
Responses to Public Comments

*Public Review of TVA's Proposed Amendments to Procedures for Implementing the
National Environmental Policy Act
(June to September 2017)*

Tennessee Valley Authority



MARCH 2020

List of Acronyms

ASCE	American Society of Civil Engineers
ASFPM	Association of State Floodplain Managers
CE	Categorical Exclusion
CEC	Categorical Exclusion Checklist
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DOE	U.S. Department of Energy
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
FFRMS	Federal Flood Risk Management Standard
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
IRP	Integrated Resource Plan
kV	kilovolt
NEPA	National Environmental Policy Act
NRP	Natural Resource Plan
PFHA	Probabilistic Flood Hazard Analysis
ROD	Record of Decision
SACE	Southern Alliance for Clean Energy
SELC	Southern Environmental Law Center
TL	Transmission Line
TNC	The Nature Conservancy
TVA	Tennessee Valley Authority
TWF	Tennessee Wildlife Federation

INTRODUCTION

On June 8, 2017, the Tennessee Valley Authority (TVA) published the proposed rule to revise its procedures implementing the National Environmental Policy Act (NEPA) in the *Federal Register*, initiating a 60-day public review period (82 FR 26620). In response to public requests for an extension, TVA extended the comment period for an additional 30 days on July 28, 2017 (82 FR 35133). The extended comment period closed on September 6, 2017. During the public review period, TVA received 1,572 responses, consisting of letters, emails, statements, phone calls, and web-based submissions. Of those, 61 responses contained original substantive comments. The remaining responses were variations of four form letters addressing several general topics, which are addressed below. Comments were received from individuals, trade associations, nongovernmental organizations, local, State and Federal entities, and a tribal government.

Most commenters, including those who submitted comments in variations of form letters, expressed general opposition to TVA's proposal to establish new CEs. The primary reasons cited for this opposition were the beliefs that adding Categorical Exclusions (CE) would increase the potential for adverse environmental impacts and that additional CEs would reduce or eliminate the public's ability to be informed of proposed TVA actions and their impacts and to participate in the decision-making process. TVA also received numerous comments that were not substantive because they included statements that were conclusory, unclear and/or vague, and statements related to specific TVA projects or operations rather than to the proposed rule.

After completing consultation with the Council on Environmental Quality (CEQ) in February 2020, TVA published the Final Rule in the *Federal Register* on March 26, 2020. In the Final Rule, TVA responded to public comments in the preamble, but did not include the identities of commenters for the sake of brevity, given the volume of similar comments. This Comment-Response document includes the same responses published in the Final Rule preamble and includes the identities of commenters. TVA prepared this document so that commenters are able to see how TVA addressed their comments.

TVA appreciates the input provided by the public during the rulemaking process.

I. GENERAL COMMENTS

Public Disclosure and Notice

1. TVA's proposal would reduce transparency, limit TVA's obligation to solicit public input about proposed actions, and reduce recordkeeping regarding TVA decisions. The National Environmental Policy Act (NEPA) requires that TVA inform the public on matters that impact people and the environment.

(Commenters: Janice Agee, Martha Alexander, Kate Anthony, Ward Archer, Paige Arnold, Patty Atha, Anne Atkinson, Rehim Babaoglu, Lynne Bachleda, Deborah Bahr, Tammie Ball, Ev Banda, Mark Barrett, Gino Bauwens, Cheryl Beard, Matt Beasley, Judy Bell, Cynthia Bernard, Dee Billmeier, Betsy Black, Pat Blackman, Julie Bockman, Pat Boling, Sara Bowers, Brandy Boyd, Natalie Boyle, Rebecca Brehmer, John Brinkley, Mary Burger, Jennifer Butler, Valorie Calton, Walter Campbell, Raeus Cannon, Nicole Chambers, Lynn Charles, Shelby County Citizens, Craig Clark, Jessica Clark, Cathy Clarke, Marlene Clausen, Rick Clemenzi, Barry Coburn, Kate Cockerham, Savannah Collins-Kay, Tim & Diane Connor, Joyce Coombs, Juergen & Patricia Dahle, Mike Dalen, Lynn Dearing, Brian Defayette, Pam Drlica, James Drummond, Sue DuBois, Daniel Durant, Laurie Dye, Cheryl Eberhardt, Deborah Edwards, Donna Edwards, Denise Elder, Connie Ely, Kathleen Emmke, Robert Emrick, Ann Ercelawn, John Eulberg, Rita Fazekas, Denise Fesmire, Theresa Findley, Marilyn Finley, Pat Fitz, Olaf Fjetland, Deborah Flack, Judith Flegel, Nara Fleming, Cata Folks, Peter Ford, Matthew Foy, KC & Stephan Frantzen, Carol Frazier, Leslie Fuller, Diane Fulton, Amanda Garcia/Southern Environmental Law Center (SELC), Lindsay Gardner/Tennessee Wildlife Federation (TWF), Jan Garrett, Stephen Smith/Southern Alliance for Clean Energy (SACE), Katharine Garstka, Charles Gee, Jacki Gibbons, Mary Gonsnell, Gerald Gonyea, Rudy Gonzales, Chris Goodacre, Sandra Goss, Anna Grabowski, Christine Grace, Jane Gulley, Astrid Gunter, Erin Hafkenschiel, Francis Hall, Vicki Hallen, Nancy Harper, Rita Harris, Robert Hatfield, Susan Hawthorne, Margaret Hayes, Suzy Hendrix, Hunt Henion, Katie Herzig, Thomas Hill, Sharon Hilton, Lydia Hines, Patti Holland, Dieter & Magdalena Horstkotte, Carol Hudler, Murray Hudson, Adam Hughes, Patricia Hunt, Sarah Hunt, Sonja Hunter, Mary Huskey, Robyn Hyde, Lisa Hyder, Karen Johnson, Catherine Jones, Edward Jones, Joan Jones, Virginia Jones, Daniel Joranko, Sharon Kane, Jeremy Keck, Susan Keller-Walker, Chelsea Kent, Timothy Kent, Matt King, Eileen Koesy, Jim Kovarik, Sandra Kurtz, G L, Paula Ladd, Martha Jo Law, Ann League, Betsy Leiss, Greg Lesick, Melanie Leslie, Jonathan Levenshus, Jim Levernier, Terri Likens, Gregory Love, James Luna, Amy Lutterloh, Paula Lynn, Sean MacInnes, Matthew Magallanes, Sean Maguire, Ann Malone, Terry Maness, Margaret Mann, Tamera Marcus, Trish Marshall, Tamars Marshall-Whiting, Lee Martin, Patricia McTigue, Lara Miller, Matthew Mills, Michael Mobley, Margaret Mock, Gary Moore, Mary Moore, Susan Moresi, Jennie Morgan, Corneli Morris, Nancy Morrow, Barbara Mott, Shelia Mulroy, Lou Murray, Linda Myers, Barbara Nash, Nancy Neilsen, Norm Nelson, Laura Nevins, Bettie Northcross, Sara Oaks, Susan O'Connor, Emily Oppenheimer, Hunter Oppenheimer, Brian Paddock, Diana Page, Sally Palmer/TNC, Emma Patterson, Carolyn Payne, Sylvia Percy, Joyce Petrina, Erik Plakanis, Donald Plunk, Kathy Poole, Debra Prince, Carol Rasmussen, Gayle Ray, Nancy Reed, Ashley Reeve, Garron Riechers, Michael and Sharon Riharb, Axel Ringe, Beverly Robb, Holly Roberts, Kathy Rodgers, Helen Sanders, Dhana Schaal, Jenny Schmidt, Elaine Scott, Rocky Scott, Rowlett Scott, Heather Seitz, Cathy Shafer, Gary & June Shannon, Courtney Shea/Tennessee Interfaith Power and

Light, Elizabeth Sheppard, Tina Shurtleff, Mayme Siders, Larry Silverstein, Erica Sircy, Vic & Sue Skeels, Michael Sledjeski, Wendy Smith, Lisa Snowden, Pamela Solomon, Randa Spears, Dan Spector, Christopher Spiegl, Becky States, Darby Stone, Jenna Stonecipher, Lynne Sullivan, Lana Sutton, Beverly Sweeton, Matt Taylor, Patricia Taylor, Katie Tedford, Lance Tolman, Judith Toy, Michael Tumblin, Cheryl Umberger, Anne Vest, Linda Wade, Barbara Wagner, Kent Walker, Melba Walker, Valerie Walling, Michael Wendt, Janice Wert, Sharon West, Dawn Wetzel, C.S. Whitson-Forbes, Billie Wilkinson, Wayne Williams, Sheryl Wilson, Darrell Wood, Carolene Wu, Richard & Laura Young, Tina Young)

TVA Response: TVA recognizes that compliance with NEPA and other environmental laws and requirements is of great interest to the people it serves. TVA remains committed to being a good steward of the environment and incorporating appropriate opportunities for public review into agency planning and decisionmaking.

TVA's final rule supplements but does not supersede the CEQ's regulations implementing NEPA, which contain public involvement requirements. The final rule retains CEQ's requirements to involve and consider public and interagency comments during the decision-making process and to include such comments and responses in the administrative record. CEQ regulations instruct agencies to apply CEs, where appropriate, because they can "reduce paperwork and delay, so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects" (*Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*, 75 FR 75628, 75631, December 6, 2010; see also 40 CFR 1500.5(k)).

A CE is a form of NEPA compliance, and not an exemption from NEPA. A CE is established for a category of actions that TVA has determined, based on analysis and experience, do not individually or cumulatively have potential to cause significant impacts to the human environment and, therefore, do not require the preparation of an environmental assessment (EA) or an environmental impact statement (EIS). The final rule does not reduce TVA's obligation to comply with NEPA, as some commenters assert. Rather, CEs make TVA's compliance with NEPA more efficient by allowing TVA to focus its resources on reviewing proposed actions that have the potential for significant environmental impacts. TVA is committed to conducting thorough, systematic, and interdisciplinary reviews of its projects and incorporating those findings into its decisionmaking.

Although there is no requirement under NEPA or CEQ regulations to do so, to ensure transparency, TVA has added a paragraph in the final rule that addresses the circumstances in which the public should be notified before a CE is used. As stated in the final rule (§ 1318.200(f)), TVA may consider public notice before a CE 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.

TVA notes that public notice and/or involvement has been and will continue to be provided for certain actions for which CEs may be used. For instance, TVA routinely conducts public meetings when planning new transmission lines, provides notice and comment on certain land

actions (e.g., land disposals and commercial recreation requests), and, as addressed in Subpart G of the final rule, issues notices on certain actions impacting wetlands even when those actions come under CEs. These notices are listed on TVA's "Get Involved Stay Involved" website: <https://www.tva.gov/About-TVA/Get-Involved-Stay-Involved>.

In addition, TVA will periodically publish to the TVA NEPA website a list of completed actions for which TVA has prepared CE documentation to improve transparency regarding these minor actions.

Support NEPA Ideals

2. TVA should continue to uphold the spirit and intent of NEPA. TVA's amendments to its procedures weakens the original intent of NEPA.

(Commenters: Sierra Club, Pat Horton, Margie Hunter, Tamars Marshall-Whiting, Henry McCarthy, Bonita McClay, Rebecca Mercer, Anna Miller-Grabowski, Susan Moresi, Richard Phelps, Michael and Sharon Riharb, Christine Scott, Rowlett Scott, Carole Soldon, Roger Soprych, Michael Westfall, Pamela Whitman, Anne Woiwode)

TVA Response: The final rule does not reduce TVA's obligation to comply with NEPA and the establishment of new CEs does not represent a move by TVA away from its commitment to comply with NEPA. Rather, CEs make TVA's compliance with NEPA more efficient by allowing TVA to focus its resources on reviewing proposed actions that have the potential for significant environmental impacts. TVA is committed to conducting thorough, systematic, and interdisciplinary reviews of its projects and incorporating the findings of those reviews into its decisionmaking.

Trust

3. We oppose the proposed amendments to the TVA NEPA procedures. We do not trust TVA and do not believe TVA is doing what is best for those in the Valley.

(Commenters: Janice Agee, Mark H. Barnes, Maggie Brooks-Taylor, Janella Carpenter, Michael Finley, Paul Garrett, Charlie Goodman, Lydia Hines, Michael Hollis, Joann Holman, Brian Inzer, Jennifer Johnson, Karen Johnson, Michael Jones, Sandra Jones, Christopher Michelier, Angela Minor, Mona Mitchell, Linda Moore, Susan Moresi, Jill Morgan, William Phillips, Jay Roberts, Mary Roberts-Landrum, Donna Sherwood, Vance Sherwood, Larry Silverstein, Michael Smith, Linda Soule, Shaye Sowell, Don Talley, Sharon Thompson, Mary Vrailas, Jerry Whaley, Nolan Whitesell)

TVA Response: TVA regrets that some stakeholders hold this view, and remains committed to transparency and involving the public in its decisionmaking. TVA's overarching environmental policy is to promote proactive environmental sustainability in a balanced and ecologically sound manner, support sustainable economic growth in the Tennessee Valley, and produce cleaner, reliable and affordable power. The update to the NEPA procedures is consistent with this policy and is intended to promote environmental stewardship and ensure legal compliance. The updated procedures also facilitate the implementation of TVA's mission, use of evolving energy industry

and communication methods, and improvement of its business practices. In addition, TVA is incorporating new guidance, directives and legal precedents that are relevant to NEPA practices. Nothing in the final rule eliminates TVA's obligation to continue to comply with all applicable local, state and federal laws addressing environmental protection when conducting its activities. TVA remains dedicated to these environmental mandates and to being good stewards of the environment and public lands it manages.

Concern for the Environment and Public Health

4. TVA's proposal to amend its procedures for implementing NEPA endangers public health, safety and the environment. The proposed rule increases the potential for adverse environmental impacts.

(Commenters: Vivian Agan, Lara Arnold, Rehim Babaoglu, Deborah Bahr, Elizabeth Barger, Nancy Beavers, Mary Billings, John Binkley, Julie Bockman, Deborah Bratten, Kelli Broussard, Larry & Megan Brown, Tony Brown, Byron Buell, Susan Carr oppenheimer, Misty Carriger, John Cathcart, Lynn Charles, Craig Clark, Patrick Conley, Diane Cummings, Pam Drlica, V. Duncan, Laurie Dye, Denise Elder, Kurt Emmanuele, Robert Emrick, Dorothy Farner, Susan Forbess, Ruth Foxall, KC & Stephan Frantzen, Mary Green, Sherry Green, Jorjeana Gross, Kathleen Grover, Edwin Ham, Nancy Harper, Mary Headrick, Dell Hooker, Linda Jowers, Joan Kearns, M. Rene Koeppen, Jim Levernier, Natalie Mamerow/American Society of Civil Engineers (ASCE), Steve Mattson, Anna Miller-Grabowski, Edward Mitchell, Jennie Morgan, Charlene Nash, Judy Nokes, Fran Overall, Michelle Peterson, Craig Robb, Francie Rose, Kimberly Rowlett, Pat Schaefer, Belinda Sellari, Jennifer Shepherd, Lee Shropshire, Somphouvang Souvannaseng, Shauna Spiker, Gail Starnes, Alex Stiles, Kathy Story, Christine Todd, Jennifer Towe, Benlyn Wade, Kimberly Wood)

TVA Response: Protecting public health and safety is among the key considerations in all NEPA reviews, including the establishment and application of CEs, and is TVA's highest priority. The final rule addresses how TVA considers adverse impacts to the environment, including impacts to sensitive resources, during its decision-making processes. The procedures also address consideration of measures to minimize or mitigate such impacts. TVA will continue to adhere to all applicable local, state and federal laws and regulations when implementing actions that may potentially impact the environment.

Disregard for NEPA Procedures

5. TVA is completely ignoring NEPA procedures when engaging in environmental projects, and TVA has weakened the burden of proof and is now considering too many projects to be minor. (Commenters: Amanda Garcia/SELC, Sandra Kurtz)

TVA Response: TVA is revising its procedures to improve its NEPA compliance by clarifying and updating its procedures (last updated over 35 years ago) to make them more accurately reflect TVA's mission and program activities. CEQ regulations and guidance outline a process by which agencies may establish CEs for actions that are unlikely to result in significant environmental impacts and encourages their use to reduce paperwork and delay, and allow

agencies to focus their EAs and EISs on proposed actions that truly have the potential to cause significant environmental effects. (See response to the first comment above). CEQ's regulations also require agencies to "continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of NEPA." 40 CFR § 1507.3(a). TVA has complied with these requirements in establishing the additional list of CEs and revising other CEs. Many of the new CEs reflect actions that TVA had previously excluded under more broadly defined CEs. Newly defined categories and revisions to existing CEs provide clarification and transparency regarding the type of actions covered by a CE and help limit its use to specific actions.

