

**TENNESSEE VALLEY AUTHORITY - IMPLEMENTATION OF THE
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (18 CFR Part 1318)**

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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 consider those reasonable alternatives to the proposed action that fulfill the purpose and need for the action, concisely present the environmental impacts and other information regarding the proposed action and its alternatives, are consistent with the environmental importance of the action, concentrate on truly significant environmental issues, 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 this part. 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.

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.

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.

Official responsible for NEPA compliance refers to the TVA official who manages the NEPA compliance staff and is responsible for overall review of TVA NEPA compliance.

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 and includes an evaluation of all pertinent factors, such as environmental impact, economic costs, statutory authority, legality, technological achievability, and engineering constraints.

Wetland refers to an area inundated by surface or ground water with a frequency sufficient to support, and that under normal circumstances does 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 appropriately consider potential environmental effects, reduce the risk of delays, and 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 human environment that would result in a non-trivial change to the environmental status quo.

(b) At the earliest possible time, the TVA entity proposing an action shall consult with the staff responsible for NEPA compliance and TVA legal counsel, as appropriate, to determine 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 shall determine whether the action is already covered under an existing NEPA review, including a programmatic or generic review. Before such an action proceeds, the NEPA compliance staff shall evaluate and adequately document whether the new action is essentially similar to the previously analyzed action, the alternatives previously analyzed are adequate for the new action, there are significant new circumstances or information relevant to environmental concerns that would substantially change the analysis in the existing NEPA review, and there are effects that would result from the new action that were not addressed in the previous analysis

(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 human environment and therefore do not require the preparation of an EA or an EIS.

(b) The TVA entity proposing to initiate an action must determine, in consultation with the NEPA compliance staff, whether 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.

(e) The use of a categorical exclusion for an action does not relieve TVA from compliance with other statutes or consultations, including, for example, the Endangered Species Act or the National Historic Preservation Act.

§ 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 shall consider whether:

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

(i) Species listed or proposed to be listed under the Endangered Species Act, or the proposed or designated Critical Habitat for these 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 by itself preclude use of a categorical exclusion. Rather, the determination that extraordinary circumstances are present depends upon the finding of a causal 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.

§ 1318.202 Public notice.

TVA may consider providing public notice before a categorical exclusion is used if TVA determines that the public may have relevant and important information relating to the proposal that will assist TVA in its decisionmaking.

SUBPART D – ENVIRONMENTAL ASSESSMENTS

§ 1318.300 Purpose and scope.

(a) TVA shall prepare an EA 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 need not be initiated (or completed) when TVA determines that it will prepare an EIS.

(b) An EA shall concisely communicate information and analyses about issues that are potentially significant and reasonable alternatives.

§ 1318.301 Public and stakeholder participation in the EA process.

(a) The NEPA compliance staff, in consultation with the initiating TVA entity and other interested offices, may request public involvement in the preparation of an EA or a revision to or a supplement thereof. The type of and format for public involvement shall be selected as appropriate to best facilitate timely and meaningful public input to the EA process. In deciding the extent of public involvement, TVA will consider whether the public has already been provided a meaningful opportunity to comment on the environmental impacts of a proposal through other coordinated, regulatory processes.

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

(c) A draft EA prepared for an action listed in §1318.400(a), for which TVA would normally prepare an EIS, shall be circulated for public review and comment.

(d) TVA will make draft (if applicable) and final EAs and FONSI's available on TVA's public website and by other means upon request to TVA.

§ 1318.302 EA preparation.

(a) As soon as practicable after deciding to prepare an EA, the initiating TVA entity, in consultation with NEPA compliance staff, shall convene an internal coordination team to discuss:

- (1) Reasonable alternatives,
- (2) Permit requirements,

- (3) Coordination with other agencies (consistent with §1318.401),
- (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 purpose and need for action, reasonable alternatives, the no-action alternative (consistent with §1318.400(e)), the environmental impacts of the proposed action and alternatives, measures (if any) to 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 finalized and with the concurrence of TVA legal counsel, the NEPA compliance staff will make one of the following determinations:

- (1) A Finding of No Significant Impact,
- (2) The action requires the preparation of an EIS, or
- (3) The EA needs to be supplemented before the significance of potential impacts can be determined.

§ 1318.303 Finding of No Significant Impact.

