

**TENNESSEE VALLEY AUTHORITY****18 CFR Part 1318****Procedures for Implementing the National Environmental Policy Act****AGENCY:** Tennessee Valley Authority.**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Tennessee Valley Authority (TVA) is proposing to amend its procedures implementing the National Environmental Policy Act (NEPA) to make these implementing procedures better align with its decision making processes, and to incorporate into these procedures guidance issued by the Council on Environmental Quality (CEQ) since the procedures were last amended. TVA also proposes to move its NEPA implementing procedures from TVA Instruction IX (Environmental Review) to Chapter XIII (Tennessee Valley Authority) in the Code of Federal Regulations as Part 1318. In addition, implementation of the Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, is addressed.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before August 7, 2017.

**ADDRESSES:** Comments can be submitted by one of the following methods:

1. *TVA's NEPA Web site:* <http://www.tva.gov/nepa>. Follow the instructions for submitting comments electronically on the Web site.
2. *Email:* [NEPARule@tva.gov](mailto:NEPARule@tva.gov).
3. *Mail comments to:* NEPA Rule Comments, Tennessee Valley Authority, 400 W. Summit Hill Drive 11D-K, Knoxville, TN 37902.

Before including your address, phone number, email address, or other personal identifying information in your comment, please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Matthew Higdon, NEPA Specialist, Tennessee Valley Authority, 400 W. Summit Hill Drive #11D-K, Knoxville, Tennessee 37902. Telephone: 865-632-8051. Email: [mshigdon@tva.gov](mailto:mshigdon@tva.gov).

**SUPPLEMENTARY INFORMATION:****Background**

This proposed rule revises TVA's implementing procedures for assessing the effects of TVA's actions in accordance with NEPA, as amended (42

U.S.C. 4321 *et seq.*). CEQ regulations at 40 CFR 1505.1 and 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing NEPA and to consult with CEQ during their development. TVA established its procedures for implementing NEPA in 1980 (45 FR 54511-15, August 15, 1980), and amended the procedures in 1983 (48 FR 19264, April 28, 1983) to incorporate requirements relating to floodplain management and protection of wetlands, among other things.

TVA has completed an internal review of its NEPA procedures and practices and has identified the need to revise its procedures. TVA found during its review that some procedures must be updated to more accurately address TVA's current mission, program areas, or organizational structure. Also, the current procedures should be updated to appropriately address the currently evolving energy market place, current communication trends, and CEQ guidance and additional orders that were established subsequent to the initial TVA NEPA procedures. In addition, TVA has identified opportunities to improve its practices and to provide clarity to the procedures to ensure environmental compliance and improve the decision-making process. In updating its procedures, TVA also wishes to ensure that those procedures reduce paperwork and delay to the extent possible.

*The proposed amendments include:* (1) Updates to organizational references to clarify roles and responsibilities within TVA; (2) acknowledgement of the use of modern notification and communication methods to improve public participation; (3) revisions to TVA's list of categorical exclusions to include common actions that have been demonstrated to have little effect on the human environment and to remove categorical exclusions for actions which TVA rarely or no longer undertakes; (4) instructions to incorporate E.O. 13690; and (5) revisions to improve the clarity of the procedures and remove redundant and outdated information. Key changes to the procedures proposed by TVA are described below.

TVA's NEPA implementing procedures have been contained in TVA Instruction IX (Environmental Review), a section of TVA's administrative code of internal policies and procedures. Although most of the code was eliminated in the 1980s, Instruction IX (Environmental Review) has remained in effect. TVA now proposes to publish the amended procedures as rules to be codified in Chapter XIII (Tennessee Valley Authority) as part 1318 of the

Code of Federal Regulations (18 CFR part 1318). The heading of part 1318 would be "Implementation of the National Environmental Policy Act of 1969." TVA intends to promote greater transparency in the NEPA process by incorporating its NEPA procedures in the Code of Federal Regulations (CFR). Extensive changes to the format and organization of the procedures are needed to meet the uniform requirements applying to Federal regulations codified in the CFR.

TVA consulted with CEQ while preparing these proposed regulations. Like TVA's current NEPA procedures, the proposed regulations would supplement the CEQ regulations implementing NEPA. The proposed regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that the TVA-specific regulations would be applied with the CEQ regulations. The notice and the proposed TVA regulations include many words and phrases that are specifically defined in either the NEPA statute or CEQ regulations. Many of these definitions can be found in part 1508 of the CEQ regulations (40 CFR part 1508). In addition, the proposed TVA regulations include definitions for certain terms.

**Administrative Requirements**

*A. Unfunded Mandates Reform Act and Various Executive Orders Including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 12988, Civil Justice Reform Act; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use; and E.O. 13771, Reducing Regulation and Controlling Regulatory Costs*

This proposed rule amends TVA's procedures for the implementation of NEPA and is not subject to review by the Office of Management and Budget (OMB) under E.O. 12866. The proposed rule contains no Federal mandates for State, local, or tribal government or for the private sector. TVA has determined that these amendments will not have a significant annual effect of \$100 million or more or result in expenditures of \$100 million in any one year by State, local, or tribal governments or by the private sector. Nor will the amendments

have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low-income or minority populations. Accordingly, this proposed rule has no implications for any of the aforementioned authorities.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA's Chief Executive Officer has certified that the amendments promulgated in this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This determination is based on the finding that the amendments are directed toward changing existing TVA procedures for conducting environmental reviews and do not compel any other party to take any action or interfere with an action taken by any other party. The amendments do not change the substantive requirements of TVA programs that are most likely to affect small entities (e.g., TVA permitting, economic assistance and development programs).

#### *C. Paperwork Reduction Act*

This proposed rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### *D. National Environmental Policy Act*

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. TVA's NEPA procedures assist in the fulfillment of its responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular agency action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000).

#### **Description of Proposed Changes**

TVA's proposed regulations are organized under subparts A through G of 18 CFR part 1318, covering the contents of TVA Instruction IX (Environmental Review) sections 1 through 5. Subpart A of the proposed regulations includes sections 1 through 4 of TVA's current NEPA procedures. The provisions in section 5 of TVA's current NEPA procedures are now found in Subparts B through G of the proposed regulations. TVA proposes to reorganize some sections of the procedures to improve its organization by grouping similar subjects together. As noted above, the new numbering and formatting of sections and paragraphs changes the structure and organization of the procedures, but is necessary to meet the requirements for codifying regulations in the CFR.

The majority of implementing procedures found in TVA Instruction IX (Environmental Review) would transfer to 18 CFR part 1318 and remain intact, except for organizational and grammatical changes added to improve clarity and reflect regulatory requirements. Throughout the procedures, TVA proposes to revise references to TVA management and staff positions and office titles because those positions and office titles have changed since 1983 and are subject to further change over time; therefore, these titles would be revised to more general terms to clarify roles and responsibilities within TVA. The following paragraphs contain a section-by-section summary of key proposed changes under each subpart from those currently in TVA's NEPA procedures. These summaries are provided so that members of the public may focus their review on changes proposed by TVA.

#### **Subpart A—General Information**

Subpart A of the proposed regulations includes sections 1 through 4 of TVA's current NEPA procedures.

*Section 1318.10 Purpose.* Minor revisions are proposed for this section to improve clarity.

*Section 1318.20 Policy.* In addition to minor edits to improve clarity, this section would incorporate TVA's policy that the application of NEPA principles during the environmental review process will assist TVA to make better, more informed decisions.

*Section 1318.30 Abbreviations.* Abbreviations for the following would be added to this section: Categorical Exclusion, Draft Environmental Impact Statement, Environmental Impact Statement, Environmental Protection Agency, Final Environmental Impact

Statement, Finding of No Significant Impact, and Record of Decision.

*Section 1318.40 Definitions.* TVA would add a definition of “controversial” and revise the definition of “floodplain” to recognize that the Federal Flood Risk Management Standard applies for federally funded projects. The definition of “important farmland” would be moved to reflect the alphabetical order of defined terms.

#### **Subpart B—Initiating the NEPA Process**

This subpart incorporates and expands the current procedures in section 5.1 of TVA Instruction IX.

*Section 1318.100 Action formulation.* TVA would expand this section to reflect the TVA policy that in addition to decision-making responsibilities of the TVA Chief Executive Officer and Board of Directors, other TVA managers and officials make decisions for some TVA actions.

*Section 1318.101 NEPA determination.* In addition to minor edits to improve clarity, the procedures would be expanded to clarify roles and responsibilities and to clarify when NEPA applies.

#### **Subpart C—Categorical Exclusions**

Substantial revisions to TVA's procedures relating to categorical exclusions are proposed. Subpart C would replace the current procedures in section 5.2 of TVA Instruction IX.

*Section 1318.200 Purpose and scope.* In addition to minor revisions to improve clarity, this section incorporates direction to avoid segmenting a larger project into small parts when considering applying categorical exclusions.