Increased Uncertainty

6. The proposed procedures do not address the increased uncertainty due to climate change and state that TVA must practice caution in relying on the impact findings of past decades as its basis for conclusions about potential impacts of future actions.

(Commenter: Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: TVA notes that CEQ guidance states that an agency's past experience should serve as the basis for identifying whether a proposed activity is one that normally does not require further environmental review (75 FR 75631, December 6, 2010). Although past experience serves as the basis for the list of CEs, TVA relied on a variety of supporting information in establishing its CEs. TVA recognizes the importance of understanding changes in the environment, including climate change, and of using high quality information and scientific analyses to inform its decisionmaking. For instance, TVA routinely considers climate change adaptation and potential greenhouse gas emissions when conducting environmental reviews. TVA specialists draw upon experience as well as available science to identify potential environmental impacts of actions and address any uncertainty.

Adherence to Existing State & Federal Regulations

7. TVA should continue to comply with all applicable state or federal regulations during the NEPA process.

(Commenter: Matt Taylor)

TVA Response: TVA will continue to comply with applicable local, state and federal laws when conducting its activities. TVA remains committed to coordination and consultation with other government agencies throughout the region in the intergovernmental review for assessing impacts of its actions. TVA's experience affirms that such coordination benefits TVA's decision-making processes and results in fewer environmental impacts.

Industrial Wind Turbine Projects

8. We are concerned about the wind energy project proposed to be constructed near Crab Orchard, Tennessee. TVA should conduct reviews under NEPA of these types of projects and TVA should be the lead federal agency on the project.

(Commenters: Craig Clark, Craig & Becky Leeper, Dwight Wages)

TVA Response: The concerns expressed in this comment relate to a specific wind energy development project that is no longer under consideration. While comments related to the Crab Orchard project are outside the scope of this rulemaking process, TVA notes that the final rule includes procedures for determining the scope of the federal action being proposed, including wind energy projects, and appropriate levels of environmental review and public involvement for those actions.

Collaboration

9. The Tennessee Wildlife Federation wishes to collaborate with TVA to develop and establish policies to fill in any critical gaps in public communication and understanding that may result from approval of key CE, and to provide important guidance and needed transparency. TVA should plan for worst-case scenarios to ensure consistency in the future in the absence of the formal NEPA requirements.

(Commenter: Lindsay Gardner/TWF)

TVA Response: Thank you for expressing interest in collaborating with TVA. We will continue to seek opportunities for collaboration with stakeholders to improve our decision-making processes.

II. COMMENTS SPECIFIC TO TVA'S PROPOSED NEPA PROCEDURES

Legal Framework

10. TVA lacks the authority to reinterpret NEPA and CEQ regulations in its implementing procedures. TVA impermissibly paraphrases the CEQ regulations and improperly constrains its obligations to comply with requirements set forth in NEPA and the CEQ regulations.

(Commenter: Amanda Garcia/SELC)

TVA Response: CEQ instructs agencies to develop their own NEPA procedures that supplement CEQ regulations (40 CFR 1507.3(a)). TVA's regulations were drafted to minimize repetition of requirements already contained in the CEQ regulations and with the understanding that the TVA-specific regulations would be applied in conjunction with the CEQ regulations. The TVA regulations include many words and phrases that are specifically defined in either the NEPA statute or CEQ regulations (40 CFR part 1508). TVA's regulations include definitions for certain terms to assist in implementing NEPA, not to reinterpret NEPA or CEQ's regulations. TVA coordinated the review of its amended procedures with the CEQ to ensure compliance with NEPA and CEQ's regulations. On February 19, 2020, CEQ notified TVA that the final rule conforms to NEPA and the CEQ regulations.

The commenter asserted that TVA improperly paraphrases CEQ regulations with its statement in the proposed rule that EAs should address “important environmental issues.” CEQ regulations do emphasize that agencies concentrate their efforts and attention on important issues when completing environmental analysis. Nonetheless, because of the emphasis in NEPA on the “significance” of environmental impacts, TVA revised the sentence in the final rule by replacing “important environmental issues” with “issues that are potentially significant.”

Public Review

11. Given the complexity of TVA’s proposed rule, TVA did not provide adequate time for the public to review the proposed rule.

(Commenters: Amanda Garcia/SELC, Natalie Mamerow/ASCE)

TVA Response: The publication of the proposed rule in the Federal Register initiated a 60-day public comment period (82 FR 26620, June 8, 2017). After publication of the notice, TVA received stakeholder requests to extend the comment period; in response, TVA extended the period an additional 30 days. The 90 day comment period ended on September 6, 2017. Just prior to the close of the review period, one commenter requested a further extension of the comment period. TVA considers 90 days to be adequate; EO 13563, *Improving Regulation and Regulatory Review*, establishes 60 days as the standard duration of comment periods for informal rulemaking processes (75 FR 3821, January 21, 2011).

12. TVA has not provided adequate documentation to the public to evaluate the basis for TVA’s proposed rule.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA’s Federal Register notice provided relevant supplementary information associated with the proposed rule, including a lengthy statement of the basis and a description of the proposed changes to each section of the procedures (82 FR 26620, June 8, 2017). TVA also prepared and made available its Proposed Categorical Exclusions Supporting Documentation (Supporting Documentation) for the proposed CEs to describe its review of the CEs and to support its findings that certain categories of actions do not result in significant environmental effects. TVA prepared the document to comply with CEQ’s guidance to agencies on substantiating changes to agency CEs (75 FR 75628, December 6, 2010). The organization that made this comment submitted a Freedom of Information Act (FOIA) request seeking several thousand records associated with almost 700 NEPA reviews. TVA fulfilled the request in compliance with FOIA.

Subpart A - General Information

13. TVA cannot define the term “controversial” as proposed in Subpart A of its proposed rule.

(Commenter: Amanda Garcia/SELC)

TVA Response: The language in the rule reflects current case law addressing the meaning of “controversial” under NEPA. Courts have consistently held that controversy refers to disagreement with respect to the characterization of the effects on the quality of the human

environment, rather than opposition to a proposal. See, e.g., *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1240 (9th Cir. 2005) (stating that mere opposition or uncertainty does not render a project “controversial” under NEPA); *River Road Alliance, Inc. v. Corps of Engineers*, 764 F.2d 445, 451 (7th Cir. 1985) (“[P]ublic opposition [to a project] would be the environmental counterpart to the ‘heckler’s veto’ of First Amendment law.”).

TVA will continue to consider the context and intensity of a potential impact to determine whether the action has the potential to significantly affect the environment; the definition of “controversial” clarifies that a dispute as to the size, nature or effect of the action’s impacts must be supported by scientific commentary that casts doubt on the agency’s methodology or data.

14. The Commonwealth of Virginia Department of Historic Resources encouraged TVA to include a brief statement of the possibilities and advantages of the coordinating process and documentation required for the preparation of an EA and finding of no significant impact (FONSI) or an EIS and Record of Decision (ROD), to comply with Section 106 of the National Historic Preservation Act (NHPA) in place of the regulations at 36 CFR 800.3 through 800.6. (Commenter: Ethel Eaton)

TVA Response: TVA occasionally uses the process established under 36 CFR 800.8 when beneficial and will continue to do so. The final rule encourages early coordination and public involvement in the NEPA process. TVA prefers not to include specific provisions relating to compliance with the NHPA in its NEPA procedures, but would continue to use the process in 36 CFR 800.8 to gain efficiencies.

Subpart C - Extraordinary Circumstances

15. Under its procedures addressing “extraordinary circumstances,” TVA is adding that “the mere presence of one or more of the resources” listed does not preclude the use of a CE, and the determination of whether extraordinary circumstances exists depends upon the existence of a cause-effect relationship between the proposed action and the effect on the resources. Regarding threatened and endangered species, it is our understanding that consideration of these is not specified in the CEs, but the provision (in § 1318.201(b) of the final rule) would still allow for an action involving threatened or endangered species to be categorically excluded and preclude the opportunity for public review and comment. TVA should ensure appropriate consideration of species in need of management. If there are federally-listed threatened and endangered species on TVA managed lands or lands where TVA is working, actions should not be categorically excluded.

(Commenter: Lindsay Gardner/TWF)

TVA Response: TVA’s NEPA procedures require that extraordinary circumstances be reviewed prior to determining whether an action qualifies as a CE. One of the extraordinary circumstances is whether there is potential that threatened or endangered species would be significantly impacted by the action (§ 1318.201(a)(1)(i) of the final rule). TVA’s final rule incorporates changes to TVA’s list of extraordinary circumstances to make it clearer that an impact to sensitive resources, including threatened or endangered species, is an important factor for consideration in determining whether a CE should be used.

Under § 1318.201(b), TVA will review the presence of sensitive resources as a factor to consider in making a determination whether the resource may be impacted by the action. TVA's final rule also clarifies that the determination that an extraordinary circumstance will require additional environmental review in an EA or an EIS should depend not solely on the presence of sensitive resources, but also on the potential that those resources would be impacted by the proposed action. When appropriate, TVA will consult with the U.S. Fish and Wildlife Service to analyze the potential impacts to threatened or endangered species and apply appropriate measures to address those impacts. TVA would not apply a CE to any action with potential to result in the lethal taking of a threatened or endangered species.

16. The Department of the Interior recommended that TVA modify TVA's extraordinary circumstances section (18 CFR 1318.201 of the final rule) regarding special status species in a manner that is consistent with the Department's language as well as other Federal agencies. (Commenter: Cheryl Kelly/DOI)

TVA Response: In response to the Department of the Interior comment, TVA has revised this provision on extraordinary circumstances under § 1318.201(a) in the final rule. "Threatened or endangered species" is replaced with "Species listed or proposed to be listed under the Endangered Species Act on the List of Endangered or Threatened Species, or designated Critical Habitat for these species." This change accurately reflects the current practice of TVA to review for potential impacts to listed species as well as species proposed to be listed, and to the habitat on which such species rely, when considering whether it is appropriate to apply a CE to an action

17. TVA should identify potential wind turbine projects as "Extraordinary Circumstances." (Commenter: Craig Clark)

TVA Response: A commenter who raised concerns about a specific wind energy project also stated that a potential electrical transmission interconnection to wind turbine projects should be considered an extraordinary circumstance. TVA notes the list of extraordinary circumstances in the final rule are factors or circumstances in which an action listed by TVA as a CE has the potential to cause significant environmental effects, thereby requiring further analysis and documentation in an EA or an EIS. It would be inappropriate to include a specific type of action to the list of extraordinary circumstances; however, whether "extraordinary circumstances" are present would be analyzed for all projects including wind projects. TVA notes that the final rule does not include a CE for industrial-scale wind projects of the type that are of concern to the commenter.

18. The proposed procedures regarding the identification of extraordinary circumstances are inconsistent with NEPA and CEQ guidance. (Commenters: Amanda Garcia/SELC, Lindsay Gardner/TWF, Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: Under § 1318.201(a), the final rule provides that an action that may otherwise be categorically excluded may not be so classified if an extraordinary circumstance is present and cannot be mitigated. If any of the extraordinary circumstances listed in Section 1318.201(a) apply to the proposed action, TVA would consider whether the proposal can be modified to

resolve the circumstances that are considered extraordinary. In some cases, such measures to resolve extraordinary circumstances may be required through the application of other environmental regulatory processes (e.g., the Clean Water Act or NHPA) such that the potential for significant impacts to the resource is resolved. Other regulatory processes, including consultation with State Historic Preservation Officers or the U.S. Fish and Wildlife Service, sometimes provide appropriate measures to resolve extraordinary circumstances, which facilitate the identification of appropriate mitigations, but do not replace TVA's compliance with NEPA.

Other agencies have recently promulgated similar procedures for extraordinary circumstances, including the National Aeronautics and Space Administration, the National Capital Planning Commission, and the Air Force Retirement Homes. TVA also notes that the cause-effect relationship between a proposed action and the potential effect on resources is also considered by the U.S. Forest Service when reviewing for extraordinary circumstances (see 36 CFR 220.6(b)(2)).

As noted above, when issuing its final 2010 guidance on CEs, CEQ stated in its preamble that it had received specific comments noting that, "the determination that an extraordinary circumstance will require additional environmental review in an EA or an EIS should depend not solely on the existence of the extraordinary circumstance but rather on an analysis of its impacts." In reply to this comment, CEQ stated that it agreed with this perspective (75 FR 75629, December 6, 2010). TVA's rule is consistent with this guidance. A determination of the potential effects of an action and its severity should be considered by TVA to identify the situations or environmental settings when an otherwise categorically excludable action merits further analysis and documentation in an EA or an EIS.

*19. TVA's definition of "extraordinary circumstances" improperly segregates consideration of "controversy" from determining significance.
(Commenter: Amanda Garcia/SELC)*

TVA Response: The division of the section into separate paragraphs (with § 1318.201(a)(1) identifying specific environmental resources and § 1318.201(a)(2) addressing controversy) does not segregate "controversy" from the extraordinary circumstances determination. Rather, it reflects proper organization: controversy is included under § 1318.201(a)(1) since it is not an "environmental resource." Consideration of whether the significance of environmental impacts is or may be "highly controversial" is still an important consideration in determining whether extraordinary circumstances exist, and the procedures now more clearly reflect CEQ's significance criteria.

TVA did not remove consideration of "other environmentally significant resources"; the text of the procedures was revised for clarity and TVA added to § 1318.201(a)(1) a statement that it would consider whether "the action has the potential to significantly impact environmental resources, including the following resources:" The purpose of this section was not to exclude consideration of environmentally significant resources not specifically enumerated, but to identify resources most likely to be encountered.

20. TVA procedures addressing extraordinary circumstances (18 CFR 1318.201 of the final rule) fail to distinguish between the routine mitigation which is a type of best management practice and the more expansive mitigation actions described at 40 CFR 1508.20. TVA fails to distinguish between actions for which routine procedures address impacts and has been overly broad in its discussion of “mitigated actions.” The procedures contain language about mitigation that would allow agencies to downgrade significant impacts that had the potential for an EA and public input.

(Commenter: Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: As previously stated, TVA’s procedures do not supersede those of CEQ. The use of the term “mitigation” in § 1318.201 is consistent with the definition of the word in 40 CFR 1508.20. TVA considered the comment and does not find it necessary to include in its procedures a distinction between routine and the non-routine mitigation, as suggested by the commenter.

TVA disagrees with the comment that a CE cannot be used when it is possible to modify a proposal to mitigate (as defined at 40 CFR 1508.20) a potential impact or to resolve an extraordinary circumstance. Under the final rule, TVA may modify a proposed action in order to resolve or alleviate the circumstances that are considered extraordinary. In other cases, TVA may implement mitigation measures that address the circumstances and ensure that no significant impacts from the action would occur. Often, the mitigation measures are identified through other environmental processes (such as consultation under NHPA or the Endangered Species Act (ESA)).

Subpart C - Categorical Exclusions General Comments

21. TVA’s proposed CEs are written so broadly that they would apply to almost every activity the utility undertakes and threaten public health, public safety and the environment. Several terms used in CE definitions are too subjective and lack sufficient specificity.

(Commenters: Amanda Garcia/SELC, Lindsay Gardner/TWF, Sandra Goss, Sandra Kurtz, SACE)

TVA Response: TVA disagrees that the changes represent a broad expansion in the scope of actions that may be categorically excluded. The expanded list still covers only those categories of actions that individually or cumulatively do not have a significant impact on the environment. Many of the actions specifically addressed in new CEs have been covered under the more broadly defined CEs established by TVA in 1980, as disclosed in the Supporting Documentation. For example, one of the CEs established in 1980 (CE 5.2.1, “Routine operation, maintenance, and minor upgrading of existing TVA facilities”) is replaced by multiple new CEs. Many of the CEs established in 1980 lacked specificity and limiting criteria so that they were subject to broad interpretation over time by staff. The new and revised CEs included in the final rule represent a more detailed list of specific activities that are tailored to TVA programs.

In its 1983 guidance on NEPA regulations, CEQ encouraged agencies to “consider broadly defined criteria which characterize types of actions that, based on the agency's experience, do not cause significant environmental effects” (48 FR 34263, July 28, 1983). Later, in 2010, CEQ guided agencies to clearly define eligible categories of actions and the factors that would

constrain their use. With the list of CEs in the final rule, TVA has struck a balance between these two ends of the guidance spectrum. It has established CEs that are not so narrow that they would not allow TVA flexibility to consider project-specific issues but that are more specific so as to improve clarity and avoid misapplication.

As discussed in the Supporting Documentation prepared by TVA to substantiate its CE revisions, TVA also uses several terms in the definition of its CEs as narrative descriptors of parameters appropriate for the CE's use. For instance, terms like "minor," "limited," "small," "routine," and "small-scale" are included as limitations in some CEs. Several such descriptors have been included in TVA's procedures since 1980. TVA has determined that these narrative parameters are effective for assessing application of the CEs and will continue to apply a reasonable interpretation to such terms on a project-specific basis.

