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Julie A. Lynch,

Acting Director, Office of Rulemaking.

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TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Tennessee Valley Authority Procedures

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its regulations which contain TVA's procedures for the Freedom of Information Act (FOIA), the Privacy Act, and the Government in the Sunshine Act. These amendments reflect changes in position titles and addresses; for FOIA purposes, update the definitions of "news media" and "news media requesters" to reflect changes in the way news is delivered; conform references to Privacy Act systems of records to the most current publication of TVA's Privacy Act Systems Notices in the **Federal Register**; clarify special procedures for the release of certain medical records in response to Privacy Act requests; pursuant to amendments to the TVA Act, reflect changes in the number of TVA Board members required for a quorum; and make other editorial changes.

DATES: *Effective Date:* March 12, 2010.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Goschy, Assistant General Counsel, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902-1401, (865) 632-8960.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency procedure and practice. TVA considers this rule to be a procedural rule which is exempt from notice and comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, TVA certifies that these regulatory amendments will not have a significant impact on small business entities. Since this rule is nonsubstantive, it is being made effective March 12, 2010.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy.

■ For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

Subpart A—Freedom of Information Act

■ 1. The authority citation for part 1301, Subpart A, is revised to read as follows:

Authority: 16 U.S.C. 831-831ee, 5 U.S.C. 552.

■ 2. In § 1301.3, revise paragraphs (a) and (b) to read as follows:

§ 1301.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of TVA by writing to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (WT 7D), Knoxville, Tennessee 37902-1401. You may find TVA's "Guide to Information About TVA"—which is available electronically at <http://www.tva.gov>, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see Subpart B Privacy Act for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request will be considered received as of the date it is received by the FOIA Officer. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Descriptions of records sought.* You must describe the records that you seek in enough detail to enable TVA personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely TVA will be able to locate those records in response to your request. If TVA determines that your request does not reasonably describe records, you will be informed what additional information is needed or why your

request is otherwise insufficient. TVA shall also give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

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■ 3. In § 1301.5, revise paragraph (b) introductory text to read as follows:

§ 1301.5 Timing of responses to request.

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(b) *Multi-track processing procedures.*

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, including a consideration of the number of pages involved. If TVA places a request in a track other than Track 1, it will advise requesters of the limits of its faster track(s). TVA may provide requesters in its tracks 2 and 3 with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of TVA's faster track(s). When doing so, TVA may contact the requester either by telephone, e-mail, or letter, whichever is most efficient in each case.

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■ 4. In § 1301.9, revise paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7D), Knoxville, Tennessee 37902-1401. You must make your appeal in writing, and it must be received by the FOIA Appeal Official within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA FOIA Appeal Official will be the final action of TVA.

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■ 5. In § 1301.10, revise paragraph (b)(6) to read as follows:

§ 1301.10 Fees.

* * * * *

(b) * * *

(6) *Representative of the news media, or news media requester,* means 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. In this subsection, 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 broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be new media entities. For “freelance” journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but TVA shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial or private use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

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Subpart B—Privacy Act

■ 6. The authority citation for part 1301, Subpart B, is revised to read as follows:

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

■ 7. In § 1301.12, revise paragraphs (d) and (f) to read as follows:

§ 1301.12 Definitions.

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(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.
- Employee Alleged Misconduct Investigatory Files—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.
- Woodland Resource Analysis Program Input Data—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.

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(f) The term *reviewing official* means TVA’s Vice President, Human Resources Shared Services & Employee Relations (or incumbent of a successor position), or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

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■ 8. In § 1301.14, revise paragraph (g) to read as follows:

§ 1301.14 Times, places, and requirements for identification of individuals making requests.

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(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.

■ 9. Revise § 1301.16 to read as follows:

§ 1301.16 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.

■ 10. In § 1301.19, revise paragraph (a) introductory text to read as follows:

§ 1301.19 Appeals on initial adverse agency determination or 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:

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■ 11. Revise § 1301.23 to read as follows:

§ 1301.23 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.

■ 12. In § 1301.24, revise paragraphs (b)(1) and (c)(1) to read as follows:

§ 1301.24 Specific exemptions.

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

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(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).

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Subpart C—Government in the Sunshine Act

■ 13. The authority citation for part 1301, Subpart C, is revised to read as follows:

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

■ 14. In § 1301.42, revise paragraph (b) to read as follows:

§ 1301.42 Definitions.

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(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;

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■ 15. In § 1301.44, revise paragraphs (b) and (c) to read as follows:

§ 1301.44 Notice of meetings.

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(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.

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■ 16. In § 1301.45, revise paragraph (a) to read as follows:

§ 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.

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■ 17. In § 1301.48, revise paragraphs (a), (c), and (d) to read as follows:

§ 1301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings pursuant to § 1301.44, written copies 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.

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(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.

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Dated: March 5, 2010.

Maureen H. Dunn,

General Counsel and Secretary.

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