*Section 1318.201 Extraordinary circumstances.* Proposed revisions to this section would expand the list of extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

*Appendix A—Categorical exclusions.* The list of categorical exclusions would be appended to Subpart C. TVA is proposing to retain 4 of the current categorical exclusions unchanged, revise 15, and remove 9. TVA also proposes to expand its list of CEs to include 31 new categories of activities. TVA's proposed revisions are consistent with guidance issued by CEQ on establishing, applying, and revising categorical exclusions under NEPA (CEQ, “Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act,” 75 FR 75628, December 6, 2010).

In response to CEQ's issuance of the guidance, TVA conducted an extensive review of its current 28 categorical exclusions and identified the need to make numerous revisions and additions to ensure TVA's compliance with the purposes and provisions of NEPA. Based on this review, TVA identified four categorical exclusions that do not require revision and would be retained. These four categorical exclusions are clearly defined and continue to address actions that would not typically result in significant environmental impacts.

Of the nine categorical exclusions that TVA proposes to remove, three are proposed for removal because activities covered by those exclusions are no longer performed regularly by TVA (*i.e.*, exploration for uranium, visitor center construction, backslope agreements). Two categorical exclusions are considered to be too broadly defined and would be replaced by new categorical exclusions that are more specific. Two other categorical exclusions would be removed because they include human resources actions that are addressed by another categorical exclusion. Finally, TVA determined that two additional categorical exclusions should be removed because they are inconsistent with the definition of categorical exclusions in CEQ's regulations.

During the review of its categorical exclusions, TVA identified the need to revise 15 existing categorical exclusions to reflect current agency programs, clarify the definitions of the categories, apply new spatial limits, and/or change the scope of categorically excluded activities. Some revisions are proposed to expand or limit the applicability of the categorical exclusions and/or make the scope and quantitative aspects of the categorical exclusions more consistent with those adopted by other Federal agencies engaged in similar or identical actions.

TVA is proposing to add 31 new categorical exclusions to include activities that are commonly performed by TVA and have been shown not to have significant environmental impacts under normal circumstances. Most of the new categorical exclusions address routine natural resources stewardship, land and facilities management, economic development, and certain transmission system management activities. Consistent with CEQ's guidance, TVA has prepared supporting documentation for the proposed revisions. The document, entitled "Proposed Categorical Exclusions Supporting Documentation," is intended to assist the public in reviewing the proposed changes to

TVA's list of categorical exclusions and is available for review at TVA's Web site (<http://www.tva.gov/nepa>). The document provides substantiating information that activities encompassed by the new and revised categorical exclusions would not normally cause significant environmental effects and explains in greater detail TVA's reasons for retaining, modifying or eliminating existing categorical exclusions. The document includes: A discussion of the actions in the category; references to previous TVA projects documented with environmental reviews and relevant findings; a summary of relevant environmental issues for each category of actions; references and comparisons to other Federal agencies with similar provisions for categorical exclusions; information on how TVA would document the application of the categorical exclusion; a discussion of each new spatial limit that is proposed for the categorical exclusion; and other supporting information.

#### **Subpart D—Environmental Assessments**

This subpart incorporates and expands the current procedures in section 5.3 of TVA Instruction IX. Requirements relating to generic EAs were moved to the subpart for miscellaneous procedures.

**Section 1318.300 Purpose and scope.** A statement was added to this section to reflect that environmental assessments should be concise and focus on important issues and reasonable alternatives.

**Section 1318.301 Public and stakeholder participation in the EA process.** This section would be revised to describe factors considered by TVA in determining how to involve the public in the preparation of EAs. In addition, TVA would require that staff identify and involve interested stakeholders, including local and State agencies, other Federal agencies, and Indian tribes, during the EA review process, as appropriate. TVA would also require public reviews of EAs prepared for actions that would normally require an EIS.

**Section 1318.302 EA preparation.** Minor changes to the organization and grammar in this section would clarify EA requirements and the responsibilities of TVA staff early in the EA process. Responsibilities for determining the need for public involvement in the completion of the EA would also be set out in this section.

**Section 1318.303 Finding of No Significant Impact.** This section clarifies that the finding should be concise, identify environmental mitigation

measures to which TVA commits, and incorporate the EA.

**Section 1318.304 Supplements and adoptions.** This section would be expanded to address adoption of EAs prepared by other agencies; TVA Instruction IX only addresses adoption of EISs prepared by other agencies.

#### **Subpart E—Environmental Impacts Statements**

**Section 1318.400 Purpose and scope.** TVA would make revisions to the list of actions normally requiring an EIS. Examples of water resource development and water control projects would be added for clarity. TVA would specify that "major power generating facilities" would normally require an EIS if such actions involve construction of new major power generating facilities occurring at sites not previously used for industrial purposes.

Two actions would be removed from the list of actions normally requiring an EIS. Uranium mining and milling complexes would be removed from the list of actions requiring an EIS because TVA no longer conducts these actions. Any major action which will have a significant effect on the quality of the human environment was removed from the list because it is well established by CEQ regulation that such actions require completion of an EIS.

**Section 1318.401 Lead and cooperating agency determinations.** Minor revisions would clarify roles and responsibilities.

**Section 1318.402 Scoping process.** Minor revisions to this section would clarify the types of agencies with whom TVA may coordinate and the roles and responsibilities of TVA entities and NEPA compliance staff. This section incorporates a requirement that if a scoping report for an EIS is prepared, it would be made available to the public.

**Section 1318.403 DEIS preparation, transmittal, and review.** This section combines TVA Instruction IX sections 5.4.4 and 5.4.5 and includes substantive changes. It incorporates information relating to cooperating agency reviews of a Draft EIS and includes the requirement that Draft EISs will be available on TVA's public Web site. A minor revision was made to specify that 45 days is the minimum length of the public review period for a Draft EIS. Roles and responsibilities are clarified as well in this section. TVA proposes to remove information related to providing additional public involvement and to determining the appropriate type and format for involvement.

**Section 1318.404 FEIS preparation and transmittal.** This section combines sections 5.4.6 and 5.4.7 of TVA

Instruction IX. Minor revisions to this section would clarify roles and responsibilities. This section also incorporates guidance for addressing substantive comments received on a Draft EIS and how such input would be incorporated in the Final EIS. The section also incorporates requirements to post a Final EIS to the TVA public Web site and by other means upon request.

**Section 1318.405 Agency decision.** This section combines sections 5.4.8 and 5.4.9 of TVA Instruction IX and clarifies when actions may commence after a Final EIS is published. Minor revisions regarding the contents of the Record of Decision were made for clarity. This section also incorporates the limitations on actions that apply during the NEPA process pursuant to CEQ's regulations at 40 CFR 1506.1(a).

**Section 1318.406 Supplements.** This section clarifies the circumstances in which TVA would supplement an EIS. Minor revisions to this section would clarify roles and responsibilities. Also, the term "revisions" relating to changes made to an EIS is removed.

**Section 1318.407 EIS adoption.** To improve clarity, this section revises and incorporates additional requirements pertaining to the adoption of an EIS (or portion) prepared by another agency. The section incorporates procedures to ensure that the scientific accuracy of the analysis and conclusions are verified by TVA prior to adoption. The section also incorporates procedures relating to supplementing EISs that TVA determines do not adequately address TVA's action; relating to issuing decisions based on EISs (a) for which TVA served as a cooperating agency and (b) which TVA determines adequately address its decision; and to public notification requirements for EISs deemed adequate but prepared without TVA's participation as a cooperating agency. The section also incorporates procedures relating to notification of the public and other interested stakeholders.

#### **Subpart F—Miscellaneous Procedures**

Miscellaneous procedures in TVA's Instruction IX would be reorganized under Subpart F and precede procedures relating to floodplains and wetlands.

**Section 1318.500 Public participation.** Minor revisions to this section would clarify TVA's policy regarding public participation during the NEPA process. Reference to TVA's former Citizen Action Office is removed. This section also incorporates information regarding TVA's Web site as a resource for the public to learn about

TVA actions and NEPA reviews, as well as information regarding public availability of names and addresses provided by those commenting on any NEPA document.

**Section 1318.501 Mitigation commitment identification, auditing, and reporting.** Minor revisions to this section clarify roles and responsibilities, and address disclosure of mitigation commitments in NEPA documents. In addition, this section clarifies considerations made when determining whether to modify or delete previously-made mitigation commitments.

**Section 1318.502 Tiering.** No substantive changes are proposed for this section.

**Section 1318.503 Programmatic and generic NEPA documents.** TVA would remove procedures in TVA's Instruction IX that address using generic EAs to establish whether a category of actions may be treated as a categorical exclusion; categorical exclusions would no longer be established in this manner. This section incorporates guidance regarding programmatic and generic NEPA analyses of programs, policies or plans, or of actions that may have a wide geographic scope. This section also incorporates information regarding actions that may continue during programmatic NEPA review period, and when tiering from programmatic reviews is appropriate.