TVA would continue to consider the potential intensity of a proposed action when interpreting such descriptors in making CE determinations. (In its 2010 guidance, CEQ notes that when identifying extraordinary circumstances, agencies commonly use factors similar to the intensity criteria for determining significance pursuant to 40 CFR 1508.27(b).) The term "minor" is well understood by TVA staff as applying to actions limited in scale and scope; under the final rule, the term in some CEs is accompanied by a new spatial limitation. TVA notes that procedures of many federal agencies include similar narrative descriptions. As with each Federal agency, TVA must ensure that the CEs are appropriately used, that staff is adequately trained, and that environmental compliance is ensured through the implementation of these procedures by responsible staff and managers.

TVA's use of the term "generally" as used in spatial limits indicates that the limit is not a strict limit. If a project area slightly exceeds the spatial limit, some consideration may be made by staff to determine whether the CE may still apply based on consideration of potential impacts. TVA would not apply the CE to actions that substantially exceed the spatial limit. The term "including, but not limited to" introduces exemplary actions to which the CE applies; CEQ has encouraged agencies to identify representative examples of the type of activities "especially for broad categorical exclusions" in order to further clarify the types of actions covered (75 FR 75632, December 6, 2010).

For most activities that could qualify for a CE, TVA specialists complete a categorical exclusion checklist (CEC) to document TVA's review of the proposed activity. The CEC consists of 60 questions about potential site-specific environmental issues associated with an activity and is completed by an interdisciplinary team to document their findings. The CEC is part of an automated system that prompts TVA specialists to consider and document whether there are any extraordinary circumstances associated with a proposed activity. Often, specialists conduct field visits to make their determinations. Using the CEC, TVA specialists verify that a proposed activity falls within the definition of the CE and that there are no extraordinary circumstances associated with the activity.

As TVA has always done, some routine activities with no potential for environmental effects (training personnel, or changing a bathroom faucet) would not require paperwork to check for environmental effects. Even for categorically excluded activities, TVA must comply with other

applicable laws and requirements, including the ESA, the Clean Water Act, and NHPA, further ensuring that significant environmental impacts would not occur.

22. TVA's justifications for expanding the list of CEs falsely rely on the assumption that actions that had insignificant effects in the past must therefore have an insignificant effect in the future. Past findings are not likely to hold up in these days of climate change where ecosystem compositions and their resiliency are threatened.

(Commenters: Sandra Kurtz, Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: CEQ's 2010 guidance on CEs provides direction on how to substantiate new or revised CEs: "An agency's assessment of the environmental effects of previously implemented or ongoing actions is an important source of information to substantiate a categorical exclusion. Such assessment allows the agency's experience with implementation and operating procedures to be taken into account in developing the proposed categorical exclusion." (75 FR 75631, December 6, 2010) Consistent with this guidance, TVA cited to and relied on almost 700 previously implemented activities to support the establishment or revisions of CEs. As stated above, although past experience serves as the basis for the list of CEs, TVA recognizes the importance of understanding changes in the environment, including climate change, and of using current high quality information and scientific analyses to inform its decisionmaking. The extraordinary circumstance provision at § 1318.201 provides TVA the ability to consider changes in the environment that would make the use of a CE inappropriate.

23. TVA should require that all CEs are documented and should promulgate the documentation requirements in the rule.

(Commenter: Amanda Garcia/SELC, Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: TVA notes that a majority of its CEs will require documentation in the form of a CEC. Generally, proposed actions that carry little probability of significant environmental impacts (e.g., those that do not result in ground disturbance) do not require such documentation, consistent with CEQ's 2010 guidance that "there is no practical need for, or benefit from, preparing additional documentation when applying a categorical exclusion to those activities." (75 FR 75636, December 6, 2010)

When establishing its NEPA procedures in 1980, TVA did not specify in its procedures whether CEs required documentation. Rather, TVA provides to staff administrative guidance to establish documentation requirements. TVA will continue to determine documentation requirements through implementing internal guidance rather than including such requirements in the final rule. Such an approach allows TVA flexibility to change guidance if the need for additional documentation is identified or as the agency acquires experience with implementing the new CEs.

24. TVA should engage an expert panel to evaluate scientific basis for expansion of CEs and implementation of flood plain management.

(Commenter: Natalie Mamerow/ASCE)

TVA Response: A team of environmental and legal professionals was involved in the development of the revised procedures. The team included TVA environmental professionals, including a flood plains management specialist, as well as external contributors with extensive experience in environmental compliance. In addition to these professionals, TVA relied on its extensive experience as well as the experiences of other federal agencies when defining its CEs.

*25. The Commonwealth of Virginia Department of Historic Resources recommends that TVA include that CEs under NEPA may still require compliance with the NHPA and ESA.
(Commenter: Ethel Eaton)*

TVA Response: In response to this recommendation, TVA added a statement in the procedures to clarify that the use of a CE does not relieve TVA from compliance with other statutes or consultations. This statement has been inserted at § 1318.200(e). TVA notes that a majority of actions that qualify for a categorical exclusion are also covered under a programmatic agreement under Section 106 of the NHPA that was developed through a review process involving the public, the Advisory Council on Historic Preservation, the State Historic Preservation Officers, and the tribes.

*26. The Eastern Band of the Cherokee Indians requested that TVA continues to alert the tribes when historic resources or gravesites are found while actions under the new proposed CEs are undertaken. In these instances, work should be stopped immediately and tribes should be consulted.
(Commenter: Holly Austin)*

TVA Response: This practice is currently observed by TVA and no changes to TVA's NEPA procedures affect TVA's continued commitment to comply with the requirements of NHPA, the Native American Graves Protection and Repatriation Act, or other laws relating to historic properties.

*27. Using CEs leads to less thorough environmental reviews and less robust decisionmaking (e.g., it does not allow for considerations such as mitigation measures).
(Commenter: Sally Palmer/TNC)*

TVA Response: A categorical exclusion is not an exemption from environmental review under NEPA, but is instead the result of an agency's evaluation of a class of actions that, in the absence of extraordinary circumstances, do not individually or cumulatively have the potential to cause significant environmental impacts. TVA's final rule identifies procedures that require TVA staff to conduct reviews of the proposed action to determine whether it would be appropriate to use a CE for the action and to ensure that extraordinary circumstances are not present. Because the vast majority of actions undertaken by federal agencies have no significant environmental impacts, CEs are the most frequently used approach for federal agencies to comply with NEPA. For example, between 2013 and 2018, TVA evaluated over 12,000 actions under CEs but less than 200 that required completion of an EA or EIS. CEQ considers CEs to be efficient tools for conducting a review process for actions which typically do not have significant effects on the human environment. In cases where TVA specialists identify the potential for adverse impacts

and/or the need for mitigation to address the impacts, TVA would carefully consider whether it is appropriate to use the CE or to complete an EA or EIS.

28. TVA's proposed CEs segment activities in a manner that avoids NEPA review of activities that, considered together, would require an EA or EIS. TVA may not create CEs for activities that would normally tier to programmatic EAs and EISs (e.g., TVA's Natural Resource Plan). (Commenter: Amanda Garcia/SELC)

TVA Response: TVA addresses the potential segmenting of actions in § 1318.200(c) of the final rule and will continue to comply with CEQ regulations requiring that agencies consider connected actions. Under TVA's final rule, larger projects may not be broken down into small parts such that the use of a CE for a small part commits TVA to a plan of action for the larger project. TVA NEPA compliance staff responsible for oversight of the procedures will continue to review proposals to verify that the action is not an interdependent part of a larger proposal that has no independent utility. Further, TVA has taken care to define each CE to ensure it covers stand-alone actions that have independent utility. TVA programs implement numerous activities to meet program goals and objectives. While such activities may be implemented to achieve broad goals or missions of TVA, TVA does not agree that the implementing actions of TVA programs or missions are, necessarily, interdependent, connected or even similar, as asserted by the commenter.

TVA does not agree with the assertion that all natural resource management actions are connected actions, nor that all transmission development and maintenance actions, all road development and management actions, and all electricity regulation actions are connected due to "binding characteristics." Such an interpretation is unreasonable and inconsistent with CEQ regulations as well as TVA NEPA procedures and practices. Further, TVA notes that in the 2011 Natural Resource Plan (NRP) EIS, TVA committed to conducting an "appropriate" level of NEPA review; such reviews may be completed as CEs, EAs or EISs, depending on the nature of the proposal, its potential impacts, and whether the action meets the definition of an established CE.

Subpart C – Categorical Exclusions

29. In its Supporting Documentation, TVA does not take the required hard look at the potential direct and indirect environmental effects of the individual and cumulative application of the CEs. (Commenter: Amanda Garcia/SELC)

TVA Response: CEQ's guidance to agencies on establishing CEs directs the preparation of documentation with sufficient information to substantiate the new CEs (75 FR 75628, December 6, 2010). TVA included in the Supporting Documentation a summary of the general types of impacts that would occur for such actions, based on TVA's experience with these actions and input from interdisciplinary experts. This information provides important context to TVA's findings that such actions do not, individually or cumulatively, result in significant environmental effects. The description of impacts in the Supporting Documentation is general in nature because CEs are established for categories of actions without knowledge of the specific locations of these actions. The assessment of site-specific impacts is more appropriately undertaken by TVA when applying the CEs.

Consistent with CEQ's 2010 guidance, the discussions of revised or new CEs vary. The amount of information provided by TVA to substantiate each revised or new category depends on the type of activities included in the proposed category of actions and their potential to result in significant environmental effects. For instance, TVA's discussion of CEs for administrative actions are less detailed than the discussions of CEs that are more likely to result in impacts to the physical environment. In addition, TVA's discussion of revisions to existing CEs are generally less detailed than the substantiating information provided for new CEs because the revisions to existing CEs are typically minor.

*30. The Supporting Documentation fails to provide any analysis of the potential for cumulatively significant effects on any of the 50 proposed CEs.
(Commenter: Amanda Garcia/SELC)*

TVA Response: TVA's Supporting Documentation provides information and includes a brief description of the common impacts of activities that would be covered under new or expanded CEs. As stated in the previous response, the documentation is consistent with CEQ's 2010 guidance regarding establishing CEs. The covered actions are minor in nature and would not result in individually or cumulatively significant impacts. TVA considered the frequency with which the categorically excluded actions are applied when identifying new CEs. Further, many of the CE actions most likely to result in ground disturbance are limited in scope and infrequent and would not be conducted as segments of greater development proposals, thereby reducing potential cumulative effects.

*31. In its Supporting Documentation, TVA does not consider the climate-related impacts of any of the proposed CEs; certain categories of actions have potential to contribute to climate change and/or be affected by climate change.
(Commenter: Amanda Garcia/SELC)*

TVA Response: As noted above, TVA's Supporting Documentation for the CEs provides a summary of findings based on past environmental reviews. While the assessment of impacts in the Supporting Documentation is necessarily general in nature, TVA will continue to consider the potential environmental impacts of proposed site-specific actions, including their potential to contribute to climate change, prior to applying the CEs. TVA notes that CEs that include in-kind replacement of turbines, purchase of existing combustion turbine or combined-cycle plants, or certain rate changes are defined to limit covered actions to those which result in no new emissions or in very minor generation changes, thereby ensuring no significant impact to the environment.

TVA notes that certain shoreline and floodplain impacts of climate change may be tempered because TVA actively manages the Tennessee River system to reduce flooding. The commenter also noted potential impacts of certain activities to bat species. Each proposed action would be reviewed for extraordinary circumstances, including the potential to impact listed or proposed threatened and endangered species. As noted above, TVA revised the CE procedures at § 1318.200(d) to affirm that the use of a CE does not relieve TVA from compliance with ESA and other statutes.

32. *The EAs and EISs cited by TVA in its Supporting Documentation do not support the proposed CEs. Many of TVA's cited EAs and EISs included mitigation measures; an agency must ensure that mitigation measures in cited EAs and EISs are "integral components" of the actions included in a CE.*

(Commenter: Amanda Garcia/SELC)

TVA Response: The Supporting Documentation provided by TVA cites to almost 700 NEPA reviews (CEs, EAs, and EISs). TVA listed many NEPA records and described others in greater depth when they were particularly relevant to the category of actions. In addition to the support provided by the vast array of cited EAs and EISs in the documentation, the expertise acquired by TVA through the implementation of NEPA over four decades also substantiates the proposed CEs. TVA's Supporting Documentation represents a sufficient summary of the relevant information to substantiate its determinations that these categories of actions do not normally result in significant environmental impacts.

Many of the EAs and associated FONSIIs cited by TVA in its Supporting Documentation include mitigation measures to address impacts; some of these mitigation measures resolve potentially significant impacts. The most commonly listed mitigation measures in TVA FONSIIs include standardized best management practices implemented by TVA (e.g., to address storm water runoff at a construction site); although listed as mitigating measures, TVA considers these to be standard practices that are incorporated into TVA's project design. TVA considers all mitigation measures and best management practices that are incorporated into a proposed action in its decision whether to apply any CE to that action. This approach is supported by the CEQ final guidance on the "*Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*" (76 FR 3843, January 21, 2011). In its guidance, CEQ noted that "[m]any Federal agencies rely on mitigation to reduce adverse environmental impacts as part of the planning process for a project, incorporating mitigation as integral components of a proposed project design before making a determination about the significance of the project's environmental impacts. Such mitigation can lead to an environmentally preferred outcome and in some cases reduce the projected impacts of agency actions to below a threshold of significance. An example of mitigation measures that are typically included as part of the proposed action are agency standardized best management practices such as those developed to prevent storm water runoff or fugitive dust emissions at a construction site" (Id.).

Several mitigation measures identified in the cited EAs and FONSIIs were developed through other environmental compliance processes (e.g., through consultation with U.S. Fish and Wildlife Service regarding endangered species or through coordination with the U.S. Army Corps of Engineers to address impacts to wetland resources). TVA considers such measures to be integral components of the proposed action because TVA's action could not be implemented without compliance with these other environmental laws and regulations.

Commenters request that the mitigation measures listed in the cited EAs and FONSIIs be included in the definition of the CE because they are integral components of the category of actions. Because the majority of mitigation measures listed in the cited EAs and FONSIIs are included in the project design or derive from TVA's compliance with other environmental laws, TVA does

not consider it necessary to include potential mitigations in a CE's definition. Rather, what is integral is the review by TVA of proposed actions to determine whether mitigation measures are needed. In addition to the limits included in the definitions, which are intended to eliminate the potential for significant impacts, TVA's consideration and review for extraordinary circumstances prior to use of a CE address the same or similar environmental concerns that are commonly addressed when applying mitigation to proposed actions. The review by TVA for extraordinary circumstances will allow TVA to determine whether mitigation measures are necessary and to consider whether additional environmental review at the EA or EIS level is necessary.

Based on public input, TVA again reviewed the 215 EAs and FONSIIs cited in the Supporting Documentation and confirmed that the vast majority of EAs and FONSIIs provide support for the proposed CEs. However, TVA found that it would not be appropriate to rely on some of the cited EAs and FONSIIs to support the proposed CEs. TVA updated the Supporting Documentation by removing 30 EA and FONSI citations; the updated document is available for public review at <https://www.tva.gov/nepa>. TVA believes that the information provided in the updated Supporting Documentation complies with CEQ's 1983 and 2010 guidance on establishing CEs and adequately supports our determinations regarding the proposed CEs.

Comments addressing the segmentation of actions addressed under programmatic EISs are address above. TVA notes that the most frequently cited EIS in its Supporting Documentation is the NRP EIS. The documentation notes that at the completion of the EIS, TVA determined that no significant adverse impacts would result from implementing the plan and many beneficial impacts were described. In numerous sections of the Supporting Documentation, TVA highlighted several EISs that were representative NEPA documents of the relevant analyses conducted by TVA that supports its findings for specific CEs and provided a summary of the EIS and its findings in the narrative.

*33. The CEs of other agencies that TVA uses as benchmarking examples in the Supporting Documentation do not support the CEs as written.
(Commenter: Amanda Garcia/SELC)*

TVA Response: The inclusion in TVA's Supporting Documentation of the CEs of other agencies as benchmarks for the CEs in the final rule is appropriate. The documentation includes a short discussion of how comparable the agency's CE is to the TVA category and describes supporting information, when available, from the administrative records issued by the agencies when the CEs were established. TVA noted in the documentation the extent to which the CEs were similar and supported its CE, highlighting which were more relevant to the TVA CE and which provided less or only partial support. The benchmarked CEs were intended to provide additional support for the TVA CE; TVA relied primarily on its own experience in identifying categories of actions that do not typically result in significant environmental impacts.

Subpart C - Proposed CE 6 (Electricity Contracts)

34. By proposing to categorically exclude electricity contracts (under CE 6) without limiting application to situations where the contract will definitively not have such impacts, TVA

undermines the CEQ requirement that agencies consider reasonable alternatives to a proposed action.

