) of this section, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(D) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

(iii) Within 180 days of the initiation of a complaint investigation, TVA shall advise the recipient, in writing, of:

(A) Preliminary findings;

(B) Where appropriate, recommendations for achieving voluntary compliance; and

(C) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 50 days of the recipient's notification under paragraph (c) of this section, TVA's recommendations for compliance are not met, or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a formal determination of compliance or noncompliance. The determination is to be made no later than 14 days after conclusion of a 50-day negotiation period. TVA's General Manager may extend the 14-day period for good cause shown.

(5) Where TVA makes a formal determination of noncompliance, the complainant, the recipient, and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under §1302.8 of this part. The complainant shall also be notified of any action taken including the closing of the complaint or the achievement of voluntary compliance. All agreements to come into voluntary

compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient and shall be made available to the complainant on request.

(6) If the complainant or party other than TVA has filed suit in Federal or State court alleging the same discrimination as alleged in a complaint pending before TVA, and if during TVA's investigation the trial of that suit would be in progress, TVA will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination against a recipient that would constitute a violation of this part, TVA shall institute proceedings as specified in §1302.8 of this part. All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c) (3) through (5) of this section shall be appropriately adjusted where TVA requests another Federal agency to act on the complaint. TVA shall monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, TVA shall institute appropriate proceedings as required by this part.

(d) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(e) *Enforcement authority.* TVA's Director of Equal Opportunity Compliance, or a successor as designated by

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TVA's Board of Directors, will be responsible for all decisions about initiating compliance reviews and complaint investigations. TVA's General Manager, or a successor as designated by TVA's Board of Directors, shall be responsible for all decisions about initiating compliance actions under § 1302.8(a) of this part.

(Information collection requirements appearing in § 1302.7 were approved by the Office of Management and Budget under control number 3316-0077)

[49 FR 20481, May 15, 1984, as amended at 49 FR 47383, Dec. 4, 1984; 51 FR 9649, Mar. 20, 1986; 68 FR 51355, Aug. 26, 2003]

### § 1302.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act),

(2) Institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and

(3) Any applicable proceeding under State or local law.

The Assistant Attorney General, Civil Rights Division, Department of Justice, will be notified of all findings of probable noncompliance at the same time the recipient or applicant is notified.

(b) *Noncompliance with § 1302.5.* If anyone requesting financial assistance declines to furnish the assurance required under § 1302.5 of this part, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section

and for such purposes, the term "recipient" shall be deemed to include one which has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, or a failure by the recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the TVA Board pursuant to § 1302.9, and (4) the expiration of 30 days after the TVA Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular political entity, or part thereof, or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from



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the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20483, May 15, 1984; 49 FR 47384, Dec. 4, 1984]

### § 1302.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §1302.7(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §1302.7(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board, or a member thereof, or, at the discretion of the Board, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the TVA

Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1302.9.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979, and 49 FR 20483, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

#### § 1302.10 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* A member of the TVA Board or a hearing examiner who holds the hearing shall either make an initial decision or certify the entire record, including the Board member's or examiner's recommended findings and proposed decision, to the TVA Board for a final decision. A copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a member of the TVA Board or a hearing examiner, the recipient may file exceptions to the initial decision, together with a statement of reasons therefor. Such exceptions and statement shall be filed with the TVA Board within 30 days of the date the notice of initial decision was mailed to the recipient. In the absence of exceptions, the TVA Board may on its own motion within 45 days after the initial decision serve on the recipient a notice that the TVA Board will review the decision. Upon the filing of such exceptions or of such notice of review, the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the TVA Board.

