

## § 1307.9

### § 1307.9 Conduct of investigations.

(a) *Periodic compliance reviews.* TVA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any individual who claims (individually or on behalf of any specific class of individuals) to have been subjected to discrimination prohibited by this part may, personally or by a representative, file with TVA a written complaint. A complaint must be filed not later than ninety (90) days from the date of the alleged discrimination, unless the time for filing is extended by TVA.

(c) *Investigations.* TVA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, TVA will so inform the recipient and the matter will be resolved by informal means whenever possible. If TVA determines that the matter cannot be resolved by informal means, action will be taken as provided for in § 1307.10.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section, TVA will so inform the recipient and the complainant, if any, in writing.

(e) *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 504 or this part, or because the individual had 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 part, in-

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cluding the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

### § 1307.10 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 part 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 to be 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, (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.

(b) *Noncompliance with § 1307.7.* If any entity requesting financial assistance from TVA declines to furnish the assurance required under § 1307.7, 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" includes one who 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 was 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 the 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, of a failure by the recipient to comply with a requirement imposed by or pursuant to this part, including any act of discrimination on the basis of handicap in violation of this part, and (3) the action has been approved by the TVA Board pursuant to §1307.12. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular recipient as to whom such a finding had been made and shall be limited in its effect to the particular program or activity, or part thereof, in which such noncompliance had 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 ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days additional efforts will be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Aug. 26, 2003]

#### § 1307.11 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §1307.10, 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 shall either (1) fix a date not less than twenty (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 and a 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 before a "hearing officer" who shall be either a member of the TVA Board or, at the discretion of the Board, a person designated by the Board who shall not be employed in or under the TVA division through or under which the financial assistance has been extended by TVA to the recipient involved in the hearing.

(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 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 will 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