**Section 1318.504 Private applicants.** Major revisions to this section pertain to clarification of roles and responsibilities of TVA's NEPA compliance staff and other TVA staff when applicants and non-TVA entities propose to undertake an action requiring TVA approval or involvement. This section also incorporates requirements for consideration of an applicant's purpose and need in decision-making and clarifies that while non-TVA entities may prepare NEPA documents, it remains TVA's responsibility to ensure NEPA adequacy. This section also specifies that a private entity's participation in TVA's NEPA process does not commit TVA to a favorable action on the request.

**Section 1318.505 Non-TVA EISs.** No substantive changes are proposed to this section.

**Section 1318.506 Documents.** A minor revision to this section is proposed to clarify that electronic archiving of NEPA documents is acceptable and will be done in compliance with TVA's record retention policy.

**Section 1318.507 Reducing paperwork and delay.** No substantive changes to this section are proposed.

**Section 1318.508 Supplemental guidance.** No substantive changes to this section are proposed.

**Section 1318.509 Substantial compliance.** Minor revisions to this section incorporate TVA's general policy that the substance of its NEPA reviews and processes are of utmost importance, rather than the form of its reviews and processes.

**Section 1318.510 Emergency actions.** This section incorporates and revises procedures in Section 5.6 of TVA's Instruction IX relating to emergency actions. The section would be revised to clarify the roles and responsibilities of TVA staff and the responsible official in determining and documenting that an emergency exists.

**Section 1318.511 Modification of assignments.** No substantive changes to this section are proposed.

**Section 1318.512 Status reports.** This section would be revised to clarify that TVA's Web site serves as the primary means by which information or status reports of TVA's NEPA documents or compliance activities is available to the public.

**Section 1318.513 Official responsible for NEPA compliance efforts.** This section would be revised to clarify that the person responsible for the management of TVA NEPA compliance staff is the official responsible for overall NEPA compliance.

#### **Subpart G—Floodplains and Wetlands**

In addition to minor clarifications, this subpart incorporates information from E.O. 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Additional information regarding how TVA proposes to determine project-specific Federal Flood Risk Management Standard elevations and their applicability can be reviewed at the TVA Web site listed above.

**Section 1318.600 Purpose and scope.** In this section, TVA incorporates information from E.O. 13690. Further, the text of this section was revised to clarify when wetland evaluations are not required under E.O. 11990, Protection of Wetlands.

**Section 1318.601 Area of impact.** Minor revisions to this section are proposed to clarify roles and responsibilities.

**Section 1318.602 Actions that will affect floodplains or wetlands.** Minor revisions are proposed to clarify roles and responsibilities.

**Section 1318.603 Public notice.** Minor revisions are proposed to improve clarity and to incorporate

procedures relating to the Federal Flood Risk Management Standard. Outdated procedures pertaining to the use of State or regional A-95 clearinghouses and TVA's Citizen Action Office (which no longer exists) were updated for clarification.

*Section 1318.604 Disposition of real property.* No substantive changes to this section are proposed.

*Section 1318.605 General and class reviews.* This section incorporates guidance that general or class reviews of similar or repetitive actions occurring in floodplains may be conducted in lieu of site-specific reviews.

#### List of Subjects in 18 CFR Part 1318

Administrative practice and procedure, Environmental impact statements, Environmental protection, Floodplains, Floods, Wetlands.

■ For the reasons stated in the preamble, TVA proposes to add a new part 1318 to chapter XIII of title 18 of the Code of Federal Regulations to read as follows:

### PART 1318—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

#### Subpart A—General Information

Sec.

- 1318.10 Purpose.
- 1318.20 Policy.
- 1318.30 Abbreviations.
- 1318.40 Definitions.

#### Subpart B—Initiating the NEPA Process

- 1318.100 Action formulation.
- 1318.101 NEPA determination.

#### Subpart C—Categorical Exclusions

- 1318.200 Purpose and scope.
  - 1318.201 Extraordinary circumstances.
- Appendix A to Subpart C of Part 1318—Categorical Exclusions

#### Subpart D—Environmental Assessments

- 1318.300 Purpose and scope.
- 1318.301 Public and stakeholder participation in the EA process.
- 1318.302 EA preparation.
- 1318.303 Finding of no significant impact.
- 1318.304 Supplements and adoptions.

#### Subpart E—Environmental Impact Statements

- 1318.400 Purpose and scope.
- 1318.401 Lead and cooperating agency determinations.
- 1318.402 Scoping process.
- 1318.403 DEIS preparation, transmittal and review.
- 1318.404 FEIS preparation and transmittal.
- 1318.405 Agency decision.
- 1318.406 Supplements.
- 1318.407 EIS adoption.

#### Subpart F—Miscellaneous Procedures

- 1318.500 Public participation.
- 1318.501 Mitigation commitment identification, auditing and reporting.

- 1318.502 Tiering.
- 1318.503 Programmatic and generic NEPA documents.
- 1318.504 Private applicants.
- 1318.505 Non-TVA EISs.
- 1318.506 Documents.
- 1318.507 Reducing paperwork and delay.
- 1318.508 Supplemental guidance.
- 1318.509 Substantial compliance.
- 1318.510 Emergency actions.
- 1318.511 Modification of assignments.
- 1318.512 Status reports.
- 1318.513 Official responsible for NEPA compliance efforts.

#### Subpart G—Floodplains and Wetlands

- 1318.600 Purpose and scope.
- 1318.601 Area of impact.
- 1318.602 Actions that will affect floodplains or wetlands.
- 1318.603 Public notice.
- 1318.604 Disposition of real property.
- 1318.605 General and class reviews.

Authority: 42 U.S.C. 4321 *et seq.*

#### Subpart A—General Information

##### § 1318.10 Purpose.

This part establishes procedures for Tennessee Valley Authority (TVA) to use for compliance with:

- (a) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*);
- (b) Other applicable guidelines, regulations and Executive orders implementing NEPA; and
- (c) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

##### § 1318.20 Policy.

It is the policy of TVA that:

- (a) TVA incorporates environmental considerations into its decision-making processes to the fullest extent possible. These procedures ensure that actions are viewed in a manner to encourage productive and enjoyable harmony between man and the environment.
- (b) Commencing at the earliest possible point and continuing through implementation, appropriate and careful consideration of the environmental aspects of proposed actions is built into the decision-making process in order that adverse environmental effects may be avoided or minimized, consistent with the requirements of NEPA.
- (c) Environmental reviews under NEPA will assist decision makers in making better, more knowledgeable decisions that concentrate on truly significant environmental issues, consider reasonable alternatives to the proposed action, are consistent with the environmental importance of the action, substantially fulfill the identified need and purpose for a proposed action, and are practicable.

#### § 1318.30 Abbreviations.

- (a) CE—Categorical Exclusion
- (b) CEQ—Council on Environmental Quality
- (c) DEIS—Draft Environmental Impact Statement
- (d) EA—Environmental Assessment
- (e) EIS—Environmental Impact Statement
- (f) EPA—Environmental Protection Agency
- (g) FEIS—Final Environmental Impact Statement
- (h) FONSI—Finding of No Significant Impact
- (i) NEPA—National Environmental Policy Act
- (j) ROD—Record of Decision
- (k) TVA—Tennessee Valley Authority

#### § 1318.40 Definitions.

The following definitions apply throughout these procedures. All other applicable terms should be given the same meaning as set forth in CEQ's currently effective regulations (40 CFR part 1508) unless such a reading would make the terms inconsistent with the context in which they appear.

*Controversial* refers to scientifically supported commentary that casts substantial doubt on the agency's methodology or data, but does not mean commentary expressing mere opposition.

*Federally funded projects* for purposes of the Federal Flood Risk Management Standard are actions where Federal funds are used for new construction, substantial improvement of existing structures, or to address substantial damage to existing structures and facilities.

*Floodplain* refers to the lowland and relatively flat areas adjoining flowing inland waters and reservoirs. Floodplain generally refers to the base floodplain, *i.e.*, that area subject to a 1 percent or greater chance of flooding in any given year. For federally funded projects, the definition of floodplains for the Federal Flood Risk Management Standard applies.

*Important farmland* includes prime farmland, unique farmland, and farmland of statewide importance as defined in 7 CFR part 657.

*Natural and beneficial floodplain and wetland values* refer to such attributes as the capability of floodplains and wetlands to provide natural moderation of floodwaters, water quality maintenance, fish and wildlife habitat, plant habitat, open space, natural beauty, scientific and educational study areas, and recreation.

*Practicable*, as used in Subpart G of this part, refers to the capability of an action being performed within existing

constraints. The test of what is practicable depends on the situation involved and should include an evaluation of all pertinent factors, such as environmental impact, economic costs, statutory authority, legality, technological achievability, and engineering constraints.