(a) If the NEPA compliance staff concludes, 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. The official responsible for NEPA compliance will sign the 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 circumstance, the NEPA compliance staff, in consultation with TVA legal counsel and the initiating TVA entity, will make a draft EA and draft FONSI available for public review and comment for 30 days before a final determination is made whether 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 issued a Notice of Intent 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 components of the proposed action that remain to be implemented, the NEPA compliance staff and TVA legal counsel, in consultation with the initiating TVA entity, 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 environmental impacts of TVA's action are adequately assessed in the EA. Public involvement must be provided consistent with §1318.301. The adopted EA and the FONSI issued by TVA must be provided on TVA's public website.

SUBPART E – ENVIRONMENTAL IMPACT STATEMENTS

§ 1318.400 Purpose and scope.

(a) The following actions in paragraphs (a)(1) through (5) normally will require an EIS:

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

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

(3) The development of integrated resource plans for power generation.

(4) The development of system-wide reservoir operations plans.

(5) Any major action whose environmental impacts are 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 the decision must be discussed in the environmental assessment or in a document that is made available to the public.

(c) An EIS shall describe the proposed action and reasonable alternatives, including no action; analyze the potential environmental impacts associated with the proposed action, alternatives, and identify any mitigation measures; and include a list of the major preparers of the EIS.

(d) The scope and detail of the EIS shall be reasonably related to the scope and the probable environmental impacts of the proposed action and alternative actions (see 40 CFR 1502.10 through 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 practicable 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, shall determine whether inviting other Federal, State, or local agencies to participate in the preparation of the EIS as lead, joint lead (40 CFR 1501.5), or cooperating agencies (40 CFR 1501.6) is 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 practicable after the decision to prepare an EIS is made, the NEPA compliance staff, in consultation with other TVA entities, will identify preliminary 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).

(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 practicable in the scoping process, the NEPA compliance staff, in consultation with the initiating TVA entity and TVA legal counsel, will prepare and publish in the *Federal Register* a notice of intent to prepare an EIS. This notice will briefly describe the proposed action, possible alternatives, and potentially affected environmental resources. In addition, the notice will identify issues that TVA has tentatively determined to be insignificant and which will not be discussed in detail in the EIS. 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 describe how to submit comments.

(e) There will be a minimum 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 whether to modify the schedule or scope of the EIS.

(g) At the close of the scoping process, the NEPA compliance staff, in consultation with the other TVA entities, will identify the following components in paragraphs (g)(1) through (8) for use in preparing the DEIS:

- (1) Purpose and need of the proposed action.
- (2) Reasonable action alternatives.
- (3) Environmental issues to be addressed in detail.
- (4) Environmental issues that should be mentioned but not addressed in detail.
- (5) Lead and cooperating agency roles and responsibilities.
- (6) Related environmental documents.
- (7) Other environmental review and consultation requirements.
- (8) Delegation of DEIS work assignments to TVA entities and 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) During preparation of the DEIS, the NEPA compliance staff will involve any cooperating agencies to obtain their input. 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 official responsible for NEPA compliance, the senior manager of the initiating TVA entity, and TVA legal counsel, the NEPA compliance staff will make the DEIS available to the public; other interested Federal, State, and local agencies; and other entities and individuals who have expressed an interest in the type of action or commented on the scope of the EIS. The NEPA compliance staff will then file the DEIS with EPA for publication of its notice of availability in the *Federal Register*.

(d) TVA will make the DEIS available on its public website and provide it by other means upon request.

(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 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 practicable.

§ 1318.404 FEIS preparation and transmittal.

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

(b) If changes 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 instead of rewriting the DEIS. In such cases, only the comments, the responses (including explanations why the comments do not warrant changes to the DEIS), and the changes need be circulated. The entire document with a new cover sheet shall be filed as the FEIS (40 CFR 1506.9). If other more extensive changes 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 receives 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) After approval of the FEIS by the official responsible for NEPA compliance, the senior manager of the initiating TVA entity, and TVA legal counsel, the NEPA compliance staff will make the FEIS available to the public; other interested Federal, State, and local agencies; and other entities and individuals who have expressed an interest in the type of action or commented on the DEIS. The NEPA compliance staff will then file the FEIS with EPA for publication of its notice of availability in the *Federal Register*.