(Commenter: Amanda Garcia/SELC)

TVA Response: The proposed revision to the CE established by TVA in 1980 was intended to clarify that transactions that spur expansion or development of facilities and/or transmission infrastructure are not covered under the CE. Upon further internal deliberation, however, TVA determined that no clarification was needed to the CE, as staff shared that understanding of the existing CE. In the final rule, TVA carries forward the existing CE without revision as CE 6.

Subpart C - Proposed CE 15 (Rights-of-Way Maintenance)

35. Proposed CE 15, which addresses transmission line maintenance actions, violates and contravenes the injunction of the United States District Court in Sherwood v. TVA. There should be no CE for vegetation management due to the adverse impacts it has on the environment.

(Commenter: Donald Vowell, Larry Silverstein, Amanda Garcia/SELC).

TVA Response: TVA has withdrawn the proposed CE pertaining to right-of-way maintenance actions from the final rule. TVA is currently undertaking a programmatic environmental review of these actions.

Subpart C - Proposed CE 15 (Rights-of-Way Maintenance) and CE 19 (Transmission Line Retirement and Rebuilding)

36. The implementation of proposed CEs 15 and 19, both of which deal with the vegetation management decisions in TVA transmission corridors, have the potential to impact high natural resource land that contain habitation for plant and wildlife as well drinking water supplies.

(Commenter: Sally Palmer/TNC)

TVA Response: As noted above, TVA has not carried the proposed CE 15 pertaining to right-of-way maintenance actions into the final rule. TVA notes that CE 19 pertains to ending vegetation management activities, as transmission lines are retired. Under CE 19, TVA would conduct a complete and thorough review of the proposed action using its CEC to determine whether extraordinary circumstances exist that would require TVA to conduct additional environmental review. The CEC review is conducted by a qualified multidisciplinary team of experts. Existing current resource data will be used when available, or new field data will be obtained when needed. The CEC review will verify that no extraordinary circumstances exist that would preclude the use of CE 19.

Subpart C - Proposed CE 16 (New Transmission Line)

37. Proposed CE 16, which includes the construction of new transmission lines and substations, would allow TVA to construct new transmission line infrastructure in increments of “generally” 10 miles, as long as they “generally” require no more than 125 acres of new rights-of-way, no

more than 1 mile of new access road construction, and support facilities that physically disturb no more than 10 acres. The inclusion of the term “generally” means that the explicit 10-mile limitation is meaningless. TVA provides no rationale for why a 10-mile transmission line does not have significant environmental effects, while an 11-mile transmission line would. Without limiting the contiguous application of CE 16, TVA could simply break up a 150-mile; 1,000-mile; or 10,000-mile stretch of new transmission infrastructure into 10-mile increments and categorically exclude all of its activities.
(Commenter: Amanda Garcia/SELC)

TVA Response: CEQ regulations and guidance and TVA’s final rule (§ 1318.200(c)) prohibit the use of a CE on a segment or interdependent part of a larger proposed action. The TVA environmental compliance staff remains responsible for screening proposed actions and ensuring that larger projects are reviewed in their entirety. As noted above, TVA would not categorically exclude contiguous proposals as asserted by the commenter.

TVA explains that the 10-mile and 125-acre limits are established based on extensive TVA experience and provides a discussion of these limits in the CE Supporting Documentation (background discussion of CE 16). For instance, in its 2015 and 2019 Integrated Resource Plans (IRP) EIS, TVA reviewed dozens of TVA projects and their impacts. For those EIS reviews, dozens of EAs completed since 2005 were identified that address new transmission line construction, including 11 EAs addressing new transmission construction over 10 miles. See Table 5-2 of the 2019 Final EIS (<https://www.tva.gov/irp>).

As stated in the Supporting Documentation, the CE limits actions to no more than 10 miles in length and no more than 125 acres of new ROWs. This CE’s acreage limit applied to actions involving new 500-kV transmission line construction would limit the length of such lines to less than 5.9 miles.

38. TVA has conceded that an EIS must be prepared for tree clearing and vegetation management for existing transmission lines, however, under CE 16 constructing new transmission infrastructure falls under an exemption. The commenter asserts that the category of actions has significant direct, indirect and cumulative effects, and TVA has not taken a “hard look” at the environmental effects of activities applicable to CE 16, simply citing its own NEPA analyses and ignoring the effects of CE 16.
(Commenter: Amanda Garcia/SELC)

TVA Response: TVA did not propose CE 16 as a means to avoid tiering such site-specific analyses to the programmatic EIS it is currently preparing to address rights-of-way vegetation management. That EIS does not address the impacts associated with construction of new transmission infrastructure, but vegetation maintenance on existing lines.

TVA’s experience supports the determination that construction of new transmission lines, when limited, would not result in significant environmental impacts. As noted in TVA’s Supporting Documentation, CE 16 would not cover the construction of a 500-kV transmission line up to 10 miles, as asserted by the commenter, because 500-kV lines have a wider right-of-way. Rather,

with the acreage limit included in the CE (125 acres), less than 5.9 miles of new 500-kV transmission line construction would be allowed.

In its Supporting Documentation, TVA included a summary of common impacts associated with such actions. TVA's review of potential impacts of such actions, as limited, is based on decades of experience, dozens of NEPA records, benchmarking to other federal agencies, and the professional expertise and knowledge of staff. TVA agrees that when considering these actions, a review must be conducted to determine the potential impacts to resources; TVA would complete a CEC for each action, allowing qualified TVA specialists to review the proposals and identify potential extraordinary circumstances. Use of the CE for such actions does not relieve TVA from compliance with other statutes, including ESA. If the extraordinary circumstances cannot be resolved, TVA would complete an EA or EIS.

As stated in TVA's Supporting Documentation, there are CEs of other agencies that provide support for TVA's findings that such actions do not typically result in significant environmental impacts. TVA acknowledges that these CEs are not identical to CE 16 and notes that TVA bases its spatial limits in CE 16 on its own experience.

39. In CE 16, TVA does not define what types of mitigation would be required for wetland impacts and what parameters are needed for reviewing the area of impacted wetlands. Proposed CE 16 should be limited to construction of new transmission lines less than 4 miles in length that do not require offsite mitigation of wetland impacts.

(Commenter: Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: TVA did not find it appropriate to include the list of the types of mitigation measures it would implement to address wetlands in its NEPA procedures. TVA notes that its wetland biologists take part in the review process of actions that may be categorically-excluded to determine whether extraordinary circumstances exist. These biologists conduct desktop reviews and field surveys to determine whether wetlands may be affected by an action. If wetlands may be impacted, TVA coordinates with the U.S. Army Corps of Engineers and state agencies in compliance with Sections 401 and 404 of the Clean Water Act and determines whether impacted wetlands require mitigation. If avoidance or minimization of wetland impacts is not possible, appropriate mitigation generally refers to compensatory mitigation via purchase of credits from an offsite wetland mitigation bank to offset loss of wetland function. The level of NEPA review does not affect the determination of compensatory mitigation. Offsite mitigation is a common practice implemented to resolve wetland impacts. TVA's experience has shown that the potential for wetlands impacts, while real, is small and insignificant for actions that would fall under CE 16. TVA uses assessment methods for quantifying wetland functional capacity and projecting loss of wetland function from proposed disturbances.

When considering the extent of a proposal's wetland impacts, TVA wetland biologists apply standard analytical approaches and practices that are based on professional judgment, scientific norms, administrative guidance, and regulatory compliance. TVA addresses such parameters in other forms of guidance and administrative policy documents outside of NEPA.

*40. Construction actions such as those under CE 16 should not be exempted from NEPA due to the projects' potential to impact the environment and surrounding citizens negatively.
(Commenter: Sally Palmer/TNC)*

TVA Response: As stated in a previous response, CEs are not exemptions from or waivers of NEPA review; they are a type of NEPA review. Under CE 16, TVA will conduct a review of the proposed action using its CEC to determine whether extraordinary circumstances exist and to confirm that the action would not have significant impacts. Should extraordinary circumstances or the potential for significant effects be identified during this review, TVA would not use a CE, but would prepare an EA or an EIS.

TVA notes that its process for siting new transmission projects is designed to allow public input at various stages. Typically, TVA issues public notifications and conducts public open house meetings for new transmission line proposals to ensure that members of the public that may be affected by the project have an opportunity to learn more about the proposal and provide feedback. These opportunities for public input often precede the NEPA process and are conducted regardless of the level of NEPA review.

As previously noted, TVA has added § 1318.202 (Public Notice) to Subpart C of the final rule to clarify that public notice and involvement may be provided by TVA for CEs “if TVA determines that the public may have relevant and important information relating to the proposal that will assist TVA in its decisionmaking.”

Subpart C - Proposed CE 17 (Existing Transmission Infrastructure)

*41. Proposed CE 17 would allow TVA to exclude the modification, repair, and maintenance of all existing infrastructure, without limitation based on the activities' geographic scope or environmental effects. The broad language allows TVA to exclude any and all changes without incorporating the NEPA process.
(Commenter: Amanda Garcia/SELC)*

TVA Response: As presented in the Supporting Documentation, CE 17 is based on TVA's experience with hundreds of similar projects, categorized as TVA's CE 5.2.17 under TVA's previous NEPA procedures, amended by this rule. The extensive records show that while the activities contemplated under CE 17 could have localized, minor, short-term adverse effects, they do not cause significant environmental effects. Through the development of several new CEs for transmission-related actions, TVA is providing more specific definitions of these activities to clarify for TVA staff which activities may be categorically excluded. The special limitations and review for extraordinary circumstances conducted by TVA when these actions are proposed ensure that these actions would not result in significant effects.

Transmission system CECs are typically prepared for small and isolated projects. Any system-wide effort to uprate a portion of the TVA transmission system would, by the requirements of this procedure, be assessed under a higher level of NEPA review. TVA NEPA compliance staff responsible for oversight of the procedures will continue to review proposals to verify that the action is not an interdependent part of a larger proposal that has no independent utility. To clarify the limitations of this CE, TVA revised the beginning of the definition of CE 17 to clarify that

the category includes only “routine” modifications, repairs or maintenance actions and only “minor” upgrade of and addition to existing infrastructure.

CEQ guidance affirms that CEs are not exemptions or waivers of NEPA review; they are simply one type of NEPA review. Under CE 17, TVA will conduct a complete and thorough review of the proposed action using its CEC to identify extraordinary circumstances that may require the preparation of an EA or EIS. The CEC review is conducted by a qualified multidisciplinary team of experts. Existing, current resource data will be used when available, or new field data will be obtained when needed. Should the potential for significant effects be identified during this review, a higher level of NEPA review would be initiated.

TVA made two edits to the Supporting Documentation after reviewing the comments. In section 3.17.3.3, TVA removed the reference to communication-related equipment and structures because its inclusion was in error. In section 3.17.3.4, TVA removed the Department of Homeland Security CE as a benchmark CE for CE 17. An earlier draft version of CE 17 included actions relating to communication equipment that were later removed and the Supporting Documentation had not been properly revised to remove the information relating to communication equipment. TVA finds that the CEs of the Departments of Energy and Commerce support TVA’s conclusion that actions under CE 17 do not result in significant environmental impacts; thus, these benchmark CEs were retained.

Subpart C - Proposed CE 15 (Rights-of-Way Maintenance), 16 (New TL) & 17 (Existing Transmission Infrastructure)

42. Proposed CEs 15, 16, and 17 do not adequately address cumulative impacts, which should be considered in siting.

(Commenter: Lindsay Gardner/TWF)

TVA Response: TVA has considered the potential cumulative impacts of these categories of actions. Consistent with CEQ’s 2010 guidance on establishing CEs, TVA considered the frequency with which the categorically-excluded actions may be applied and the dispersed geographic area across which actions would occur across the seven-state TVA region. The CEs include spatial limitations to constrain the use of the CE and ensure that cumulative impacts are not significant (as noted above, TVA has withdrawn CE 15 from the final rule). CE 16 has a greater potential for cumulative impacts than CE 17, due to the new disturbances associated with the actions. TVA notes that cumulative impacts associated with CE 17, which addresses modification, repair, maintenance, or upgrade of existing transmission infrastructure, would be limited, as most of this infrastructure already exists.

In the Supporting Documentation, TVA cites to numerous NEPA reviews that have occurred primarily since 2005. These NEPA documents likewise serve as a record of TVA’s consideration of cumulative impacts. In addition, TVA relies on its integrated resource planning efforts to review actions needed to ensure the transmission of power through the TVA region and consider their regional impacts. The IRP was completed in 2011 and supplemented in 2015. A new IRP was completed by TVA in 2019. The 2015 and 2019 IRP Final EISs provide important

supporting information for the establishment of CE 16 and 17 and are referenced in TVA's Supporting Documentation.

*43. Proposed CEs 15, 16 and 17 should be withdrawn because TVA is currently doing a programmatic EIS on its transmission systems.
(Commenter: Lindsay Gardner/TWF)*

TVA Response: As noted above, TVA has withdrawn from the final rule the proposed CE (CE 15) pertaining to right-of-way maintenance actions. The programmatic EIS currently underway is focused on right-of-way vegetative maintenance. TVA considers actions falling under CEs 16 and 17 to be outside the scope of that programmatic EIS.

Subpart C - Proposed CE 18 (Telecommunications and Smart Grid)

*44. Proposed CE 18 contains no limit to the length, geographic scope, or environmental impacts that the installation of fiber optics, electricity transmission control devices and supporting towers could have under the CE. The CE does not set forth specific criteria for and identification of the actions that it proposes to categorically exclude (40 CFR 1507.3(b)(2)).
(Commenter: Amanda Garcia/SELC)*

TVA Response: TVA does not consider the revision of this CE to expand the scope of covered actions. Rather, the revision is intended to clarify and add additional examples of activities, as recommended by CEQ in their 2010 guidance. TVA's examples are not intended to be exhaustive of all possible activities that fit within the subject class of activities. TVA anticipates that the inclusion of examples will more clearly define for TVA staff the activities associated with this CE.

TVA notes that installation of optical ground wire would have been covered under the previous, broadly defined version of this CE (established in 1980). TVA's NEPA procedure at § 1318.200(c), specifies that TVA will ensure that a larger project is not impermissibly broken down into small parts such that the use of a CE would irreversibly and irretrievably commit TVA to a particular plan of action for the larger project. Further, § 1318.200(d) provides that TVA has determined that the classes of actions qualifying for CEs do not individually or cumulatively have a significant effect on the human environment, subject to review for extraordinary circumstances. Section 1318.201 of the final rule specifies that actions normally qualifying as a CE cannot be reviewed at this level if an extraordinary circumstance is present that cannot be mitigated. These requirements in TVA's NEPA regulations set the boundaries for use of all of TVA's CEs.

Subpart C - Proposed CE 19 (TL Retirement and Rebuilding)

45. Regarding CE 19, tree clearing and vegetation management practices for existing transmission infrastructure have significant environmental indirect, direct, individual, and cumulative effects, thereby requiring an EIS. If the tree clearing for maintaining rights-of-way and existing transmission has significant environmental effects, surely the same is true for new transmission infrastructure. TVA has not shown that a 25-mile standard for rebuilding

transmission lines will not have an insignificant impact on the environment. In its Supporting Documentation, TVA incorrectly states that the three benchmarked CEs of other federal agencies are “comparable.”

(Commenters: Amanda Garcia/SELC; Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: Categorical exclusion 19 addresses the common activities TVA conducts to retire transmission lines or to rebuild transmission lines that may require a limited right-of-way expansion. The definition of the CE 19 includes spatial limitations such that no action would exceed 25 miles in length or constitute an expansion of more than 125 acres of an existing right of way. Expansions of larger transmission lines (e.g., 500kV) would be shorter in length because of the 125-acre limit. These spatial limitations are not arbitrary. TVA relied on a combination of its extensive experience to identify a proper linear distance limit to ensure that the category of actions would not result in significant environmental impacts.

As explained in the Supporting Documentation, the 25-mile limit for redevelopment along existing ROWs is supported by previous environmental reviews conducted by TVA that resulted in findings of no significant impacts; since 2002, TVA has reviewed 108 such projects by completing CECs and 16 projects by completing EAs. TVA considered and reviewed the analysis conducted in its IRP EIS to determine the average impacts associated with new or upgraded transmission infrastructure projects.

The spatial limit for area of disturbance (125 acres) is consistent with the limitation included in CE 16, which is also supported by TVA experience and environment reviews (as explained in the Supporting Documentation discussion of CE 16). Therefore, actions under CE 19, as circumscribed by the spatial limitation, would not result in significant environmental impacts. TVA again notes that specialists will complete a CEC for every application of CE 19 to ensure that the proposed CE would not be applied when there are extraordinary circumstances requiring additional NEPA review.