*Wetlands* are those areas inundated by surface or ground water with a frequency sufficient to support, and that under normal circumstances do or would support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands do not include temporary human-made ponds associated with active construction projects.

## **Subpart B—Initiating the NEPA Process**

### **§ 1318.100 Action formulation.**

(a) Each office, group, or department (“entity”) within TVA is responsible for integrating environmental considerations into its planning and decision-making processes at the earliest possible time to ensure that potential environmental effects are appropriately considered, to reduce the risk of delays, and to minimize potential conflicts.

(b) Environmental analyses should be included in or circulated with and reviewed at the same time as other planning documents. This responsibility is to be carried out in accordance with the environmental review procedures contained herein.

(c) TVA’s Chief Executive Officer and Board of Directors are the agency’s primary decision makers for programs and actions that are likely to be the most consequential from an environmental, financial, and policy standpoint. Other TVA officials and managers are responsible for and make decisions about other TVA actions.

### **§ 1318.101 NEPA determination.**

(a) NEPA applies to proposed actions with potential impacts on the physical environment that would result in a non-trivial change to the environmental status quo.

(b) At the earliest possible time, the TVA entity proposing to initiate an action must consult with the staff responsible for NEPA compliance (“NEPA compliance staff”) and TVA legal counsel, as appropriate, in determining whether the action requires an environmental review under NEPA and, if so, the level of environmental review.

(c) The level of review will be in one of the following categories: Categorical

Exclusions, Environmental Assessments, and Environmental Impact Statements.

(d) The NEPA compliance staff will determine whether the action is already covered under an existing NEPA review. These determinations should be appropriately documented before an action proceeds.

(e) NEPA and its implementing regulations (both CEQ’s and TVA’s) provide an established, well-recognized process for appropriately analyzing environmental issues and involving the public.

(f) TVA may choose to conduct an environmental review when NEPA does not apply.

## **Subpart C—Categorical Exclusions**

### **§ 1318.200 Purpose and scope.**

(a) Categories of actions addressed in this section are those that do not normally have, either individually or cumulatively, a significant impact on the quality of the human environment and require neither the preparation of an EA nor an EIS.

(b) The TVA entity proposing to initiate an action must determine, in consultation with the NEPA compliance staff, whether or not the proposed action is categorically excluded.

(c) In order to find that a proposal can be categorically excluded, TVA will ensure that a larger project is not impermissibly broken down into small parts such that the use of a categorical exclusion for any such small part would irreversibly and irretrievably commit TVA to a particular plan of action for the larger project.

(d) The actions listed in Appendix A of this part are classes of actions that TVA has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions), subject to review for extraordinary circumstances.

### **§ 1318.201 Extraordinary circumstances.**

(a) An action that would normally qualify as a categorical exclusion must not be so classified if an extraordinary circumstance is present and cannot be mitigated, including through the application of other environmental regulatory processes. In order to determine whether extraordinary circumstances exist, TVA may consider whether:

(1) The action has the potential to significantly impact environmental resources, including the following resources:

- (i) Threatened or endangered species,
- (ii) Wetlands or floodplains,

(iii) Cultural or historical resources,

(iv) Areas having special designation or recognition such as wild and scenic rivers, parklands, or wilderness areas, and

(v) Important farmland; and

(2) The significance of the environmental impacts associated with the proposed action is or may be highly controversial.

(b) The mere presence of one or more of the resources under paragraph (a)(1) of this section does not preclude use of a categorical exclusion. Rather, the determination of whether extraordinary circumstances exist depends upon the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and, if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions.

## **Subpart D—Environmental Assessments**

### **§ 1318.300 Purpose and scope.**

(a) An EA will be prepared for any proposed action not qualifying as a categorical exclusion to determine whether an EIS is necessary or a FONSI can be prepared. An EA is not necessary if it has been determined that an EIS will be prepared.

(b) EAs should concisely communicate information and analyses about important environmental issues and reasonable alternatives.

### **§ 1318.301 Public and stakeholder participation in the EA process.**

(a) In deciding how to involve the public in the preparation of EAs, TVA will consider the extent to which the public already has been involved through other processes or has commented on a proposed action or has otherwise expressed interest.

(b) TVA will also identify and involve, as appropriate, other interested stakeholders including local and State agencies, other Federal agencies, and Indian tribes.

(c) EAs prepared for actions listed in § 1318.400(a) will be circulated for public review and comment.

### **§ 1318.302 EA preparation.**

(a) As soon as practical after the decision to prepare an EA is made, the initiating TVA entity, in consultation with NEPA compliance staff, should determine the need for an internal coordination meeting to discuss:

- (1) Reasonable alternatives,
- (2) Permit requirements,
- (3) Coordination with other agencies,
- (4) Environmental issues,
- (5) Public involvement, and

(6) A schedule for EA preparation.

(b) The EA will describe the proposed action and include brief discussions of the need for action, reasonable alternatives, the no-action alternative, the environmental impacts of the proposed action and alternatives, measures (if any) to minimize or mitigate such impacts, a listing of the agencies and persons consulted, and a list of permits that may be required for the proposed action.

(c) As appropriate, EAs will identify alternatives that were considered, but not addressed in further detail in the EA.

(d) The EA will address comments made during any public comment period.

(e) The EA will briefly provide sufficient data and analysis for determining whether to prepare an EIS or a FONSI.

(f) The EA will be reviewed by the NEPA compliance staff and other interested TVA entities, including TVA legal counsel.

(g) After the EA is completed and with the concurrence of TVA legal counsel, the NEPA compliance staff will make one of the following determinations:

(1) The action does not require the preparation of an EIS,

(2) The action will require the preparation of an EIS, or

(3) Additional information or analyses are required before the significance of potential impacts can be determined.

#### **§ 1318.303 Finding of No Significant Impact.**

(a) If it is concluded, based on an EA, that a proposed action does not require the preparation of an EIS, the NEPA compliance staff, in consultation with TVA legal counsel and the initiating TVA entity, will prepare a FONSI.

(b) A FONSI must concisely summarize the proposed action and the EA, which should be incorporated by reference, and identify any environmental mitigation measures to which TVA commits.

(c) A FONSI must be made available to the public.

(d) In the following circumstances and if TVA did not provide an opportunity for public comment on a draft EA, the NEPA compliance staff, in consultation with TVA legal counsel and the initiating TVA entity, will make a draft FONSI available for public review and comment for a period of time (normally 30 days) before a final determination is made whether or not to prepare an EIS and before the proposed action may begin:

(1) The proposed action is, or is closely similar to, an action listed in § 1318.400(a),

(2) TVA has previously announced that the proposed action would be the subject of an EIS, or

(3) The nature of the proposed action is one without precedent.

#### **§ 1318.304 Supplements and adoptions.**

(a) If new information concerning action modifications, alternatives, or probable environmental effects becomes available and there are important decisions remaining to be made, the initiating TVA entity, in consultation with the NEPA compliance staff and TVA legal counsel, will consider whether an EA should be supplemented based on the significance of the new information. The NEPA compliance staff will be responsible for preparing supplements to EAs.

(b) TVA may adopt an EA prepared by another agency if it determines that the action it proposes is adequately addressed in the EA. Public involvement must be provided consistent with § 1318.301. Notice of the adopted EA and the FONSI issued by TVA must be provided on TVA's public Web site.

### **Subpart E—Environmental Impact Statements**

#### **§ 1318.400 Purpose and scope.**

(a) The following actions normally will require an EIS:

(1) New large water resource development and water control projects such as construction of new dams or navigation locks.

(2) The construction of new major power generating facilities proposed at sites not previously used for industrial purposes.

(3) Any major action, the environmental impact of which is expected to be highly controversial.

(b) If TVA determines that an EIS will not be prepared for an action falling within one of these categories, the basis for this must be discussed in the environmental review that is conducted or in a document that is made available to the public upon request.

(c) An EIS should include a description and an analysis of the proposed action; reasonable alternatives to the proposed action, including the no-action alternative; probable environmental impacts associated with the proposed action and alternatives and measures (if any) to minimize impacts; and a list of the major preparers of the EIS.

(d) The scope and detail of the EIS should be reasonably related to the

scope and the probable environmental impacts of the proposed action and alternative actions (see 40 CFR 1502.10–1502.18).

(e) The no-action alternative in an EIS (or an EA) should represent the environmental status quo and should be formulated to provide the environmental baseline from which the proposed action and other alternatives can be assessed even when TVA is legally required to take action. For proposed changes to existing programs or plans, continuation of the existing program or plan and associated environmental impacts should be considered the no-action alternative.