(e) TVA will make the FEIS available on its public website and provide it by other means upon request.

§ 1318.405 Agency decision.

(a) TVA shall not make a decision regarding a proposed action for which an EIS has been issued 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 items in the following paragraphs (b)(1) through (6):

(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, 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 components of the proposed action remain to be implemented, the NEPA compliance staff and TVA legal counsel, in

consultation with the initiating TVA entity, will determine how the FEIS should be supplemented. The NEPA compliance staff will be responsible for preparing a supplement to an EIS.

§ 1318.407 EIS adoption.

(a) TVA may adopt another agency's EIS, or a portion thereof, provided that the NEPA compliance staff determines that the EIS or portion thereof meets the standards for an adequate EIS.

(b) If the NEPA compliance staff determines that the actions covered by the other agency's EIS and TVA's proposed action are substantially the same, TVA may adopt the other agency's EIS as TVA's FEIS (§ 1318.404). In making this determination, the NEPA compliance staff, in consultation with other interested TVA entities, will consider whether 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. TVA must make this determination and the adopted EIS available on its public website.

(c) If the NEPA compliance staff determines that the actions covered by the other agency's EIS and TVA's proposed action are not substantially the same, TVA will supplement the other agency's EIS and treat it as TVA's DEIS, including circulating it for comment (§ 1318.403).

(d) 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 no sooner than 30 days 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.

(e) 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 as to its assessment of impacts as they relate to TVA's proposed action. TVA may make a decision about its proposed action no sooner than 30 days after notice of availability of the FEIS is published in the *Federal Register*. A record of decision will be prepared consistent with § 1318.405.

(f) 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 will maintain a public website at which it posts information about TVA activities and programs, including ongoing and recently completed EAs and EISs.

(d) When opportunities for public participation are provided, TVA will notify the public that comments submitted to TVA on the NEPA document and the names and addresses of those commenting may be made available for public inspection.

§ 1318.501 Mitigation commitment identification, auditing, and reporting.

(a) All appropriate measures to mitigate expected significant adverse environmental impacts ("mitigation measures") must be identified in an EA or EIS. Those mitigation measures to which TVA commits must be

identified in the associated FONSI or ROD (or the documentation, if any, prepared for a categorical exclusion).

(b) Each mitigation commitment that is not required under regulations will be assigned by the NEPA compliance staff to the 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 shall 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 verify commitment progress.

(e) Circumstances may arise that warrant modifying or cancelling previously made commitments. The decision to modify or cancel a 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) A programmatic or generic EA or EIS may be prepared to address a proposed program, policy, or plan, or a proposed action that has a wide geographic scope.

(b) A programmatic EA or EIS can support high-level or broad decisionmaking, and can provide the foundation for the efficient review of specific tiered implementing actions.

(c) Ongoing or previously planned and approved actions that are within the scope of a programmatic review may continue during the programmatic review period, so long as the criteria at 40 CFR 1506.1(c) are met.

(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 implementing actions would not result in new or different significant impacts.

§ 1318.504 Private applicants.

(a) When a private applicant, individual, or other non-Federal entity (“private entity”) proposes 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 compliance staff will provide the private entity information on its 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) A private entity may be allowed to prepare draft and final EAs for TVA’s review and approval, but TVA remains responsible for the adequacy of the documents and the conduct of associated EA process.

(e) A private entity normally will be required to reimburse TVA for its costs in reviewing the private entity's proposed action.

(f) Participation of a private entity 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 any EIS provided by another Federal agency to TVA for comment.

(b) The NEPA compliance staff, in consultation with TVA legal counsel as appropriate, will prepare comments on any such EIS 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) An environmental document may be combined with any other document to reduce duplication and paperwork.

(d) Review of a proposed action 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.

Substantial compliance with these procedures must be achieved. Minor deviations approved by the official responsible for NEPA compliance do not give rise to any independent cause of action.

§ 1318.510 Emergency actions.

(a) The NEPA compliance staff may consolidate, modify, or omit provisions of these procedures for actions necessary in an emergency.

(b) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, TVA will consult with CEQ about alternative arrangements for those actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review (see 40 CFR 1506.11).

(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 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 on the status of EISs and EAs under development shall be published on TVA’s public website.