The summary of potential impacts in the Supporting Documentation is consistent with CEQ’s 2010 guidance and adequately substantiates the creation of CE 19. TVA disagrees with the opinion of commenters regarding the benchmarked CEs of other agencies; the CEs of other agencies cited by TVA in the Supporting Documentation are comparable to CE 19 and address similar activities involving similar methods, occurring with similar frequency, timing and context.

Subpart C - Proposed CE 20 (Transmission Transactions)

46. Proposed CE 20 should not include surplus transmission or generation properties that have recreational and/or natural resource value.

(Commenter: Lindsay Gardner/TWF)

TVA Response: This CE does not apply to generation properties. It applies only to existing transmission-related equipment and facilities. Generally, any properties addressed in CE 20 are industrial in character and, thus, are not suitable for recreational use and have limited natural resources value.

*47. The definition of proposed CE 20 does not set forth “specific criteria for and identification of” the actions that it proposes to categorically exclude, as instructed by CEQ (40 CFR 1507.3(b)(2)). CE 20 must be rewritten to describe specific activities.
(Commenter: Amanda Garcia/SELC)*

TVA Response: TVA’s revision to this CE does not broadly expand the scope of the actions covered. The primary change to this CE is that existing substations, switchyards, and transmission equipment would be included in existing properties that may be transferred or leased under the CE. Because covered actions are limited to existing infrastructure or rights-of-way, the actions are unlikely to alter the environmental status quo and unlikely to result in any new environmental impacts. TVA’s experience supports its determination that transactions or agreements to acquire or transfer existing infrastructure do not typically change the environmental status quo.

The replacement of the word “sale” with the word “disposal” in the definition of the CE clarifies that the action includes any transfer of ownership, rather than just monetary purchases. The word “disposal” refers to the transfer of the property, not the destruction or demolition of the infrastructure; this definition of disposal is well understood within TVA by staff and decision makers. In the context of the CE, where other types of real estate actions are addressed, this term is not unclear. The CE would not apply to proposals to demolish such infrastructure.

These actions are distinct from other actions relating to TVA’s transmission system for which TVA may use a CE. Under the final rule, TVA will ensure that a larger project is not impermissibly broken down into small parts (§ 1318.200(c)).

Subpart C - Proposed CE 21 (Power Plant Acquisition)

*48. Proposed CE 21 lacks the specificity required by NEPA and the CEQ regulations to ensure that no significant environmental impacts will occur as a result of application of the CE. TVA must evaluate the potential impacts of its action against the actual baseline conditions (and level of emissions), rather than the permitted levels.
(Commenter: Amanda Garcia/SELC)*

TVA Response: In response to this comment, TVA revised the CE to reflect that the planned operation by TVA of purchased or leased facilities should be consistent with the “normal operating levels” of the existing facilities rather than the limits identified in the facilities’ environmental permits. This revision will further ensure that impacts to the environment are insignificant because the category of actions would effectively be limited to the continuing operation of an existing facility.

Under the final rule, TVA would consider whether an action has the potential to significantly impact environmental resources due to extraordinary circumstances before a CE can be used. Before using the CE, consideration would be given to potential air resource impacts and whether greenhouse gas emissions are significant.

TVA disagrees with the assertion that the generic EA completed by TVA and cited in its Supporting Documentation does not substantiate TVA's finding that the category of actions do not have significant impacts. The generic EA addresses the purchase or lease and operation of existing combustion turbine or combined-cycle combustion turbine plants located in or near the Tennessee Valley. TVA notes that the purchase or lease of an existing facility would only take place if it were in keeping with the IRP. The TVA IRP and the types of generation choices that TVA would consider would have already been assessed in the IRP and its EIS prior to the use of this CE.

Subpart C - Proposed CE 22 (Dispersed Recreation)

49. TVA should withdraw proposed CE 22 because it is unreasonably broad and may be used to inappropriately develop its public lands. TVA's documentation does not support its findings. TVA should not categorically exclude any natural resource management activities. (Commenter: Amanda Garcia/SELC)

TVA Response: The definition of the CE sufficiently defines discrete and routine types of actions in well-defined settings. TVA staff is familiar with the terms included in the CE and have experience in applying such terms. The term "generally" does not negate the spatial limit but serves to provide TVA staff some discretion for an activity that may slightly exceed the limit. If a project area would slightly exceed the spatial limit, project staff would consult with TVA NEPA staff to determine whether the CE may still apply based on consideration of potential impacts. As noted in the supporting document, TVA has previously excluded such actions under several CEs. The new CE is more specifically defined than the previous, broadly defined CEs and provides clarity and transparency regarding the types of actions covered. The actions identified in the text of the CE are provided as examples to improve clarity and transparency.

The discussion of impacts in each section of the Supporting Documentation is, as noted in the document, a summary of TVA's findings that further demonstrate how TVA made its determination that such actions do not typically result in significant environmental effects. Prior to conducting some actions, TVA would review each proposal to determine if extraordinary circumstances exist. If they do, an EA or EIS would be prepared if the extraordinary circumstances cannot otherwise be resolved.

As noted above, TVA would not categorically exclude any segment or interdependent part of a larger proposed action and TVA has no intention of establishing thousands of dispersed recreation sites across hundreds of thousands of acres of public lands as suggested by the commenter; such development is inconsistent with TVA's objectives to provide quality dispersed recreation experiences and opportunities on undeveloped lands.

TVA disagrees that the eight CEs of other agencies do not support the new CE. The CEs of other agencies need not be identical to TVA's CE to provide support; these CEs are comparable, similar and relevant to TVA's CE because they address the same types of actions.

An example action listed in the proposed CE 22 was the "stabilization of sites." TVA notes that dispersed recreation sites such as trails or primitive campsites are more likely to be much smaller

in size than developed TVA recreation sites that are more accessible to the public (e.g., campgrounds, picnic areas, trailheads). Establishing and maintaining a dispersed recreation site typically requires less intense, smaller-scale activities. The stabilization of dispersed recreation sites or facilities differs from the stabilization of shoreline addressed in the NRP. The term “stabilization of sites” in the context of dispersed recreation management may apply to minor actions at a discrete site or portion of a site or facility to address overuse or erosion or to make the site or facility more resilient to impacts. For instance, rock cribbing may be added along a trail to address erosion or wear from use. To stabilize the trail section or campsites, TVA would “harden” the site to concentrate impacts to one area (e.g., a tent pad) and reduce impacts to adjacent vegetation and soils consistent with Leave No Trace principles. Because the term “hardening of sites” is a term more often used by TVA specialists and outdoor recreation professionals than “stabilization of sites,” TVA has revised the CE to include both “hardening” and “stabilization” of site. The change would be a better example of a covered action because it is more familiar.

Subpart C - Proposed CE 23 (Public Use Areas)

50. TVA should either adjust CE 23 so that it complies with the requirements of NEPA, or it should withdraw it as a CE.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA revised this CE to include example activities and to add a spatial limitation on activities. The examples improve clarity and transparency regarding the types of actions that fall under the CE; the spatial limitation is included to ensure that the CE is not used for projects that would result in significant environmental impacts. Because these are the only revisions proposed by TVA for this CE, TVA did not provide additional analysis in the Supporting Documentation as it did for new CEs. TVA has not developed and does not foresee the potential development of public use areas in the manner described by the commenter. Further, under CEQ regulations and the final rule (§ 1318.200(c)), any use of CEs that would result in the impermissible segmentation of a larger project into smaller parts is prohibited.

Subpart C - Proposed CE 24 (Use of TVA Property)

51. CE 24 lacks specificity and should either be revised by TVA so that it complies with the requirements of NEPA or withdrawn.

(Commenter: Amanda Garcia/SELC)

TVA Response: The revisions to this CE do not expand its scope. TVA has changed the definition to improve clarity and added an example of recreational use that has commonly been covered under this CE in the past, as discussed in TVA’s Supporting Documentation. The term “minor” will remain in the CE to serve as a limit; a reasonable interpretation will continue to be applied to the term. Because the changes to the definition are minor and the scope of the category is not expanded, the Supporting Documentation provided only a summary of the changes.

Subpart C - Proposed CE 25 (Property Transactions)

52. Proposed CE 25 would allow TVA to sell, lease, or transfer land, as well as the accompanying mineral rights, landrights, and structures, as long as TVA determines that these acts are “minor,” a term that, left undefined and without appropriate context or other limits, provides TVA unfettered discretion. TVA should revise the CE to comply with NEPA or withdraw the CE.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA’s changes to the definition of this CE are intended to clarify the actions covered and to add examples of actions (e.g., rights in ownership of permanent structures); CEQ encourages the inclusion of examples in the definitions of CEs. The definition includes “lease” to reflect that all transfers of property or rights would be covered; impacts of leases of properties are substantially similar to property transfers. The term “minor” remains in the definition of the CE as a narrative limitation. TVA will continue to apply a reasonable interpretation to this term and will ensure that the CE is not applied to major actions with significant environmental effects. The use of the term “minor” does not give TVA unfettered discretion to apply the CE without context or limits. The plain meaning of this term as well as the “extraordinary circumstances” provision would limit TVA’s discretion. TVA notes that the other agency CE definition identified by the commenter includes stipulations to review proposals for impacts and extraordinary circumstances. Because TVA’s process for determining whether it is appropriate to apply any CE to a proposed action requires a review of extraordinary circumstances and the proposed action’s impacts, adding such text to this CE definition is unnecessary. TVA has adopted the final rule to ensure that its decisions are made in accordance with the policies and purposes of NEPA.

Subpart C - Proposed CE 24 (Use of TVA Property) & CE 25 (Property Transactions)

53. Proposed CEs 24 and 25 are too broad and could be misconstrued. TVA should break the CEs into multiple, separate CEs to improve clarity.

(Commenter: Lindsay Gardner/TWF)

TVA Response: Based on TVA’s experience in applying CEs 24 and 25 since 1980, the types of actions that may be covered under the CEs are not too broad or subject to misapplication. Actions of each category are reasonably similar in nature and potential impacts from actions in each category are generally similar. In revising its procedures, TVA weighed each CE to determine whether the category should be broken into separate CEs to improve clarity. In some cases, TVA identified a need to split categories but in other instances, had no reason to create new CEs based on past experiences. TVA determined that while some clarification may be found in splitting certain CEs, it must also consider the merit of minimizing changes to its list of CEs. Where a need was not evident, as in the case of these two CEs, TVA opted to not make additional revisions to its procedures.

Subpart C - Proposed CE 26 (Section 26a Permitting Approvals)

54. *Proposed CE 26 lacks specificity; it should be revised to comply with NEPA or withdrawn. (Commenter: Amanda Garcia/SELC)*

TVA Response: The comments do not specifically address the addition by TVA of an example action covered by the CE. The only proposed change to this CE is the replacement of the term “boat docks” with “boat docks and ramps.” This is needed to clarify the types of actions addressed by this CE. TVA’s Supporting Documentation addresses this change; TVA did not provide additional analysis in the documentation because no other changes were proposed. The term “minor” has been used in this CE since 1980 and is understood by TVA staff. CEQ and TVA procedures forbid segmentation of activities. For reasons stated above, TVA did not establish documentation requirements for its CE.

Subpart C - Proposed CE 26 (Section 26a Permitting Actions) & CE 27 (TVA Shoreline Actions)

55. *The Department of the Interior expressed concern over the potential damage to existing shoreline habitation for vegetation and other aquatic life resulting from new boat ramps and the installation of minor shoreline structures or facilities (covered under CEs 26 and 27). (Commenters: Cheryl Kelly, Janet Mizzi)*

TVA Response: Approvals of minor shoreline structures and facilities are among TVA’s most commonly reviewed actions. As explained in the Supporting Documentation for the CEs, TVA reviews up to 2,000 approvals under Section 26a of the TVA Act annually. Many such actions have included construction by TVA or others of boat ramps. Boat ramps are included in the text of CEs 26 and 27 to provide clarity about their inclusion in actions covered under these CEs. TVA specialists complete an environmental review checklist (i.e., CEC) for each of these actions to ensure that there are no extraordinary circumstances associated with the proposal. The impacts to shoreline habitation for vegetation and other aquatic life is considered during the review. The standard permit conditions applied to permit holders further reduce the potential for adverse impacts.

Subpart C - Proposed CE 27 (TVA Shoreline Actions)

56. *TVA should either revise or withdraw CE 27 because it lacks specificity and does not comply with the requirements of NEPA. The CE should be revised to correct that bank stabilization is a management practice. (Commenters: Amanda Garcia/SELC, Lindsay Gardner/TWF)*

TVA Response: As noted above, TVA reviews up to 2,000 actions a year involving installation of shoreline structures, primarily in response to applications by private homeowners residing along reservoir shorelines. This CE was added to TVA’s procedures because the CE established for such actions in 1980 did not explicitly allow TVA to apply the CE for its own actions, despite the fact that the impacts of such TVA projects are substantially the same. Such actions, whether conducted by applicants or TVA, are very common, as noted in TVA’s Supporting Documentation.

The spatial limitation of 0.5 mile for stabilization projects is intended to ensure that actions under this CE are minor in nature. To identify a spatial limit for the definition of this CE, TVA reviewed environmental records of over 800 separate actions to identify an appropriate limit to the distance for the length of stabilization projects. The Supporting Documentation notes that over two dozen EAs completed by TVA for shoreline or streambank stabilization and/or installation of riprap materials were reviewed, with an average length of over 1.5 mile of riprap per project. When considering past projects that were categorically excluded, the average length of projects was found to be smaller than 1.5 miles. Rather than establish a 1.5-mile limit based on TVA's evaluation of past EAs for shoreline or streambank stabilization, TVA establishes a shorter linear distance as a limit because most of the projects it reviews are much shorter than 1.5 miles in distance. TVA identified 0.5 mile as the spatial limit for the CE because TVA experience in numerous projects supports at least this distance.

Based on the suggestion by a commenter, TVA made a minor grammatical revision to the definition of CE 27 in the final rule to improve clarity. .

Subpart C - Proposed CE 27 (TVA Shoreline Actions) & CE 33 (Cultural Resources Protection)

57. The Department of the Interior requested that TVA consider modifying Proposed CEs 27 and 33 due to the impact they may have on aquatic life along the shorelines. The proposed CEs may not encompass all problems that would face construction on the shorelines. For significant projects TVA might even be able to consult the U.S. Fish and Wildlife Service without the use of CEs.

(Commenters: Cheryl Kelly, Janet Mizzi)

TVA Response: TVA acknowledges that stabilization actions under the CE have the potential to directly impact benthic fauna and other aquatic habitat. TVA reviews each proposal for potential impacts to sensitive resources, including federally protected species. Such reviews would continue under the CEs as TVA reviews for extraordinary circumstances (as noted above, TVA has revised its extraordinary circumstances as suggested by the Department of the Interior to clarify the review for impacts to federal special status species). TVA has revised its Supporting Documentation to address potential impacts to benthic fauna and other aquatic habitat; the draft Supporting Documentation released for public review should have addressed these potential impacts. Based on experience and extensive environmental review of past projects, TVA has determined that such actions would not result in significant environmental impacts.

Subpart C - Proposed CE 28 (Modifications to Land Use Allocations in TVA Plans)

58. TVA should either adjust the proposed CE 28 so that it complies with the requirements of NEPA, or it should withdraw it as a proposed CE.

(Commenter: Amanda Garcia/SELC)

TVA Response: The scope of CE 28 is limited to minor land allocation modifications and would not affect broad swaths of lands. TVA has made several revisions to the CE in the final rule.

TVA revised the definition of the CE to clarify that the only modifications to land use plans covered by the CE are changes to land use allocations. In addition, the CE would only apply to such allocation modifications that are proposed “outside of a normal planning cycle.” This clarification is added because TVA only considers minor allocation changes outside of a normal planning process under limited circumstances. TVA’s land plans and policies (e.g., NRP, Comprehensive Valleywide Land Plan, Land Policy, and Shoreline Management Policy) limit the types of revisions that can be made to land plans prior to development of the next plan for that reservoir. Outside of a normal land planning cycle, revisions to land use allocations in land plans can be made to correct administrative errors that occurred during the planning process. Further, land use allocation changes occurring outside of a normal planning cycle are to be made consistent with TVA’s Land Policy. Specifically, the Land Policy provides, “TVA shall consider changing a land use designation outside of the normal planning process only for water-access purposes for industrial or commercial recreation operations on privately owned backlying land or to implement TVA’s Shoreline Management Policy.” Allocation changes for other purposes would occur during the normal land planning process. Updates to land plans within the normal land planning cycle, whether it be for a portion of a reservoir, an entire reservoir, or a group of reservoirs, involves the preparation of an EA or EIS. The new CE would apply to land use allocations outside of a normal planning cycle and would not apply to land planning efforts within the normal planning process.