#### **§ 1318.401 Lead and cooperating agency determinations.**

(a) As soon as practical after the decision is made to prepare an EIS (or EA), the NEPA compliance staff, in consultation with the initiating TVA entity and TVA legal counsel, should consider whether requesting other Federal, State, or local agencies to participate in the preparation of the EIS as lead, joint lead (see 40 CFR 1501.5), or cooperating agencies (see 40 CFR 1501.6) is desirable and/or necessary.

(b) If TVA is requested to participate in the preparation of an EIS (or EA) of another Federal agency, the NEPA compliance staff, in consultation with other interested TVA entities, will determine if TVA should become a cooperating agency.

#### **§ 1318.402 Scoping process.**

(a) As soon as practical after the decision to prepare an EIS is made, the NEPA compliance staff in consultation with other TVA entities will tentatively identify action alternatives, probable environmental issues and necessary environmental permits, and a schedule for EIS preparation.

(b) The scoping process may include interagency scoping sessions to coordinate an action with and obtain inputs from other interested agencies (including local, State, and other Federal agencies, as well as Indian tribes), and public scoping meetings to obtain input from interested members of the general public.

(c) The NEPA compliance staff, in consultation with other TVA entities, will determine whether public scoping meetings should be held in addition to seeking comments by other means. Meeting types and formats should be selected to facilitate timely and meaningful public input into the EIS process.

(d) As soon as practical in the scoping process, the NEPA compliance staff, in consultation with the initiating TVA



entity and TVA legal counsel, will prepare and publish a notice of intent to prepare an EIS in the **Federal Register**. This notice will briefly describe the proposed action, possible alternatives, and potentially affected environmental resources. In addition, those issues which tentatively have been determined to be insignificant and which will not be discussed in detail in the EIS may be identified. The scoping process will be described and, if a scoping meeting will be held, the notice should state where and when the meeting is to occur if that has been determined. The notice will identify the person in TVA who can supply additional information about the action and how to submit comments.

(e) There will normally be a public comment period of 30 days from the date of publication of the notice of intent in the **Federal Register** to allow other interested agencies and the public an opportunity to review and comment on the proposed scope of the EIS.

(f) On the basis of input received, the NEPA compliance staff, in consultation with other TVA entities, will determine what, if any, additions or modifications in the scoping process or schedule are required and establish the scope of the EIS.

(g) At the close of the scoping process, the NEPA compliance staff, in consultation with the other TVA entities, should identify the following EIS components:

- (1) Key action alternatives.
- (2) Important environmental issues to be addressed in detail.
- (3) Probable non-significant environmental issues that should be mentioned but not addressed in detail.
- (4) Lead and cooperating agency assignments, if any.
- (5) Related environmental documents.
- (6) Other environmental review and consultation requirements.
- (7) Delegation of DEIS work assignments to TVA entities and, when appropriate, other agencies.
- (h) If a scoping report summarizing the preceding EIS components is prepared, it must be made available to the public.

#### **§ 1318.403 DEIS preparation, transmittal and review.**

(a) Based on information obtained and decisions made during the scoping process, the NEPA compliance staff, in cooperation with the initiating TVA entity and other interested TVA entities, will prepare the preliminary DEIS using an appropriate format (see 40 CFR 1502.10).

(b) After internal review of the DEIS is completed, the NEPA compliance staff will provide it to any cooperating

agencies to obtain their comments. If a cooperating agency's analysis of an environmental issue or impact differs from TVA's, those differences should be resolved before the DEIS is released for public comment or the cooperating agency's position should be set forth and addressed in the DEIS.

(c) After approval of the DEIS by the senior manager of the initiating TVA entity and TVA legal counsel, the NEPA compliance staff will release the DEIS to the public and transmit the DEIS to the EPA for publication of the notice of availability. NEPA compliance staff will also provide notice to other interested Federal, State, and local agencies and other entities and individuals who have previously expressed an interest in the type of action and/or commented on the scope of the EIS.

(d) The DEIS will be available on TVA's public Web site and by other means upon request to TVA.

(e) A minimum of 45 days from the date of publication of the notice of availability in the **Federal Register** must be provided for public comment. TVA may increase or extend the public comment period in its discretion.

(f) Materials to be made available to the public should be provided to the public without charge to the extent practical, or at a fee which is not more than the actual costs of reproducing copies.

#### **§ 1318.404 FEIS preparation and transmittal.**

(a) At the close of the DEIS public comment period, the NEPA compliance staff will determine, in consultation with the initiating TVA entity and other interested TVA entities, what is needed for the preparation of an FEIS.

(b) If the modifications to the DEIS in response to comments are minor and confined to factual corrections or explanations of why the comments do not warrant additional TVA response, TVA may issue errata sheets attached to the DEIS instead of rewriting the DEIS. If other more extensive modifications are required, the NEPA compliance staff, in cooperation with other interested TVA entities, will prepare an FEIS utilizing an appropriate format (see 40 CFR 1502.10).

(c) The FEIS should address all substantive comments on the DEIS that TVA received before the close of the public comment period by responding specifically to the comments and/or by revising the text of the DEIS. Comments that are substantively similar should be summarized and addressed together.

(d) With the approval of the senior manager of the initiating TVA entity and TVA legal counsel, the NEPA

compliance staff will release the FEIS to the public and transmit the FEIS to the EPA for publication of the notice of availability in the **Federal Register**. NEPA compliance staff will also provide notice to other interested Federal, State, and local agencies and to entities and individuals who commented on the DEIS.

(e) The FEIS will be available on TVA's public Web site and by other means upon request to TVA.

#### **§ 1318.405 Agency decision.**

(a) Except in emergency circumstances, a decision about a proposed action for which an EIS has been issued will not be made until 30 days after a notice of availability of the FEIS has been published in the **Federal Register** or 90 days after a notice of availability of the DEIS has been published in the **Federal Register**, whichever is later.

(b) After release of the FEIS and after TVA makes a decision about the proposed action, a ROD must be prepared by the NEPA compliance staff, in consultation with TVA legal counsel and the initiating TVA entity (see 40 CFR 1505.2). The ROD will normally include the following:

- (1) The decision;
  - (2) The basis for the decision and preferences among alternatives;
  - (3) The alternative(s) considered to be environmentally preferable;
  - (4) A summary of important environmental impacts;
  - (5) The monitoring, reporting, and administrative arrangements that have been made; and
  - (6) The measures that would mitigate or minimize adverse environmental impacts to which TVA commits to implement (see 40 CFR 1505.2(c)).
- (c) A ROD will be made available to the public.

(d) Until a ROD is made available to the public, normally no action should be taken to implement an alternative that would have adverse environmental impacts or limit the choice of reasonable alternatives.

#### **§ 1318.406 Supplements.**

If TVA makes substantial changes in the proposed action that are relevant to environmental concerns or there is significant new information relevant to environmental concerns, and important decisions related to the proposed action remain to be made, the initiating TVA entity, in consultation with the NEPA compliance staff and TVA legal counsel, will determine whether the FEIS should be supplemented. The NEPA compliance staff will be responsible for preparing supplements to EISs.



**§ 1318.407 EIS adoption.**

(a) TVA may adopt as its final EIS another agency's EIS or any portion thereof whether or not TVA participated in its preparation.

(b) The NEPA compliance staff, in consultation with other interested TVA entities, will determine if the scope and analyses in the other agency's EIS adequately address the TVA action. TVA will also review to ensure the scientific accuracy of the analysis and conclusions drawn. If TVA determines that the EIS or a portion thereof adequately addresses TVA's proposed action, it must make this determination and the adopted EIS available on its public Web site. If the other agency's EIS does not adequately assess its proposed action, TVA may choose to supplement the EIS in accordance with the process used to supplement other EISs (see 40 CFR 1506.3).

(c) If TVA cooperated in the preparation of an EIS that TVA determines adequately addresses its proposed action, TVA may make a decision about its proposed action 30 days or later after notice of availability of the FEIS was published in the **Federal Register**. A record of that decision should be prepared consistent with § 1318.405.

(d) If TVA did not cooperate in the preparation of an EIS that TVA determines adequately addresses its proposed action and that it proposes to adopt, NEPA compliance staff will transmit notice of its adoption to EPA for publication of a notice of availability and circulate the FEIS for public comment.

(e) TVA will provide notice of its adoption to other interested Federal, State, and local agencies, other entities, and individuals.

**Subpart F—Miscellaneous Procedures****§ 1318.500 Public participation.**

(a) TVA's policy is to encourage meaningful public participation in and awareness of its proposed actions and decisions. This policy is implemented through various mechanisms.

(b) The type of and format for public participation will be selected as appropriate to best facilitate timely and meaningful public input.

(c) TVA provides additional public participation opportunities during its open meetings of the Board of Directors, which are widely publicized and normally include a listening session during which members of the public may comment to the Board of Directors on TVA activities.

(d) TVA also maintains a public Web site at which it posts information about

TVA activities and programs, including ongoing and recently completed EAs and EISs.

