

§ 1307.11

18 CFR Ch. XIII (4-1-10 Edition)

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 subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. That 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 agencies issued under section 504, the TVA Board may, by agreement with such other agency, 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 §1307.12.

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

§ 1307.12 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing officer.* If the hearing is held before a "hearing officer" as defined in §1307.11(b), that hearing officer shall either make an initial decision, if so authorized, or certify the entire record including 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 hearing officer, the recipient may file with the TVA Board exceptions to the initial decision, which shall include a statement of reasons therefor. Such exceptions shall be filed within thirty (30) days of the mailing of the notice of initial decision. In the absence of exceptions, the TVA Board may on its own motion within forty-five (45) days after the initial decision serve on the recipi-

ent a notice that it 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 hearing officer 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, 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 part or section 504 shall promptly be transmitted to the TVA Board which may approve such decision, 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 section 504 and this part, including provisions designed to assure