Also, TVA made minor revisions to the scope of the CE. The proposed CE addressed four types of land use plan modifications: changes to address minor administrative errors; changes to incorporate new information (when consistent with a previously-approved decision); allocation changes to a more restrictive or protective allocation; and minor allocation changes to implement TVA’s shoreline and land management policies. Upon further review of the CE and after considering the public comments, TVA removed from the scope of the CE the amendments to land use allocations to a more restrictive or protective allocation (if consistent with other TVA plans and policies). Such proposals are unusual and would not generally occur outside of the normal planning process. In addition, TVA added a spatial limitation of 10 acres to the final action covered by the CE, thereby limiting the amount of land affected by a land use allocation modification that occurs outside of a TVA planning cycle. The acreage limit is similar to the general limitation applied to other CEs in the final rule.

TVA notes that the “shoreline or land management policies” referenced in this CE are those relating to the Shoreline Management Policy and TVA’s Land Policy. TVA has revised its discussion of this CE in its Supporting Documentation to provide additional explanation and background information on its land use planning practices and the types of actions and requests that may precipitate the need to consider such minor land use allocation changes.

TVA disagrees that the cited EAs and EISs and the benchmarked CEs of other agencies do not provide support for this CE. TVA finds that because those EAs, EISs and other agency CEs concern similar project with similar scopes, they provide additional support for TVA’s determination that allocations changes that are minor and limited in scope do not result in

significant environmental impacts. Other assertions made regarding the segmenting of actions contemplated in a tiered programmatic document and the need for documentation requirements are addressed by TVA in other responses..

Subpart C - Proposed CE 29 (Wetlands, Riparian & Aquatic Ecosystem Improvements)

*59. TVA should either revise CE 29 so that it complies with the requirements of NEPA or withdraw it. The acreage limitation is too large for actions in these habitats. In addition, TVA may segment such activities, which is not appropriate, and does not provide sufficient information in its Supporting Documentation to substantiate the new CE.
(Commenter: Amanda Garcia/SELC)*

TVA Response: Based on extensive experience in conducting minor natural resource management actions, TVA has determined that certain actions would not result in significant environmental impacts. As noted in the Supporting Documentation, TVA has proposed this CE to more efficiently implement projects to maintain or restore the natural functions of these resources, consistent with objectives in its NRP and other TVA policies.

After publication of the Notice of Proposed Rule, TVA staff had further deliberations about the acreage figure identified in the definition of CE 29 that was intended as a spatial limitation for this category of actions. TVA had proposed that a 125-acre limitation would generally apply for the CE because, as discussed in the Supporting Documentation, the limitation would be consistent with limitations of other proposed CEs. Based on additional consideration, a limitation of 10 acres is more appropriate given the sensitive nature of wetland, riparian and aquatic ecosystems. In addition, the 10-acre limitation more accurately reflects TVA's past experiences in implementing projects in these types of ecosystems. The definition of CE 29 was revised accordingly in the final rule.

When applying CE 29, TVA would use a CEC to determine whether extraordinary circumstances exist for each proposed action. Qualified TVA specialists will review whether the actions have the potential to significantly impact environmental resources and will consider whether measures are necessary to mitigate impacts and resolve extraordinary circumstances. Existing current resource data will be used or new field data will be obtained when needed. The final rule provides that during this review TVA may resolve the potential impacts through mitigation. The CEC review ultimately determines whether it is appropriate to use a CE for the action or whether additional environmental review is needed. The use of a CE for an action does not relieve TVA from compliance with other statutes or consultations, including, for example, the ESA or NHPA.

CEQ regulations prohibit the practice of segmenting projects into smaller components in order to avoid finding a significant impact of a project considered as a whole. TVA complies with this regulation, as reflected in § 1318.200, which includes direction to avoid segmenting larger projects into small parts when applying CEs. Environmental staff is responsible for screening out this type of activity and ensuring that larger projects are reviewed in their entirety. TVA staff would not use CE 29 for restoration or enhancement activities that are proposed across a wide area, as asserted; the CE would be used for discrete actions within the same area or immediate vicinity.

TVA disagrees that the Supporting Documentation is insufficient. The NRP EIS and other cited NEPA records provide important support that these restoration and enhancement actions do not typically result in significant environmental impacts. The NRP EIS states that TVA would conduct “appropriate” levels of review when specific implementing actions are proposed; it does not state that EAs or EISs would be necessary to review minor, implementing activities. As previously stated, the Supporting Documentation is intended to provide information to substantiate TVA’s determination that certain actions do not result in significant impacts. CEQ’s 2010 guidance affirms that agencies may rely on previously implemented actions and associated NEPA records to substantiate new CEs; TVA does not find that it is inappropriate to cite only to TVA EAs or EISs to support this and other CEs. TVA notes that the Supporting Documentation also provides supporting information from very similar CEs promulgated by other federal agencies, including agencies with land management and conservation responsibilities (e.g., the Forest Service, Department of Homeland Security, Fish and Wildlife Service, and the Natural Resources Conservation Service).

Subpart C - Proposed CE 30 (Land Management & Stewardship)

60. TVA should either revise CE 30 so that it complies with the requirements of NEPA, or withdraw it.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA cites to previous responses regarding the potential for segmentation of actions, the NEPA documents cited by TVA in its Supporting Documentation, and the appropriateness of using a CE for NRP implementing actions.

In addition, comments also asserted that two of the 19 CEs cited by TVA in benchmarking provide insufficient support for CE 30. TVA included several examples of actions in CE 30, as was done by the Bureau of Land Management for its CE C8. TVA cites to six Forest Service CEs and addresses the comparability in the Supporting Documentation, acknowledging that certain Forest Service CEs do not directly address certain TVA actions in CE 30. When benchmarking to other agencies’ experiences, as described in the Supporting Documentation, TVA found numerous applicable and comparable CEs that provide additional support to TVA’s determination that such actions qualify for a CE.

Subpart C - Proposed CE 31 (Forest Management)

61. Proposed CE 31 lacks specificity, impacts of such actions are significant, and cited EAs, EISs, and benchmarked CEs do not support TVA’s determination. TVA did not take a hard look and is playing a shell game by establishing a CE for actions addressed under programmatic NEPA, and documentation should be defined in the final rule. For these reasons TVA should revise or withdraw the CE.

(Commenter: Amanda Garcia/SELC)

TVA Response: The comments relating to the definition of the CE (e.g., use of the limiting terms and failure to specify the geographic area when conducting actions), the potential that such

actions may result in significant impacts, the adequacy of the EAs and EISs cited in the Supporting Documentation, and the appropriateness of using CEs for certain natural resource program actions have been previously asserted; the responses above are equally applicable here.

Again, TVA notes that information in the Supporting Documentation includes a summary of relevant NEPA documents to substantiate CE 31. The experiences of TVA and the implemented projects cited by TVA in the document support TVA's determination that such activities, when limited, would not result in significant impacts. The CEs of other agencies cited in the document provide further support; TVA notes that the Forest Service and Bureau of Land Management CEs are similar in nature but acknowledges in the Supporting Documentation that there are differences (e.g., in spatial limitations). TVA believes, however, that these CEs of the other federal agencies address similar activities as TVA's CE 31 and provide additional support for TVA's determination.

Subpart C - Proposed CE 32 (Invasive Plant Management)

62. TVA should either revise CE 32 so that it complies with the requirements of NEPA or withdraw it.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA disagrees that the CE lacks sufficient specificity or clarity. TVA staff in NEPA, Environmental Operations and Compliance, and Natural Resources reviewed the definition of the CE and found that actions specified therein are clear and well-understood. The CE is defined to describe common actions conducted by TVA to manage invasive plants. These actions do not result in significant environmental impacts if conducted in adherence to the spatial limits. TVA has extensive experience in conducting these types of vegetation management actions and, as noted in the Supporting Documentation, has reviewed similar actions under a CE in the past. TVA has determined that for many natural resource management actions that would implement its NRP, the CE provides an appropriate level of site specific environmental review.

As previously stated, TVA would conduct a review of all actions falling under this CE using a CEC to determine whether extraordinary circumstances exist and document its findings. Qualified TVA specialists will review whether the actions have the potential to significantly impact environmental resources, including sensitive bat species, and will consider whether measures are necessary to mitigate impacts and resolve extraordinary circumstances. The CEC checklist review ultimately determines whether it is appropriate to use a CE for the action or whether additional environmental review under an EA or EIS is needed. TVA also disagrees with assertions relating to the relevance of the benchmarked CE of the Forest Service; the Forest Service CE includes vegetation control activities, including the application of herbicides.

Subpart C - Proposed CE 29 (Wetland, Riparian & Aquatic Ecosystem Improvements), CE 30 (Land Management & Stewardship), CE 31 (Forest Management) & CE 32 (Invasive Plant Management)

63. TVA's procedures for project planning under proposed CEs 29, 30, 31 and 32 are unclear. TVA stated in its NRP EIS that it would perform "site and/or activity-specific environmental

reviews” for such activities. If the activities are covered under the CEs, what environmental review process will TVA use?

(Commenter: Sally Palmer/TNC)

TVA Response: TVA’s determination that certain natural resource management actions would not result in significant environmental impacts is based on extensive experience in conducting these minor actions. As noted in the Supporting Documentation, TVA has conducted many of these actions under CEs in the past. TVA has determined that for many actions addressed under its NRP, the CE provides an appropriate level of site-specific environmental review. As noted above, CEs are not exemptions or waivers of NEPA reviews and TVA would conduct a review of all actions falling under CEs 29, 30, 31, and 32 using a CEC. Qualified TVA specialists review each action to determine whether it is appropriate to use a CE for the action or whether additional environmental review in an EA or EIS is needed due to any extraordinary circumstances. The use of a CE for an action does not relieve the TVA entity from compliance with other statutes or consultations, including, for example, the ESA or NHPA.

Subpart C - Proposed CE 35 (Wells)

64. Proposed CE 35 lacks the specificity required by CEQ and NEPA to ensure that actions would have little potential for significant impacts. Commenters suggested various changes, including eliminating the CE entirely, removing groundwater supply wells from the category of actions, applying a low volume limit on covered water supply wells, eliminating its applicability to other types of wells (e.g., oil and gas), and providing clarification for determining what is “low potential” during site characterization. The water quality incident in Shelby County, Tennessee, reflects the need for more stringent reviews under NEPA and it would be inappropriate to apply a CE for water wells.

(Commenters: Ward Archer, Scott Banbury, Amanda Garcia/SELC, Lindsay Gardner/TWF, Sally Palmer/TNC)

TVA Response: Based on consideration of the comments received, TVA has revised this CE to apply a limit to the installation or modification of low-volume groundwater withdrawal wells. TVA had not intended the CE, as proposed, to be used for installing wells for high volumes of water withdrawal. For wells with such high volumes of withdrawal, TVA would complete an EA or EIS of such actions, as was done at TVA’s Allen Fossil Plant.

By comparison, TVA has extensive experience installing small-scale groundwater monitoring and withdrawal wells, including low-volume wells for potable water use at facilities in remote locations (e.g., campgrounds). TVA does not agree with one commenter’s assertion that there is a substantial difference in the types of potential environmental impacts associated with establishing and operating groundwater withdrawal wells for supply and groundwater withdrawal wells for monitoring, based on TVA’s experience in installing and conducting environmental reviews for low-volume groundwater withdrawal wells. As noted in the Supporting Documentation, the digging, drilling, boring and associated activities that occur when wells are installed do not vary greatly based on the well’s purpose. The scope of work is similar whether the well is installed for water withdrawal or water monitoring.

Regarding comments on plugging of wells, TVA agrees that there are differences in the nature of plugging of groundwater wells and oil or gas wells at the end of their operating lives. However, the commenter's specific concerns about oil or gas wells relate to the potential for adverse effects that these wells pose if not properly plugged, rather than the impacts associated with TVA's actions to plug groundwater wells. The intent of plugging groundwater wells is to address the threat to public safety and water and air quality posed by the wells. To reduce the potential for confusion regarding what the "abandonment" of a well involves, TVA revised the text of the CE in the final rule by deleting "and abandonment" from the text and adding clarification that wells would be plugged at the end of their operating life.

The CE includes a statement limiting its use to circumstances when there is "low potential for seismicity, subsidence, and contamination of freshwater aquifers." The inclusion of this text ensures that TVA reviews for the potential for such circumstances prior to determining whether a CE may be used for an action. Those qualified to make such determinations would be employed to make such determinations. Information provided in the Supporting Documentation provides an adequate summary of TVA's experience, previously implemented actions, and benchmarking to other agency CEs.

Finally, TVA received numerous comments stating that the water quality incident at its Allen plant in 2017 is a result of its installation of wells for cooling water. Studies do not show a link between the TVA action and the poor water quality findings. Equally important, this CE is not for high-volume withdrawal wells such as those at the Allen plant. To ensure its application only to small, local groundwater withdrawal wells, the definition of the CE was revised to further limit the application of this CE to "low-volume" 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."

Subpart C - Proposed CE 36 (Facilities-Based, Routine, In-Kind Activities)

*65. CE 36 sweeps in far too much, and would exempt from NEPA review exactly the sort of activities that should be reviewed under NEPA. CE 36 should be withdrawn, or at the very least, TVA should promulgate requirements that would require that application of CE 36 be documented and be made publicly available on TVA's website.
(Commenter: Amanda Garcia/SELC)*

TVA Response: As previously noted, CEs are not exemptions from or waivers of NEPA review; they are simply one type of NEPA review. Among the actions falling under CE 36 are some of TVA's most common, routinely implemented actions to maintain operations of its facilities and equipment. Covered actions are very minor, with little or no new ground disturbance, and a minor potential for new pollutant emissions streams. This CE only applies to existing buildings, infrastructure systems, facilities and grounds, and operating equipment at TVA locations; actions that require new or revised permits are not covered by this CE.

As demonstrated in the Supporting Documentation, TVA has many years of experience with the routine operation, repair or in-kind replacement, and maintenance activities for existing buildings, infrastructure systems, facility grounds, and operating equipment. Many of these activities are considered so routine, and have been repeated so often that TVA estimates it has

documented the lack of significant impacts of these types of actions in hundreds of CEs. Based on over 30 years of experience with assessing the impacts of the actions covered in CE 36, TVA believes that in the absence of extraordinary circumstances, these are repetitive actions that have been shown to have negligible effects. Decisions about the appropriate level of NEPA review for TVA actions are made by qualified environmental specialists, staff attorneys, and informed project managers, based on project descriptions including maps, photographs and drawings as appropriate. A project screening review team facilitates this process.

The terms used in the definition of the CE (e.g., routine, in-kind, replacement, maintenance) are well understood by TVA staff. The CE provides clarification of how these terms are used and terms are given context through the examples. In the third sentence, the term “substantial change” is used when describing a limitation: the category does not include actions that result in a substantial change in the design capacity, function, or operation of a facility, system, or equipment. TVA notes that this term refers to the extent to which an existing facility, system or equipment is changed, rather than the extent to which those changes would affect the environment. As stated in the second sentence of the CE, actions would be limited to those which do not alter the current condition or location of the facilities, systems or equipment for use for designated purposes. TVA notes that portions of these statements are based on the definition of the Department of Energy (DOE) CE (B1.3), which includes similar factors that constrain its use. Nevertheless, TVA has deleted the term “substantial” from this sentence to avoid potential confusion by TVA staff in the application of the CE. Likewise, TVA also reviewed the use of the word “substantially” under item (a) of CE 36 and has deleted it from the description of the example action to avoid confusion.

Commenters also assert that “a category of action is only appropriate for a CE if those activities are incapable of causing significant environmental impact” and that “[f]or something to be categorically excluded, it should never have significant environmental effects.” However, Federal agencies, in developing their NEPA procedures, are required to consider extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” See 40 CFR 1508.4. CEQ describes such extraordinary circumstances as “factors or circumstances in which a normally excluded action may have a significant environmental effect....” (75 FR 75629, December 6, 2010). CEQ’s recognition that there are circumstances in which a category of actions that are categorically excluded may nevertheless result in significant impacts serves to caution agencies to use the “extraordinary circumstances” provision to cull out any particular action from a CE category that may have a significant effect. In TVA’s Supporting Documentation, TVA described categories of actions that do not have significant impacts, but was mindful that extraordinary circumstances may exist that apply an exception to the rule.

In the June 2017 release of the document, TVA’s use of the terms “typically” or “normally” in some CEs was apparently misinterpreted by some commenters. TVA’s intent for each of its conclusions for each category of actions is to affirm that it has determined that the actions do not result in significant impacts, under normal circumstances. The use of terms like “typically” or “normally” should not be interpreted as determinations by TVA that these activities have significant impacts. The Supporting Documentation has been revised, where appropriate, to avoid such confusion.