(e) The names and addresses of those commenting on any NEPA document may be made publicly available.

**§ 1318.501 Mitigation commitment identification, auditing and reporting.**

(a) All appropriate measures to minimize or mitigate expected significant adverse environmental impacts ("mitigation measures") must be identified in the EA or EIS and those mitigation measures to which TVA commits must be identified in the associated FONSI or ROD (or the documentation prepared for a categorical exclusion, if any).

(b) Each mitigation commitment that is not regulatory-based will be tentatively assigned by the NEPA compliance staff to the appropriate TVA entity responsible for implementing the commitment. The NEPA compliance staff should consult with the responsible entities to resolve assignment conflicts, identify supporting offices, and determine implementation schedules.

(c) The responsible entity must report to the NEPA compliance staff the status of mitigation commitments periodically or whenever a specific request is made.

(d) The NEPA compliance staff must ensure that commitments are met and will, as it deems appropriate, audit commitment progress.

(e) Circumstances may arise that warrant modifying or deleting previously made commitments. The decision to modify or delete the commitment will be made by the NEPA compliance staff in consultation with TVA legal counsel, after considering the environmental significance of such a change.

**§ 1318.502 Tiering.**

TVA may rely on tiering for the environmental review of proposed actions. Tiering involves coverage of general matters in broader EISs or EAs on programs, plans, and policies, and subsequent narrower analyses of implementing actions that incorporate by reference the broader analyses (see 40 CFR 1508.28).

**§ 1318.503 Programmatic and generic NEPA documents.**

(a) Programmatic or Generic EAs or EISs may be prepared to address proposed programs, policies, or plans or when a proposed action has a wide geographic scope.

(b) Programmatic-level reviews can support proposed high-level or broad decisions as well as provide the

foundation for the review of specific implementing actions that tier from the programmatic review. This promotes efficiency and can reduce analytical redundancy.

(c) Ongoing, existing, or previously planned and approved actions that may be within the scope of a programmatic review may continue during the programmatic review period.

(d) The identification of significant impacts in a programmatic EIS does not preclude the review of specific implementing actions in an EA that tiers from the programmatic EIS if the implementation of the implementing actions would not result in new or different significant impacts.

**§ 1318.504 Private applicants.**

(a) In those cases when private applicants, persons or other non-Federal entities (collectively "private entity") propose to undertake an action that will require TVA's approval or involvement, the contacted TVA entity will notify the NEPA compliance staff. That staff must determine, in consultation with TVA legal counsel, whether NEPA is triggered and the scope of the review of TVA's proposed action.

(b) TVA will provide private entities information on their responsibilities for assisting TVA in conducting the necessary NEPA review. At TVA's discretion, this can include providing TVA detailed information about the scope and nature of the proposed action, environmental analyses and studies, and copies of associated environmental permit applications submitted to other Federal, State, or local agencies.

(c) In identifying reasonable alternatives, TVA should consider the applicant's purpose and need, in addition to TVA's purpose and need.

(d) Private entities may be allowed to prepare draft and final EAs or EISs for TVA's review and approval, but TVA remains responsible for the adequacy of the documents and the conduct of associated EA and EIS processes.

(e) Private entities normally will be required to reimburse TVA for its costs in reviewing their proposed actions.

(f) Participation of private entities in a TVA NEPA review, including reimbursement of TVA's costs, does not commit TVA to favorable action on a request.

**§ 1318.505 Non-TVA EISs.**

(a) The NEPA compliance staff, in consultation with other interested TVA entities, will coordinate the review of EISs provided to TVA for comment by other Federal agencies.

(b) The NEPA compliance staff, in consultation with TVA legal counsel as

appropriate, will prepare comments on such EISs and transmit them to the initiating agency (see 40 CFR 1503.2 and 1503.3).

#### **§ 1318.506 Documents.**

The NEPA compliance staff must keep on file all final and approved environmental documents either in paper form or electronically, in accordance with TVA's records retention policy.

#### **§ 1318.507 Reducing paperwork and delay.**

(a) These procedures are to be interpreted and applied with the aim of reducing paperwork and the delay of both the assessment and implementation of a proposed action.

(b) Data and analyses should be commensurate with the importance of associated impacts. Less important material should be summarized, consolidated, or referenced.

(c) Any environmental document may be combined with any other document to reduce duplication and paperwork.

(d) Review of proposed actions under these procedures may be consolidated with other reviews where such consolidation would reduce duplication or increase efficiency.

#### **§ 1318.508 Supplemental guidance.**

The NEPA compliance staff, in consultation with interested TVA entities and with concurrence of TVA legal counsel, may issue supplemental or explanatory guidance to these procedures.

#### **§ 1318.509 Substantial compliance.**

(a) Flexibility is the key to implementing these procedures and reviewing proposed actions. The substance of reviews and processes rather than the form of reviews and processes is what is most important.

(b) Substantial compliance with these procedures must be achieved, though minor deviations will be permitted.

#### **§ 1318.510 Emergency actions.**

(a) Because of emergencies or unforeseen situations, some of the steps outlined in these procedures may be consolidated, modified, or omitted.

(b) The NEPA compliance staff should consult with CEQ about alternative arrangements, which shall be limited to the immediate impacts of the emergency.

(c) The NEPA compliance staff, with the concurrence of TVA legal counsel, must determine whether such changes would substantially comply with the intent of these procedures.

(d) The official responsible for NEPA compliance shall document in writing the determination that an emergency

exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of that official.

#### **§ 1318.511 Modification of assignments.**

The assignments and responsibilities identified for TVA entities in these procedures can be modified by agreement of the entities involved or by the direction of TVA's Chief Executive Officer.

#### **§ 1318.512 Status reports.**

Information or status reports on EISs and other related NEPA compliance activities and documents may be found on TVA's public Web site.

#### **§ 1318.513 Official responsible for NEPA compliance efforts.**

The TVA official who is responsible for the management of the NEPA compliance staff is the person who is responsible for overall NEPA compliance.

### **Subpart G—Floodplains and Wetlands**

#### **§ 1318.600 Purpose and scope.**

(a) Consistent with Executive Order No. 11988 (Floodplain Management), as amended by Executive Order No. 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), and Executive Order No. 11990 (Protection of Wetlands), and other such presidential orders or memoranda currently in effect, the review of a proposed action undertaken in accordance with §§ 1318.200, 1318.300, and 1318.400 that potentially affects floodplains or wetlands must include a floodplain or wetlands evaluation as required by this section.

(b) As appropriate, floodplain evaluations must apply the Federal Flood Risk Management Standard to federally-funded projects.

(c) A wetland evaluation under Executive Order 11990 is not required for the issuance of permits or licenses for activities involving wetlands on non-Federal lands.

#### **§ 1318.601 Area of impact.**

(a) If a proposed action will potentially occur in or affect wetlands or floodplains, the initiating TVA entity, as soon as practicable in the planning process, will request the appropriate TVA staff with expertise in floodplain or wetland impact evaluations ("TVA staff") to determine whether the proposed action will occur in or affect a wetland or floodplain and the level of impact, if any, on the wetland or floodplain.

(b) Further floodplain or wetland evaluation is unnecessary if the TVA staff determines that the proposed action:

(1) Is outside the floodplain or wetland,

(2) Has no identifiable impacts on a floodplain or wetland, and

(3) Does not directly or indirectly support floodplain development or wetland alteration.

#### **§ 1318.602 Actions that will affect floodplains or wetlands.**

(a) When a proposed action can otherwise be categorically excluded under § 1318.200 no additional floodplain or wetland evaluation is required if:

(1) The initiating TVA entity determines that there is no practicable alternative that will avoid affecting floodplains or wetlands and that all practicable measures to minimize impacts of the proposed action to floodplains or wetlands are incorporated and

(2) The TVA staff determines that impacts on the floodplain or wetland would be minor.

(b) If the action requires an EA or an EIS, the evaluation must consider:

(1) The effect of the proposed action on natural and beneficial floodplain and wetland values and

(2) Alternatives to the proposed action that would eliminate or minimize such effects.

(c) The initiating TVA entity must determine if there is no practicable alternative to siting in a floodplain or constructing in a wetland. Upon concurrence by the NEPA compliance staff in consultation with TVA legal counsel and TVA staff with expertise in floodplain or wetland impact evaluations, this determination shall be final. If a determination of no practicable alternative is made, all practicable measures to minimize impacts of the proposed action on the floodplain or wetland must be implemented. If at any time prior to commencement of the action it is determined that there is a practicable alternative that will avoid affecting floodplains or wetlands, the proposed action must not proceed.