(b) *Decisions on record or review by the TVA Board.* Whenever a record is certified to the TVA Board for decision or it reviews the decision of a member of the TVA Board or a hearing examiner pursuant to paragraph (a) of this section, or whenever the TVA Board conducts the hearing, the recipient shall be given reasonable opportunity to file with the Board briefs or other written

statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1302.8(a) a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the TVA Board, which may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no financial assistance to which this regulation applies will thereafter be extended to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any recipient or proposed recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully the recipient's eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, TVA shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing specifying why it believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if the recipient proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 45 FR 20483, May 15, 1983; 68 FR 51355, Aug. 26, 2003]

**§ 1302.11 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979, and 49 FR 47384, Dec. 4, 1984]

**§ 1302.12 Effect on other regulations; supervision and coordination.**

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by TVA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, ex-

cept that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 12250 and regulations issued thereunder, or

(2) Any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1302.9), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by TVA.

[38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20484, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

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

1. Transfers, leases and licenses of real property for nominal consideration to states, counties, municipalities, and other public agencies for development for public recreation.

2. Furnishing funds, property and services to state agencies, local governments and citizen organizations to advance economic growth in watersheds of Tennessee River tributaries through cooperative resource development programs.

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3. Furnishing funds, property and services to land grant colleges for use in a cooperative program utilizing test-demonstration farms to test experimental fertilizers developed by TVA and to educate farmers and other interested persons concerning these new fertilizers. This program also includes the furnishing of fertilizers at reduced prices by TVA, through its fertilizer distributors, to such test-demonstration farms.

4. Furnishing space and utilities without charge under agreements with state agencies for use in accordance with the Vending Stands for Blind Act.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979]

### PART 1303—PROPERTY MANAGEMENT

#### Subpart A—General Information

Sec.

1303.1 Applicability.

#### Subpart B—Tobacco Products

1303.2 Definition.

1303.3 Prohibition on tobacco products.

AUTHORITY: 16 U.S.C. 831–831dd.

SOURCE: 61 FR 6110, Feb. 16, 1996, unless otherwise noted.

#### Subpart A—General Information

##### § 1303.1 Applicability.

This part sets out certain regulations applicable to buildings, structures, and other property under TVA control.

#### Subpart B—Tobacco Products

##### § 1303.2 Definition.

*Tobacco product* means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

[61 FR 6110, Feb. 16, 1996; 61 FR 54849, Oct. 22, 1996]

##### § 1303.3 Prohibition on tobacco products.

(a) Sale of tobacco products by vending machine on TVA property is prohibited. Tobacco product vending machines already in place on TVA property as of November 15, 1995, may continue in operation for one year from February 16, 1996 while TVA completes

review of whether such machines should be exempted under paragraph (c) of this section.

(b) Distribution of free samples of tobacco products on TVA property is prohibited.

(c) TVA may, as appropriate, designate areas not subject to this section if individuals under the age of 18 are not allowed in such areas.

### PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES AND OTHER ALTERATIONS

#### Subpart A—Procedures for Approval of Construction

Sec.

1304.1 Scope and intent.

1304.2 Application.

1304.3 Delegation of authority.

1304.4 Application review and approval process.

1304.5 Conduct of hearings.

1304.6 Appeals.

1304.7 Conditions of approvals.

1304.8 Denials.

1304.9 Initiation of construction.

1304.10 Change in ownership of approved facilities or activities.

1304.11 Little Tennessee River; date of formal submission.

#### Subpart B—Regulation of Floating Cabins

1304.100 Scope and intent.

1304.101 Floating cabins.

1304.102 Numbering of floating cabins and change in ownership.

1304.103 Health, safety, and environmental standards.

#### Subpart C—TVA-Owned Residential Access Shoreland

1304.200 Scope and intent.

1304.201 Applicability.

1304.202 General sediment and erosion control provisions.

1304.203 Vegetation management.

1304.204 Docks, piers, and boathouses.

1304.205 Other water-use facilities.

1304.206 Requirements for community docks, piers, boathouses, or other water-use facilities.

1304.207 Channel excavation on TVA-owned residential access shoreland.

1304.208 Shoreline stabilization on TVA-owned residential access shoreland.

1304.209 Land-based structures/alterations.