SUBPART G – FLOODPLAINS AND WETLANDS

§ 1318.600 Purpose and scope.

(a) 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 that is consistent with Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) pertaining to floodplains or wetlands, respectively, as required by this section.

(b) Floodplain evaluations must apply any existing 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, licenses, or allocations to private parties 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) Once 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 floodplains or wetlands if the proposed action is subject to executive order and not already covered by class review. 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 Federal, State or local floodplain protection standards;
- (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 TVA has established the following classes of actions as categorical exclusions. Individual actions must be reviewed to determine whether any of the extraordinary circumstances listed in §1318.202 is present. If an extraordinary circumstance cannot be mitigated sufficiently to render the action's impacts not significant, 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. Contracts or agreements for the sale, purchase, or interchange of electricity.
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, geotechnical 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. Reserved.
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. Routine modification, repair, and maintenance of, and minor upgrade of and addition to, existing transmission infrastructure, including the addition, retirement, and/or replacement of breakers, transformers, bushings, and relays; transmission line uprate, modification, reconductoring, and clearance resolution; and limited pole replacement. This exclusion also applies to improvements of existing access roads and construction of new access roads outside of the right-of-way that are generally no more than 1 mile in length.
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 transmission 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 the normal operating levels of 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, hardening and 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 (a) minor tracts of land, mineral rights, and landrights, and (b) minor rights in ownership of permanent structures.

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 actions to stabilize shoreline (generally up to 1/2 mile in length) by TVA.

28. Minor modifications to land use allocations outside of a normal land planning cycle to: rectify administrative errors; incorporate new information that is consistent with a previously approved decision included in the land use plan; or implement TVA's shoreline or land management policies affecting no more than 10 acres.

29. Actions to restore and enhance wetlands, riparian, and aquatic ecosystems that generally involve physical disturbance of no more than 10 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 1/2 mile in length when along stream banks or reservoir shoreline).

34. Reburial of human remains and funerary objects under the Native American Graves Protection and Repatriation Act that are inadvertently discovered or intentionally excavated on TVA land.

35. Installation or modification (but not expansion) of low-volume groundwater withdrawal wells (provided that there would be no drawdown other than in the immediate vicinity of the pumping well and that there is no potential for long-term decline of the water table or degradation of the aquifer), or plugging of groundwater or other wells at the end of their operating life. 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 that 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 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 increase emissions or discharges beyond current permitted levels;
- b. Regular servicing of power equipment and structures within existing transmission substations and switching stations;
- c. 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);
- d. Routine cleaning and decontamination, including to surfaces of equipment, rooms, and building systems (including HVAC, septic systems, and tanks);
- e. Repair or replacement of plumbing, electrical equipment, small HVAC systems, sewerage, pipes, and telephone and other communication service;
- f. Repair or replacement of doors, windows, walls, ceilings, roofs, floors and lighting fixtures in structures less than 50 years old;
- g. 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;

- h. Recycling and/or removal of materials, debris, and solid waste from facilities, in accordance with applicable requirements;
 - i. Groundskeeping 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;
 - j. Repair or replacement of gates and fences;
 - k. Maintenance of hazard buoys;
 - l. Maintenance of groundwater wells, discharge structures, pipes and diffusers;
 - m. Maintenance and repair of process, wastewater, and stormwater ponds and associated piping, pumping, and treatment systems;
 - n. Maintenance and repair of subimpoundments and associated piping and water control structures;
 - o. Debris removal and maintenance of intake structures and constructed intake channels including sediment removal to return them to the originally-constructed configuration; and
 - p. 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 large 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 (e.g., utility lines serving the building), physically disturbing generally no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed.
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 other such minor expansions.

43. Actions to enhance and control access to TVA property including, but not limited to, construction of new access roads and parking areas (generally no greater than 1 mile in length and physically disturbing no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed) 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 land not previously disturbed by human activity or 25 acres of land so disturbed:

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

46. Transactions (contracts or agreements) for purchase of electricity from new methane gas electric generating systems using commercially available technology and installed within an area previously developed or disturbed by human activity.

47. Modifications to the TVA rate structure (i.e., rate change) that result in no predicted increase in overall TVA-system electricity consumption.

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 land not previously disturbed by human activity or no more than 25 acres of land so disturbed.

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).