#### **§ 1318.603 Public notice.**

(a) Public notice of actions affecting floodplains or wetlands is not required if the action is categorically excluded under § 1318.200. If an EA or EIS is prepared and a determination of no practicable alternative is made in accordance with § 1318.602, the initiating office must notify the public of a proposed action's potential impact

on the floodplain or wetland. Public notice of actions affecting floodplains or wetlands may be combined with any notice published by TVA or another Federal agency if such a notice generally meets the minimum requirements set forth in this section. Issuance of a draft or final EA or EIS for public review and comment will satisfy this notice requirement.

(b) Public notices must at a minimum:

(1) Briefly describe the proposed action and the potential impact on the floodplain or wetland;

(2) Briefly identify alternative actions considered and explain why a determination of no practicable alternative has been proposed;

(3) Briefly discuss measures that would be taken to minimize or mitigate floodplain or wetland impacts;

(4) State when appropriate whether the action conforms to applicable State or local floodplain protection standards and the Federal Flood Risk Management Standard;

(5) Specify a reasonable period of time within which the public can comment on the proposal; and

(6) Identify the TVA official who can provide additional information on the proposed action and to whom comments should be sent.

(c) Such notices must be issued in a manner designed to bring the proposed action to the attention of those members of the public likely to be interested in or affected by the action's potential impact on the floodplain or wetland.

(d) TVA must consider all relevant and timely comments received in response to a notice and reevaluate the action as appropriate to take such comments into consideration before the proposed action is implemented.

#### **§ 1318.604 Disposition of real property.**

When TVA property in a floodplain or wetland is proposed for lease, easement, right-of-way, or disposal to non-federal public or private parties and the action will not result in disturbance of the floodplain or wetland, a floodplain or wetland evaluation is not required. The conveyance document, however, must:

(a) Require the other party to comply with all applicable Federal, State or local floodplain and wetland regulations, and

(b) Identify other appropriate restrictions to minimize destruction, loss, or degradation of floodplains and wetlands and to preserve and enhance their natural and beneficial values, except when prohibited by law or unenforceable by TVA, or otherwise, the property must be withheld from conveyance or use.

#### **§ 1318.605 General and class reviews.**

In lieu of site-specific reviews, TVA may conduct general or class reviews of similar or repetitive activities that occur in floodplains.

#### **Appendix A to Subpart C of Part 1318—Categorical Exclusions**

The following actions are designated as categorical exclusions pursuant to § 1318.200. Individual actions must be reviewed to determine if any of the extraordinary circumstances listed in § 1318.201 is present. If any of the extraordinary circumstances applies and cannot be mitigated, an EA or an EIS must be prepared.

1. Educational or informational activities undertaken by TVA alone or in conjunction with other agencies, public and private entities, or the general public.

2. Technical and planning assistance provided to State, local and private organizations and entities.

3. Personnel actions.

4. Procurement actions.

5. Accounting, auditing, financial reports and disbursement of funds.

6. Transactions (contracts, agreements or other instruments) for the sale, purchase, or interchange of electricity not resulting in the construction and operation of new generating facilities or in major modifications to existing generating facilities or associated electrical transmission infrastructure.

7. Administrative actions consisting solely of paperwork.

8. Communication, transportation, computer service and office services.

9. Property protection activities that do not physically alter facilities or grounds, law enforcement and other legal activities.

10. Emergency preparedness actions not involving the modification of existing facilities or grounds.

11. Minor actions to address threats to public health and safety, including, but not limited to, temporary prohibition of existing uses of TVA land or property, short-term closures of sites, and selective removal of trees that pose a hazard.

12. Site characterization, data collection, inventory preparation, planning, monitoring, and other similar activities that have little to no physical impact.

13. Engineering and environmental studies that involve minor physical impacts, including but not limited to, soil borings, dye-testing, installation of monitoring stations and groundwater test wells, and minor actions to facilitate access to a site.

14. Conducting or funding minor research, development and demonstration projects and programs.

15. Transmission and utility line right-of-way maintenance actions occurring within an existing maintained right-of-way, including routine vegetation management, removal of danger trees outside the right-of-way, and access road improvements or construction (generally no more than 1 mile of road construction outside the right-of-way).

16. Construction of new transmission line infrastructure, including electric transmission lines generally no more than 10

miles in length and that require no more than 125 acres of new developed rights-of-way and no more than 1 mile of new access road construction outside the right-of-way; and/or construction of electric power substations or interconnection facilities, including switching stations, phase or voltage conversions, and support facilities that generally require the physical disturbance of no more than 10 acres.

17. Modification, repair, maintenance, or upgrade of, and minor addition to existing transmission infrastructure, including work on power equipment and structures within existing substations and switching stations as well as work on existing transmission lines; the addition, retirement, and/or replacement of breakers, transformers, bushings, and relays; transmission line uprate, modification, reconductoring, and clearance resolution for transmission lines; limited pole replacement; and access road improvements and construction (generally no more than 1 mile of road construction outside the right-of-way).

18. Construction, modification and operation of communication facilities and/or equipment, including power line carriers, insulated overhead ground wires/fiber optic cables, devices for electricity transmission control and monitoring, VHF radios, and microwaves and support towers.

19. Removal of conductors and structures, and/or the cessation of right-of-way vegetation management, when existing transmissions lines are retired; or the rebuilding of transmission lines within or contiguous to existing rights-of-way involving generally no more than 25 miles in length and no more than 125 acres of expansion of the existing right-of-way.

20. Purchase, conveyance, exchange, lease, license, and/or disposal of existing substations, substation equipment, switchyards, and/or transmission lines and rights-of-way and associated equipment between TVA and other utilities and/or customers.

21. Purchase or lease and subsequent operation of existing combustion turbine or combined-cycle plants for which there is existing adequate transmission and interconnection to the TVA transmission system and whose planned operation by TVA is within existing environmental permits for the purchased or leased facility.

22. Development of dispersed recreation sites (generally not to exceed 10 acres in size) to support activities such as hunting, fishing, primitive camping, wildlife observation, hiking, and mountain biking. Actions include, but are not limited to, installation of guardrails, gates and signage, stabilization of sites, trail construction, and access improvements/controls.

23. Development of public use areas that generally result in the physical disturbance of no more than 10 acres, including, but not limited to, construction of parking areas, campgrounds, stream access points, and day use areas.

24. Minor actions conducted by non-TVA entities on TVA property to be authorized under contract, license, permit, or covenant agreements, including those for utility crossings, agricultural uses, recreational uses,

rental of structures, and sales of miscellaneous structures and materials from TVA land.

25. Transfer, lease, or disposal (sale, abandonment or exchange) of tracts of land, mineral rights, landrights, and rights in ownership of permanent structures that are minor in nature.

26. Approvals under Section 26a of the TVA Act of minor structures, boat docks and ramps, and shoreline facilities.

27. Installation of minor shoreline structures or facilities, boat docks and ramps, and bank stabilization (generally up to ½ mile in length) by TVA.

28. Modifications to land use plans to rectify minor administrative errors or to incorporate new information that is consistent with a previously approved decision included in the plan; amendments to land use allocations to a more restrictive or protective allocation (e.g., from industrial use to natural resource conservation) provided that any such allocation is consistent with other TVA plans and policies; or minor amendments to land use allocations to implement TVA's shoreline or land management policies.

29. Actions to restore and enhance wetlands, riparian, and aquatic ecosystems that generally involve physical disturbance of no more than 125 acres, including, but not limited to, construction of small water control structures; revegetation actions using native materials; construction of small berms, dikes, and fish attractors; removal of debris and sediment following natural or human-caused disturbance events; installation of silt fences; construction of limited access routes for purposes of routine maintenance and management; and reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range.

30. Actions to maintain, restore, or enhance terrestrial ecosystems that generally involve physical disturbance of no more than 125 acres, including, but not limited to, establishment and maintenance of non-invasive vegetation; bush hogging; prescribed fires; installation of nesting and roosting structures, fencing, and cave gates; and reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range.

31. The following forest management activities:

a. Actions to manipulate species composition and age class, including, but not limited to, harvesting or thinning of live trees and other timber stand improvement actions (e.g., prescribed burns, non-commercial removal, chemical control), generally covering up to 125 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction;

b. Actions to salvage dead and/or dying trees including, but not limited to, harvesting of trees to control insects or disease or address storm damage (including removal of affected trees and adjacent live, unaffected trees as determined necessary to control the spread of insects or disease), generally covering up to 250 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction; and

c. Actions to regenerate forest stands, including, but not limited to, planting of native tree species upon site preparation, generally covering up to 125 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction.

32. Actions to manage invasive plants including, but not limited to, chemical applications, mechanical removal, and manual treatments that generally do not physically disturb more than 125 acres of land.

33. Actions to protect cultural resources including, but not limited to, fencing, gating, signing, and bank stabilization (generally up to ½ mile in length when along stream banks or reservoir shoreline).

34. Reburial of human remains or objects (including repatriations) on TVA land.

35. Installation or modification (but not expansion) of groundwater withdrawal wells, or plugging and abandonment of groundwater or other wells. Site characterization must verify a low potential for seismicity, subsidence, and contamination of freshwater aquifers.