66. *The Virginia Department of Historic Resources expressed concern with the wording in CE 36 that refers to structures less than 50 years old that will receive routine maintenance. This official suggested that TVA include the need to consider historic properties in the introductory section on “extraordinary circumstances.”*
(Commenter: Ethel Eaton)

TVA Response: Under the final rule, TVA has included the potential for an action to significantly impact cultural or historic resources as an extraordinary circumstance to consider prior to use of a CE (§1318.201(a)(1)(iii)). Because actions under CEs 36 and 37 pertain to maintenance and potential modifications to buildings and structures, TVA included text to the examples listed under CEs 36 and 37 that limit the application of these CEs to activities at structures and buildings that are less than 50 years old. This limitation is intended to ensure proper consideration of potential impacts to cultural or historic resources and of the possible need to conduct consultation under Section 106 of NHPA. As noted above, TVA also added to the final rule a statement that the use of a CE for an action does not relieve TVA from compliance with NHPA.

Subpart C - Proposed CE 37 (Facilities-Based Upgrades & Modifications)

67. *Proposed CE 37 is inconsistent with the requirements of NEPA, and the actions covered by proposed CE 37 are exactly the sort that should be subjected to NEPA analysis. It is inappropriate to benchmark to the DOE’s CEs. TVA should withdraw the CE.*
(Commenter: Amanda Garcia/SELC)

TVA Response: TVA has extensive experience in completing routine and minor actions to modify, upgrade, uprate and complete other activities at its existing facilities, grounds and equipment. The covered actions are necessary to maintain current facility infrastructure, grounds, and equipment. In addition to the spatial limitation (10 acres) applying to this CE, several additional limitations are included in the definition of actions listed under items (a) through (g).

Since 1980, activities under CE 37 have been categorically excluded under 5.2.1 of TVA’s previous procedures. TVA believes that replacing the very broadly defined and widely used CE 5.2.1 is necessary to provide more specific definitions and examples to TVA staff of categorically excluded actions. Generally, TVA’s consideration of such activities would not change; the level of review would be similar under the final rule. Under CE 37, TVA will conduct a review of the proposed action using its CEC. The determination of the potential for any significant impact due to extraordinary circumstances is made during the completion of the CEC review by a qualified multidisciplinary team of experts. Should extraordinary circumstances reflecting the potential for significant effects be identified during this review, TVA staff would complete a higher level of NEPA review.

TVA’s statement in its Supporting Documentation that such actions “under normal circumstances” do not have a significant effect on the human environment articulates TVA’s determination that a CE is appropriate for these actions, if TVA verifies that no extraordinary circumstances exist that may require TVA to conduct additional environmental review. TVA notes that the examples given by the commenter (such as boiler expansions that would

dramatically change the output of a generator or the lifespan of the unit) are not covered under this CE because such components are major pieces of equipment (under item (a) of the CE). Further, the definition of the CE specifically limits its use under item (b) to modifications that do not substantially change emissions or discharges beyond current permitted levels. Other limitations are included in items (e), (f) and (g), which provide additional factors for consideration prior to use of the CE. TVA found that the DOE CE is similar in nature and provides additional support for TVA's determination that such actions, as limited, do not result in significant impacts.

Subpart C - Proposed CE 38 (Siting, Construction & Operation of Buildings)

*68. The current language of proposed CE 38 is too broad and would allow TVA to construct new facilities anywhere without the completion of an EA or public input.
(Commenter: Sally Palmer/TNC)*

TVA Response: The construction of new buildings and associated infrastructure in small areas are activities common to TVA. TVA has extensive experience in conducting environmental reviews of actions impacting less than 10 acres of land previously not disturbed by human activity or 25 acres of land so disturbed. TVA's extensive experience and environmental records support its conclusion that such actions, as limited in the CE, would not result in significant impacts. TVA notes again that CEs are not exemptions or waivers of NEPA review; rather, they are simply a type of environmental review. TVA will continue to review proposed actions to ensure that extraordinary circumstances are not present that would prevent the application of this CE. The appropriate reliance on CEs to consider minor actions with little potential for significant effects provides a reasonable, proportionate, and effective analysis of the impacts of the action.

CE 38 would not apply to the siting, construction, and use of new power generating facilities. The CE is intended to address only buildings and associated infrastructure (e.g., parking areas, utility lines serving the building). To improve clarity, TVA added an example of associated infrastructure to the definition of the CE. After considering the comment, TVA reviewed its Supporting Documentation and revised the discussion to clearly express TVA's intent that the CE would not apply to new construction of power generation facilities.

Subpart C - Proposed CE 38 (Siting, Construction & Operation of Buildings), CE 43 (TVA Property Access) & CE 45 (Renewable Energy Sources at Existing Facilities)

*69. TVA should change the 10-acre limit in proposed CEs 38 and 43 to 5 acres and the 25-acre limit to 10 acres, respectively.
(Commenter: Lindsay Gardner/TWF)*

TVA Response: The suggestion is noted. The commenter did not explain why the suggested limits would be more appropriate. TVA's own experience provides adequate justification for the use of these limits.

Subpart C - Proposed CE 42 (Road Improvements)

70. The Department of the Interior recommended adding the installation or replacement of small scale bridges to the listed actions under this CE (when such structures may facilitate improved fish and wildlife passage) and suggested that TVA evaluate potential modifications to existing roadways that intersect aquatic resources as to make sure a beneficial impact is occurring for aquatic resources. The Department also noted that TVA should evaluate how it will address the potential impacts from constructing or replacing culverts and consider modifying CE 42 concerning the issue. Finally the Department noted that CE 42 allows for ground disturbance pertaining to TVA projects, and recommends modifying the language to encompass parameters when the CE can be used

(Commenters: Cheryl Kelly, Janet Mizzi)

TVA Response: TVA's CE for improvements to existing roads, trails, and parking areas includes several example actions; however, covered actions are not limited to the example actions listed. A reasonable interpretation of the CE would allow for limited improvements to roadways that include small-scale bridge installation, particularly if the bridge installation may result in fewer impacts to aquatic resources than culvert installation. TVA acknowledges that road improvement activities may result in impacts to the environment but limits the use of the CE only to minor expansions of existing roads, trails and parking areas, thereby limiting the extent of such impacts. TVA would complete a review using a CEC for each action under CE 42 to ensure extraordinary circumstances and potential impacts of the action are considered.

Subpart C - Proposed CE 45 ((Renewable Energy Sources at Existing Facilities)

71. Several commenters expressed concern with the scope of actions covered under CE 45. Two commenters recommended that TVA revise its proposed CE 45 and delete items (c) and (d) from the list of covered actions, which address a small number of wind turbines and small-scale biomass power plants, respectively.

(Commenters: John Campbell, Lindsay Gardner/TWF)

TVA Response: Upon further consideration, TVA has removed items (c) and (d) from the list of covered actions of CE 45. TVA reviewed these actions again and concluded that it is unlikely to pursue the installation of wind turbines at its facilities in the foreseeable future. Further, lack of extensive experience assessing the impacts of wind turbines cautioned TVA against placing this category of actions under a CE. For the same reasons, TVA removed actions associated with small-scale biomass power plants from this CE in the final rule.

72. TVA should either adjust CE 45 so that it complies with the requirements of NEPA or withdraw it as a proposed CE. CE 45 is too broad in its current language regarding several potential renewable energy activities that would fall under the new CE. According to this person, the broad language does not encompass projects that should fall under the NEPA process.

(Commenters: Amanda Garcia/SELC, Sally Palmer/TNC, Courtney Shea/Tennessee Interfaith Power and Light)

TVA Response: TVA does not consider the CE to be too broadly defined. TVA notes that actions may only be implemented at an existing TVA facility to limit its impacts and reduce the likelihood for conflicts. When reviewing whether an action falls within a CE, TVA must ensure that no extraordinary circumstances relating to the proposed action are present and whether the action has the potential to significantly impact environmental resources (see § 1318.201(a)). Because the potential for significant impacts is considered when determining whether to use a CE, adding such a limit to the definition would be redundant. A TVA interdisciplinary team would review each proposal and complete a review checklist before using the CE.

TVA's Supporting Documentation summarizes TVA's findings and information that supports the establishment of the CEs. Actions covered under CE 45 would only take place if they are consistent with TVA's IRP. The TVA IRP and the types of generation choices that TVA would consider would have already been assessed in the IRP and its EIS. Use of CE 45 (through the completion of a CEC) allows TVA to verify that the site-specific impacts of particular generation choices comports with the analysis in the IRP and its EIS.

As described in the Supporting Documentation, this CE is benchmarked closely with those of other federal agencies, primarily the Department of Energy. TVA grouped different energy actions under one CE because all such actions are renewable energy actions and would only be permitted at existing TVA facilities. Further, CE 45 has limitations: it applies to projects covering less than 10 acres of land previously not disturbed by human activity or up to 25 acres of lands so disturbed, consistent with other spatial limits identified by TVA. As noted above, TVA revised this CE in the final rule and removed the wind turbine and biomass power plants from the list of renewable energy actions covered by the category.

73. Proposed CE 45 item (b), which addresses solar photovoltaic systems, should be revised to remove the reference to on-the-ground systems, thereby limiting the category to solar system mountings on existing buildings or structures.
(Commenter: Lindsay Gardner/TWF)

TVA Response: The comment expressing this preference is noted. TVA notes that covered actions would only occur at an existing TVA facility and a spatial limitation would apply.

74. We are opposed to any green field development.
(Commenter: Lindsay Gardner/TWF)

TVA Response: Comment noted.

Subpart C - Proposed CE 46 (Small Hydropower Systems)

75. Commenters expressed opposition to the proposed CE 46 because TVA does not have experience with the construction of drop-in hydroelectric systems. Without this experience, these commenters stated that TVA could not substantiate the CE. According to these commenters, the installation of these hydroelectric systems would disrupt the native biodiversity within the Tennessee River and should not be categorically excluded.
(Commenters: Cheryl Kelly, Janet Mizzi, Sally Palmer/TNC)

TVA Response: Based on public comment and additional internal consideration, TVA withdrew the proposed CE 46 from the final rule. TVA had proposed the CE to include the installation, modification, operation and removal of small, drop-in, run-of-the-river hydroelectric systems. TVA determined that such actions are not foreseeable.

Subpart C - Proposed CE 47 (Modifications to Rate Structure)

*76. Several commenters expressed concern with proposed CE 47, regarding modifications of TVA rate structure. According to two commenters, TVA bases its claim that actions in this category would not have any significant impacts off previous internal reviews of four NEPA filings, wherein TVA stated that the proposed changes could have “negligible or minor effects on environmental resources.” While the scope of those prior rate structure modifications may have been minor, these commenters assert, TVA’s intention to pursue a broad rate adjustment and rate change in 2018 may have impacts that are more dramatic.
(Commenters: Matt Beasley, Stephen Smith/SACE)*

TVA Response: During the public review period for this rulemaking, TVA made public its intention to consider modifications to its rate structure in 2018. TVA received numerous comments expressing concerns that CE 47 would be used for the 2018 rate change. Although such comments relating to a specific proposal are not within the scope of this rulemaking, TVA notes that it did not propose the CE with any specific proposed modifications to the rate structure in mind. The new CE was proposed based solely on past experience. In the case of the proposed 2018 rate change, TVA completed an EA for the proposal and provided opportunity for public review of the analysis; the EA further supports TVA’s conclusion that such actions would not normally result in significant environmental impacts.

*77. CE 47 would reverse TVA’s longstanding practice of analyzing rate changes with rigorous environmental analysis and EISs. The timing of proposing the CE is concerning, given TVA’s plan to update their rate structure in 2018 to specifically address the proliferation of distributed energy resources and energy efficiency across their service territory. It is worrisome that TVA would try to exempt rate changes from environmental analysis just months before a proposed rate change that might affect how renewables and energy efficiency are priced.
(Commenter: Erin Hafkenschiel, Amanda Garcia/SELC)*

TVA Response: As noted above, TVA did not propose the CE with any specific future proposed modifications to rate structure in mind and completed an EA in 2018 to consider the 2018 rate change proposal. TVA NEPA staff first identified the category for consideration as a potential CE more than five years ago, after completing numerous reviews of similar proposals that TVA concluded would result in no significant impacts.

TVA’s experience in reviewing prior rate changes serves to support the conclusion that such actions do not typically result in significant environmental impacts. According to CEQ, such longstanding practices can be used to provide supporting information for the establishment of a CE.

Based on further internal deliberation and consideration of public input, TVA revised CE 47 to simplify it and to omit from the CE's scope any modification that results in minor increases in energy generation. TVA had proposed to apply a reasonable interpretation of the term "minor increases" when applying the CE in the future. However, TVA determined that further limiting the use of the CE to only actions that result in no predicted increase overall TVA-system electricity consumption is more appropriate and ensures that no significant impacts would result from the action.

Although a proposed action may meet the definition of a CE (i.e., may fall within the category of actions), TVA may determine that it would be more appropriate to conduct a more thorough review. According to the final rule, TVA staff would first review the proposal to ensure that it meets the definition of the CE and its limitations. Then, TVA would review the proposal and determine whether any of the extraordinary circumstances defined in § 1318.201 may occur. As described in the Supporting Documentation, TVA interdisciplinary staff completes a Categorical Exclusion Checklist to verify that there are no extraordinary circumstances and to ensure that the action has no potential for significant environmental impacts. If extraordinary circumstances are present and cannot be resolved or the potential for significant impacts exist, TVA would complete a more rigorous analysis in an EA or EIS of the proposed action. Under the final rule, TVA may consider providing public notice when a CE is used if it is determined that the public may have relevant and important information relating to the proposal that will assist TVA in its decisionmaking.

*78. The definition of CE 47 lacks specificity for "minor" increases and the scope of extraordinary circumstances that would constitute the need for an EA or EIS.
(Commenter: Matt Beasley)*

TVA Response: As noted above, TVA has revised the CE's definition to exclude proposals that may result in increases in overall energy use. TVA's procedures directing staff to consider whether the "significance of the environmental impacts ... is or may be highly controversial" are consistent with CEQ's significance criterion (40 CFR 1508.27(4)), which directs agencies to consider "the degree to which the effects on the quality of the human environment are likely to be highly controversial." Guided by existing case law as to what constitutes "highly controversial" actions, TVA will consider controversy over the nature and scale of the impacts (e.g., scientific disagreement relating to the potential impacts), as opposed to mere opposition to a federal project. TVA agrees that it may not be appropriate to use a CE for certain rate change proposals if extraordinary circumstances are present, if TVA finds there to be potential for significant impacts, or if additional review is needed to improve the decision-making process.

*79. TVA's claim in its Supporting Documentation that CE 47 would have similar scope as the DOE CE is inaccurate because the DOE CE includes limitations that CE 47 does not include (referring to DOE CE B1.1 and DOE CE B3.4).
(Commenter: Stephen Smith/SACE)*

TVA Response: The new CE established by TVA for minor rate modifications is based on TVA's own past experience. The DOE's experience provides additional support for the establishment of a CE for TVA rate change proposals with certain limitations applied. TVA

acknowledges that the DOE's mission differs from its own, and the Bonneville Power Authority region differs from the Tennessee Valley region. TVA acknowledges that there are differences in the scope of the DOE CEs and TVA's CE 47. As addressed in the Supporting Documentation, DOE analysis of its CEs draws similar conclusions as TVA's analysis of CE 47: that impacts to the environment would occur only if the rate change involved changes to the operation of generation resources. Accordingly, TVA has limited use of this CE to actions that result in no predicted increases in overall energy use (including any change that may result in system-wide demand reduction). Because of the limitation, and based on its own experience, TVA has determined that such actions do not result in significant environmental impacts.

Subpart D - Environmental Assessments

*80. TVA's NEPA procedures addressing the circulation of findings of no significant impacts for public comment are inconsistent with the CEQ Regulations and guidance.
(Commenter: Amanda Garcia/SELC)*

TVA Response: To ensure consistency with CEQ regulations at 40 CFR 1501.4(e)(2), TVA revised § 1303(d)(1) in the final rule. As previously noted, TVA's procedures do not supersede the CEQ regulations.

*81. TVA's NEPA procedures for EAs discourage early public involvement in projects and are contrary to the CEQ Regulations, which requires agencies to consider whether public comment is "practicable," not whether the public has already been involved. TVA procedures do not reflect CEQ requirements to provide public review of an EA. Where TVA decides that an action described in § 1318.400(a) does not need an EIS, the agency must discuss the basis for this decision in a document that is made available to the public "upon request." Under § 1318.301(c), the EA will be circulated to the public for review and comment, but under § 1318.400(b), the public has to request the document containing the basis for the agency's decision not to prepare an EIS (normally provided for in an EA), and no public comment occurs. TVA should fix this contradiction.
(Commenter: Amanda Garcia/SELC)*

TVA Response: The comments address a contradiction between §§ 1318.301(c) and 1318.400(b). TVA has deleted the phrase "upon request" from § 1318.400(b) to make clear that the EA that forms the basis for not preparing an EIS for actions falling within the categories specified in § 1318.400(a) will be made available for public review.