36. Routine operation, repair or in-kind replacement, and maintenance actions for existing buildings, infrastructure systems, facility grounds, public use areas, recreation sites, and operating equipment at or within the immediate vicinity of TVA's generation and other facilities. Covered actions are those which are required to maintain and preserve assets in their current location and in a condition suitable for use for its designated purpose. Such actions will not result in a substantial change in the design capacity, function, or operation. (Routine actions that include replacement or changes to major components of buildings, facilities, infrastructure systems, or facility grounds, and actions requiring new permits or changes to an existing permit(s) are addressed in CE 37). Such actions may include, but are not limited to, the following:

a. Regular servicing of in-plant and on-site equipment (including during routine outages) such as gear boxes, generators, turbines and bearings, duct work, conveyers, and air preheaters; fuel supply systems; unloading and handling equipment for fuel; handling equipment for ash, gypsum or other by-products or waste; hydropower, navigation and flood control equipment; water quality and air emissions control or reduction equipment; and other operating system or ancillary components that do not substantially increase emissions or discharges beyond current permitted levels;

b. Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, weather stations, and flumes);

c. Routine cleaning and decontamination, including to surfaces of equipment, rooms, and building systems (including HVAC and septic systems);

d. Repair or replacement of plumbing, electrical utilities, sewerage, pipelines, and telephone and other communication service;

e. Repair or replacement of doors, windows, walls, ceilings, roofs, floors and lighting fixtures in structures less than 50 years old;

f. Painting and paint removal at structures less than 50 years old, including actions taken to contain, remove, or dispose of lead-based paint when in accordance with applicable requirements;

g. Recycling and/or removal of materials, debris, and solid waste from facilities, in accordance with applicable requirements;

h. Routine removal of minor amounts of asbestos-containing materials, in accordance with applicable requirements;

i. Routine removal of minor amounts of contaminated intact equipment and other contaminated material, in accordance with applicable requirements;

j. Grounds keeping actions, including mowing and landscaping, snow and ice removal, application of fertilizer, erosion control and soil stabilization measures (such as reseeding and revegetation), removal of dead or undesirable vegetation with a diameter of less than 3 inches (at breast height), and leaf and litter collection and removal;

k. Repair or replacement of gates and fences;

l. Maintenance of hazard buoys;

m. Maintenance of groundwater wells, discharge structures, pipes and diffusers;

n. Maintenance and repair of process, wastewater, and stormwater ponds and associated piping, pumping, and treatment systems;

o. Maintenance and repair of subimpoundments and associated piping and water control structures;

p. Debris removal and maintenance of intake structures and constructed intake channels including sediment removal to return them to the originally-constructed configuration; and

q. Clean up of minor spills as part of routine operations.

37. Modifications, upgrades, uprates, and other actions that alter existing buildings, infrastructure systems, facility grounds, and plant equipment, or their function, performance, and operation. Such actions, which generally will not physically disturb more than 10 acres, include but are not limited to, the following:

a. Replacement or changes to major components of existing buildings, facilities, infrastructure systems, facility grounds, and equipment that are like-kind in nature;

b. Modifications, improvements, or operational changes to in-plant and on-site equipment that do not substantially alter emissions or discharges beyond current permitted limits. Examples of equipment include, but are not limited to: Gear boxes, generators, turbines and bearings, duct work, conveyers, superheaters, economizers, air preheaters, unloading and handling equipment for fuel; handling equipment for ash, gypsum or other by-products or waste; hydropower, navigation and flood control equipment; air and water quality control equipment; control, storage, and treatment systems (e.g. automation, alarms, fire suppression, ash ponds, gypsum storage, and ammonia storage and handling systems); and other operating system or ancillary components;

c. Installation of new sidewalks, fencing, and parking areas at an existing facility;

d. Installation or upgrades of HVAC systems;

e. Modifications to water intake and outflow structures provided that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits;

f. Repair or replacement of doors, windows, walls, ceilings, roofs, floors and lighting fixtures in structures greater than 50 years old; and

g. Painting and paint removal at structures greater than 50 years old, including actions taken to contain, remove and dispose of lead-based paint when in accordance with applicable requirements.

38. Siting, construction, and use of buildings and associated infrastructure physically disturbing generally no more than 10 acres of undisturbed land or 25 acres of previously-disturbed land.

39. Siting and temporary placement and operation of trailers, prefabricated and modular buildings, or tanks on previously disturbed sites at an existing TVA facility.

40. Demolition and disposal of structures, buildings, equipment and associated infrastructure and subsequent site reclamation, subject to applicable review for historical value, on sites generally less than 10 acres in size.

41. Actions to maintain roads, trails, and parking areas (including resurfacing, cleaning, asphalt repairs, and placing gravel) that do not involve new ground disturbance (*i.e.*, no grading).

42. Improvements to existing roads, trails, and parking areas, including, but not limited to, scraping and regrading; regrading of embankments, installation or replacement of culverts; and minor expansions.

43. Actions to enhance and control access to TVA property including, but not limited to, construction of and improvements to access road and parking area (generally no greater than 1 mile in length and physically disturbing no more than 10 acres of undisturbed land or 25 acres of previously-disturbed land) and installation of control measures such as gates, fences, or post and cable.

44. Small-scale, non-emergency cleanup of solid waste or hazardous waste (other than high-level radioactive waste and spent nuclear fuel) to reduce risk to human health or the environment. Actions include collection and treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action.

45. Installation, modification, and operation of the following types of renewable or waste-heat recovery energy projects which increase generating capacity at an existing TVA facility, generally comprising of physical disturbance to no more than 10 acres of undisturbed land or 25 acres of previously-disturbed land:

a. Combined heat and power or cogeneration systems at existing buildings or sites;

b. Solar photovoltaic systems mounted on the ground, an existing building or other structure (such as a rooftop, parking lot or

facility and mounted to signage lighting, gates or fences);

c. A small number of wind turbines with a height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that are located more than 10 nautical miles from an airport or aviation navigational aid and more than 1.5 nautical miles from a National Weather Service or Federal Aviation Administration radar;

d. Small-scale biomass power plants (generally less than 10 megawatts) using commercially available technology intended to primarily support operations in single facilities or contiguous facilities (such as an office complex) and that is located within a previously disturbed or developed area and uses agricultural residue products or wood waste as its fuel supply; and

e. Methane gas electric generating systems using commercially available technology installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant.

46. Installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems that do not require construction of new water storage structures or new water diversion from a stream or river channel. Covered systems would be located up-gradient of natural fish barriers and outside of any navigation channels and involve no major construction or modification of stream or river channels.

47. Modifications to the TVA rate structure (*i.e.*, rate change) and any associated modifications to contracts for pricing energy or demand for wholesale end-users or direct serve customers of TVA power or development of new or modified pricing products that result in no or only minor increases in peak or base load energy generation or that result in system-wide demand reduction.

48. Financial and technical assistance for programs conducted by non-TVA entities to promote energy efficiency or water conservation, including, but not limited to, assistance for installation or replacement of energy efficient appliances, insulation, HVAC systems, plumbing fixtures, and water heating systems.

49. Financial assistance including, but not limited to, approving and administering grants, loans and rebates for the renovation or minor upgrading of existing facilities, established or developing industrial parks, or existing infrastructure; the extension of infrastructure; geotechnical boring; and construction of commercial and light industrial buildings. Generally, such assistance supports actions that physically disturb no more than 10 acres of undisturbed land or no more than 25 acres of previously-disturbed land.

50. Financial assistance for the following actions: Approving and administering grants, loans and rebates for continued operations or purchase of existing facilities and infrastructure for uses substantially the same as the current use; purchasing, installing, and replacing equipment or machinery at existing facilities; and completing engineering

designs, architectural drawings, surveys, and site assessments (except when tree clearing, geotechnical boring, or other land disturbance would occur).

**Jacinda B. Woodward**,  
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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Chapter I

#### 46 CFR Chapters I and III

#### 49 CFR Chapter IV

[Docket No. USCG-2017-0480]

### Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** We are seeking comments on Coast Guard regulations, guidance documents, and interpretative documents that you believe should be repealed, replaced, or modified. Also, we welcome your comments on our approved collections of information, regardless of whether the collection is associated with a regulation. We are taking this action in response to Executive Orders 13771, Reducing Regulation and Controlling Regulatory Costs; 13777, Enforcing the Regulatory Reform Agenda; and 13783, Promoting Energy Independence and Economic Growth. We plan to use your comments to assist us in our work with the Department of Homeland Security's Regulatory Reform Task Force.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 10, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0480 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Mr. Adam Sydnor, Coast Guard; telephone 202-372-1490, email [Adam.B.Sydnor@uscg.mil](mailto:Adam.B.Sydnor@uscg.mil).