Further, § 1318.301(a) of the proposed rule has been revised to include text from TVA's previous procedures, established in 1980, regarding public involvement in the preparation of an EA that TVA had proposed to remove from this section. After considering public input on § 1318.301(a), TVA decided to include the text (with minor edits) because it provides general guidance for determining the appropriate level of public involvement in the EA process. In the final rule, TVA also retains the sentence providing that the public's prior involvement may be also considered because often, a TVA EA process occurs concurrently with another regulatory process or environmental review by another agency. During other regulatory processes, the public is often provided a meaningful opportunity to comment on the environmental impacts of a

proposal. When this occurs, TVA will integrate the public review opportunity provided by the other regulatory process into its NEPA review. Consideration of this is consistent with CEQ's regulations requiring an agency to involve environmental agencies, applicants and the public to the extent practicable (40 CFR 1501.4(b)), to reduce delays in the NEPA process (40 CFR 1500.5), and to integrate the requirements of NEPA with other planning and environmental review procedures (40 CFR 1500.2).

82. TVA's procedures for supplementing EAs are inconsistent with NEPA and the CEQ regulations.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA revised § 1318.304(a) in the final rule to clarify that TVA would consider supplementing an EA when there are "important components of the proposed action that remain to be implemented." This text was also added under § 1318.406 addressing supplementing EISs. TVA will continue to comply with CEQ regulations addressing the supplementation of NEPA documents, including those relating to circulating supplemental documents for public review.

83. TVA's procedures are flawed because TVA arbitrarily and inaccurately paraphrases the scope of analysis required in EAs and EISs.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA's NEPA implementing procedures supplement but do not supersede CEQ's NEPA regulations. Under § 1318.302(b) of the procedures, TVA elaborates on the requirements for EAs and addresses each of the CEQ requirements. TVA's use of the term "reasonable alternatives" is consistent with CEQ guidance on the consideration of alternatives (see CEQ's Forty Most Asked Questions (questions 1 and 2) and Attachment A of its 2016 guidance regarding "Emergencies and the National Environmental Policy Act").

CEQ regulations describe EAs as "concise" documents that offer brief discussions of environmental impacts, sufficient to determine whether preparation of an EIS is required and to aid in compliance with NEPA when no EIS is necessary. TVA agrees that determining whether significant impacts may occur from an action is the proper scope of the EA. In the final rule, TVA revised the statement of the proposed rule that EAs should address "important environmental issues" (§ 1318.300(a)) to state that EAs should address "issues that are potentially significant." TVA will continue to conduct reviews that avoid discussions of trivial or irrelevant matters, consistent with CEQ regulations and guidance.

The final rule does not substantively revise procedures relating to the scope of EISs. TVA notes that § 1318.400(d) cites to CEQ regulations addressing the scope and detail of the EIS (40 CFR 1502.10-1502.18).

Subpart E - Environmental Impact Statements

84. Contrary to the requirements of NEPA and the CEQ regulations, TVA proposes to prepare EISs only for a very narrow category of major Federal actions.

(Commenter: Amanda Garcia/SELC)

TVA Response: When determining the scope of its revision to these procedures, TVA considered whether additional categories of actions should be added to the list of actions normally requiring an EIS. Some revisions were proposed and included in the final rule under § 1318.400(a). After further consideration and review of public comments, TVA includes two new actions that will normally require an EIS in the final rule: the development of integrated resource plans for power generation and system-wide reservoir operations plans.

TVA notes that the first two actions listed under § 1318.400(a) include a variety of types of projects. TVA also notes that examples provided by the commenter of categories of projects addressed by TVA in recent NEPA reviews include several that TVA found would result in no significant impacts to the environment.

*85. Wind turbine projects are actions that should normally require an EIS.
(Commenter: Craig Clark)*

TVA Response: Comment noted. The appropriate level of NEPA review would be determined by TVA in accordance with §§ 1318.101 and 1318.400. The size and location of proposed generating facilities would be considered prior to determining whether an EIS would be required.

*86. The procedures addressing the adoption of environmental reviews of other agencies are inconsistent with NEPA and the CEQ regulations. TVA applies under § 1318.407(b), the wrong factors in determining whether an EIS may be adopted, and TVA's procedure relating to what it must do if it is determined that the EIS may not be adopted is inconsistent with CEQ regulations. TVA's procedure under § 1318.407(c), when serving as a cooperating agency, conflicts with CEQ regulations (40 CFR 1506.3(c)).
(Commenter: Amanda Garcia/SELC)*

TVA Response: Based on this comment as well as further deliberation, TVA has revised § 1318.407 in the final rule to ensure that the procedures conform to CEQ regulations. TVA agrees with the commenter that the last sentence of the proposed procedure under § 1318.407(b), which addressed what action TVA would take if it determines that it is not appropriate to adopt an agency's EIS, conflicted with CEQ requirements. TVA revised this statement in the final rule to conform to CEQ requirements. Regarding the comment relating to § 1318.407(c) of the proposed rule, TVA does not find it necessary to restate the CEQ regulation in this case. When TVA concludes that another agency's EIS adequately addresses TVA's proposed action, it is implicit that TVA has determined that the agency addressed TVA's input in a satisfactory manner. Because of revisions, § 1318.407(c) of the proposed rule is now § 1318.407(d) in the final rule.

*87. The procedures addressing records of decision is inconsistent with NEPA and the CEQ regulations.
(Commenter: Amanda Garcia/SELC)*

TVA Response: TVA made the requested edit in the final rule, omitting the word "normally" in § 1318.405(d). TVA notes that § 1318.405(d) and CEQ regulations allow certain preliminary activities that do not result in adverse impacts or limit the choice of reasonable alternatives to occur prior to the issuance of the Record of Decision (40 CFR 1506.1(a)).

88. The procedures for developing EISs inappropriately give TVA unfettered discretion and deprive the public of input into key portions of the NEPA process, including scoping, alternatives analysis, and RODs.

(Commenter: Amanda Garcia/SELC)

TVA Response: Except for minor edits to reflect current TVA organization names, TVA proposed no substantive changes to § 1318.402(a). TVA notes that its procedures clearly state that the initial descriptions of alternatives, environmental issues, and schedules for environmental review are “tentative.” Such early descriptions provided by TVA are essential to initial project planning (including identifying needed resources of funds or staff to conduct the review) and represent good governance; they are critical as well in verifying whether an EIS is appropriate.

Based on TVA’s experience, it is usually ineffective to initiate scoping for public input without providing the public with basic information about a project or how TVA intends to review the proposal. TVA and other federal agencies find that providing such information during scoping improves the public scoping process and, ultimately, the decision-making process. When conducting scoping, TVA will continue to communicate to the public that its determinations about the proposal are preliminary and that scoping is intended to inform and engage the public in order to receive input. In addition, TVA will continue to comply with CEQ regulations by determining when it is appropriate to hold scoping meetings.

89. The procedures addressing the supplementation of EISs are not consistent with NEPA or CEQ’s regulations.

(Commenter: Amanda Garcia/SELC)

TVA Response: In response to this comment, TVA revised the first sentence under § 1318.406. The phrase “and important decisions related to the proposed action remain to be made” has been changed to “and important components of the proposed action remain to be implemented....” As noted above, TVA made a similar change to § 1318.304(a) for consistency. TVA will continue to comply with CEQ regulations addressing the supplementation of NEPA documents, including those relating to circulating supplemental documents for public review.

90. TVA arbitrarily and inaccurately paraphrases the alternatives analysis required in EAs and EISs. Limiting alternative analysis to merely address “key action alternatives” is inconsistent with CEQ regulations.

(Commenter: Amanda Garcia/SELC)

TVA Response: TVA notes that the term “key action alternative” was included in TVA procedures promulgated in 1980 and was not used to limit alternative analysis. In the final rule, TVA changed the term “key action alternatives” to “reasonable action alternatives” (§ 1318.402(g)) to ensure consistency with CEQ regulations. TVA will continue to comply with CEQ regulations and guidance addressing the need to consider reasonable alternatives. The comment also addresses the inclusion of a definition of “practicable” in the final rule. TVA notes that its minor revision to this definition is intended to clarify its use in Subpart G of the final rule.

Subpart F - Miscellaneous Procedures

*91. Procedures addressing mitigation are inconsistent with NEPA and the CEQ regulations.
(Commenters: Amanda Garcia/SELC, Lindsay Gardner/TWF)*

TVA Response: TVA's revision to this section of the procedures was limited to minor changes to clarify roles and responsibilities and to clarify considerations taken into account when determining whether to modify or delete previously-made mitigation commitments. TVA will continue to comply with CEQ requirements and guidance relating to mitigation. Paragraphs (a), (b), (c) and (d) of § 1318.501 reflect the obligation to identify, disclose, implement and monitor these mitigation commitments. Occasionally, circumstances have arisen that require reconsideration of mitigation commitments (in fact, CEQ addresses some of these circumstances in its 2011 guidance relating to mitigation). In those cases, as stated in the final rule, TVA would consider the environmental significance of changes to commitments before modifying or deleting the mitigation commitments (§ 1318.501(e)). This would ensure that TVA considers whether additional NEPA review is needed, including supplementing a NEPA document, prior to modifying the commitment.

TVA notes that § 1318.501 also addresses the identification of mitigation measures in FONSI and, under § 1318.501(a), all measures that mitigate expected significant adverse impacts must be identified in the EA and FONSI. The section also addresses the roles and responsibilities associated with tracking and monitoring the progress of implementing the commitments. If TVA makes changes to mitigation measures that serve as a basis of a FONSI, TVA would reevaluate the FONSI and post the revised FONSI for public review.

*92. The procedures addressing programmatic NEPA reviews are inconsistent with NEPA and the CEQ regulations because they would allow TVA to implement actions prior to completion of the NEPA review and they do not address CEQ guidance relating public involvement and transparency while conducting environmental reviews.
(Commenter: Amanda Garcia/SELC)*

TVA Response: It is not the intent of the final rule to allow interim actions under consideration to be implemented prior to the conclusion of a NEPA review. Section 1318.503(c) addresses implementing actions that have been previously planned and approved by TVA under NEPA. Based on the comment, TVA has revised § 1318.503(c) to make its intent clearer and to reflect that the criteria at 40 CFR 1506.1(c) must be met.

Comments related to the need to incorporate CEQ guidance relating to public involvement and transparency are noted. TVA will continue to complete programmatic NEPA reviews for policies, plans, programs or suite of projects in a manner consistent with CEQ regulations and guidance. TVA finds these reviews to be particularly valuable when establishing program priorities and plans, determining how policies may best be implemented, and planning proposals that may have broad geographic influence. Public involvement in these reviews would comply with CEQ requirements as well as the applicable TVA procedures. When minor actions are proposed that may implement TVA programs, such activities would properly be reviewed to

determine an appropriate level of NEPA review. In some cases, actions may fall within a category of actions and a CE may be used. In others, an EA or EIS may be prepared.

The commenter also suggested adding numerous provisions to the final rule to incorporate the CEQ guidance. These comments are noted. TVA will continue to consider the CEQ's guidance to ensure good NEPA practices are employed during programmatic reviews.

*93. Procedures in Subpart F regarding emergency actions and “unforeseen situations” are inconsistent with NEPA and the CEQ regulations.
(Commenter: Amanda Garcia/SELC)*

TVA Response: In response to the comment, TVA has revised § 1318.510 to make clear that these procedures apply only to emergencies. The term “unforeseen situations” was removed. TVA also made additional minor revisions to this section to ensure consistency with CEQ regulations addressing emergency circumstances.

Subpart G - Floodplains and Wetlands

*94. TVA’s proposed rule improperly sidelines the public in TVA’s decisionmaking regarding floodplains and wetlands because it states that “[p]ublic notice of actions affecting floodplains or wetlands is not required if the action is categorically excluded under Section 1318.200.”
(Commenter: Amanda Garcia/SELC)*

TVA Response: Although TVA did not propose any revisions to the sentence addressed in this comment, TVA considered the comment and, after further deliberation, revised the first paragraph of § 1318.603 to state that public notice will be provided for proposed actions affecting floodplains or wetlands that are subject to the applicable EOs, including categorically excluded actions.

*95. TVA must implement directives in EO 11988 for the Management of Flood Risk in Federal Infrastructure.
(Commenter: Amanda Garcia/SELC)*

TVA Response: TVA’s Class Review of Certain Repetitive Actions in the 100-Year Floodplain (46 FR 22845-46, April 21, 1981) includes a provision that “[a]ll activities will adhere to the minimum standards of the National Flood Insurance Program published at 44 CFR 60.1-60.8, and any future amendments thereto, and comply with local floodplain regulations.” TVA applies the process provided in the Class Review to every proposed action subject to NEPA. The current TVA NEPA procedures pertaining to the disposition of real property were brought forward without change to § 1318.604(a) and (b) and address property in the floodplain conveyed by TVA. Additionally, TVA requires flood-damageable structures and facilities along TVA reservoirs to be located at or above the 0.2-annual-chance (500-year) flood elevation.

*96. TVA should use an informed, science-based approach to evaluate the impacts of its actions on all floodplains and wetlands.
(Commenter: Amanda Garcia/SELC)*

TVA Response: Science-based methods and tools for wetland identification, delineations, and assessment are integral for an accurate analysis to meet NEPA standards. For all proposed projects, TVA specialists conduct an initial wetland review. This initial wetland assessment is conducted using National Wetland Inventory mapping, current aerial imagery depicting land use/land cover, and soils maps. Where deemed necessary, TVA conducts field surveys of wetlands to map wetland boundaries and collect additional information for NEPA effects determinations. Wetland determinations are performed according to U.S. Army Corps of Engineers standards, which require documentation of hydrophytic (wet-site) vegetation, hydric soil, and wetland hydrology. Wetland condition is assessed using a regional wetland assessment method, the TVA Rapid Assessment Method, which was developed using the same ecological metrics as the Ohio Rapid Assessment Method and calibrated to reflect regional wetland differences specific to the TVA region.

Environmental effects of proposed actions upon wetlands are assessed for site-specific wetland conditions and include an analysis of cumulative impacts to wetlands within a watershed and ecoregion context. Regional wetland status and trends data is obtained through land use/land cover analysis. These wetland evaluation methods utilize current best practices and are fundamentally based on botany, hydrology, pedology, ecology, and geomorphology. These methods are also tied to regulatory-standards for wetland identification and delineation; these standards are developed by multiple national advisory teams and undergo periodic evaluation and updates based on changes in wetland science.

97. TVA should update its flood frequency analysis, while continuing to analyze hydrology for the TVA region. TVA should continue to utilize its approach on flood risk management and its proposed determination chart.

(Commenter: Larry Larson/ASFPM)

TVA Response: Comment noted. TVA recognizes the need to review and update, as appropriate, its flood frequency analyses and resultant flood elevations based on newer modeling techniques, improved hydrologic methods, additional years of observed data, and newly available climate tools. TVA has created an industry-leading probabilistic flood hazard analysis (PFHA) platform. This platform handles a wide range of factors probabilistically to better understand our flood risk up to extreme flooding levels. This PFHA system gives TVA a robust understanding of the probabilities for flood elevations due to a wide range of factors. Updates to TVA flood frequency analyses would incorporate the PFHA platform.

98. When TVA published its proposed rule, it provided its document addressing “Determination of Project Specific Federal Flood Risk Management Standard (FFRMS) Elevations and Their Applicability.” This document is unclear concerning climate change and the effects of weather.

(Commenter: Natalie Mamerow/ASCE)

TVA Response: During the public review of the proposed rule, TVA received comments on a document relating to how TVA would determine FFRMS elevations available to the public as supporting information relating to its proposed procedures on flood risk. TVA notes that the comments do not relate to the TVA rule itself. As previously stated, EO 13807 revoked EO

13690 relating to the FFRMS. Although the FFRMS is no longer in effect, TVA requires flood-damageable structures and facilities along TVA reservoirs to be located at or above the 0.2-annual-chance (500 year) flood elevation.

TVA has sponsored and followed research that has shown very little climate change projected for the TVA region. In order to better understand our full risk (out to extreme flooding levels), TVA has created an industry-leading PFHA platform that includes a wide range of factors probabilistically. These factors include: storm type, precipitation frequency per storm type, storm seasonality per storm type, storm placement in space and time, rainfall-runoff relations, river routing per the TVA operating policy, and starting states sampled from the historic record re-sampled out to 1,000 years.

This PFHA system gives TVA a robust understanding of the probabilities for flood elevations due to a wide range of factors. The science on how climate change might affect extreme storms is evolving. If a method to incorporate climate projections into our PFHA system becomes available, TVA would consider incorporating it. TVA agrees with the commenter that the public health and safety of the people of the Tennessee Valley are best served when the data used to develop estimates of rainfall and subsequent runoff are accurate, up-to-date, and account for potential extreme weather events.