

Control(s)	Country chart (See <i>supp. no. 1</i> to part 738)
NS applies to 9A012.a.1 .....	NS Column 2.
MT applies to non-military Unmanned Aerial Vehicles (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload, and UAVs that meet the requirements of 9A120.	MT Column 1.
AT applies to entire entry .....	AT Column 1.

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

LVS: N/A  
GBS: N/A

**List of Items Controlled**

*Related Controls:* (1) See the U.S. Munitions List Category VIII (22 CFR part 121). (2) Also see ECCN 9A610 and § 744.3 of the EAR. (3) For “UAVs” that are “sub-orbital craft,” see ECCNs 9A004.h and 9A515.a.

*Related Definitions:* N/A

Items:

- a. “UAVs” or unmanned “airships”, designed to have controlled flight out of the direct ‘natural vision’ of the ‘operator’ and having any of the following:
  - a.1. Having all of the following:
    - a.1.a. A maximum ‘endurance’ greater than or equal to 30 minutes but less than 1 hour; and
    - a.1.b. Designed to take-off and have stable controlled flight in wind gusts equal to or exceeding 46.3 km/h (25 knots); or
  - a.2. A maximum ‘endurance’ of 1 hour or greater;

**Technical Notes:** 1. For the purposes of 9A012.a, ‘operator’ is a person who initiates or commands the “UAV” or unmanned “airship” flight.

2. For the purposes of 9A012.a, ‘endurance’ is to be calculated for ISA conditions (ISO 2533:1975) at sea level in zero wind. 3. For the purposes of 9A012.a, ‘natural vision’ means unaided human sight, with or without corrective lenses.

- b. Related equipment and “components”, as follows:
  - b.1 [Reserved]
  - b.2. [Reserved]
  - b.3. Equipment or “components” “specially designed” to convert a manned “aircraft” or a manned “airship” to a “UAV” or unmanned “airship”, controlled by 9A012.a;
  - b.4. Air breathing reciprocating or rotary internal combustion type engines, “specially designed” or modified to propel “UAVs” or unmanned

“airships”, at altitudes above 15,240 meters (50,000 feet).  
\* \* \* \* \*

**Julia A. Khersonsky,**  
*Deputy Assistant Secretary for Strategic Trade.*  
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**TENNESSEE VALLEY AUTHORITY**  
**18 CFR Parts 1318 and 1319**  
**RIN 3316–AA26**

**Implementation of the National Environmental Policy Act**

**AGENCY:** Tennessee Valley Authority.  
**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule revises the Tennessee Valley Authority (TVA) procedures implementing the National Environmental Policy Act (NEPA). TVA is taking this action in response to the amendments to NEPA enacted through the Fiscal Responsibility Act of 2023 and the One Big Beautiful Bill Act of 2025, to reflect the Supreme Court’s recent decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, and to align with Executive Order (E.O.) 14154, *Unleashing American Energy*, and the Council on Environmental Quality’s (CEQ) subsequent rescission of its NEPA implementing regulations, which TVA’s procedures were intended to supplement. This interim final rule requests comments on this action and TVA’s intent to move its procedures at Subpart G, for compliance with E.O. 11988, *Floodplain Management*, and E.O. 11990, *Protection of Wetlands*, into a new part 1319 of the CFR, to inform TVA’s decision-making.

**DATES:** The interim final rule is effective January 21, 2026. Comments must be submitted no later than February 20, 2026.

**ADDRESSES:** Comments on the interim final rule can be submitted by one of the following methods:

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

Before including your address, phone number, email address, or other personal identifying information in your

comment, please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection.

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This interim final rule revises TVA’s implementing procedures for assessing the effects of TVA’s actions in accordance with NEPA (42 U.S.C. 4321 *et seq.*), codified at 18 CFR part 1318. TVA first established its procedures for implementing NEPA in 1980 (45 FR 54511–15, August 15, 1980). In 1983, TVA amended the procedures to incorporate requirements relating to floodplain management and protection of wetlands, among other things (48 FR 19264, April 28, 1983). In 2020, TVA amended its procedures to update organizational references, improve clarity, and revise its list of categorical exclusions. To promote greater transparency in the NEPA process, TVA incorporated its procedures into the Code of Federal Regulations (CFR) at that time. In its final rule preamble, TVA stated that, “[l]ike TVA’s previous NEPA procedures, the final rule supplements the CEQ regulations” (85 FR 17434; March 27, 2020). Since established in 1980, the TVA procedures have stated that they serve to ensure compliance with not only NEPA itself but CEQ’s NEPA implementing regulations. 18 CFR 1318.10(c).

CEQ’s NEPA implementing regulations were rescinded as of April 11, 2025. *See Removal of National Environmental Policy Act Implementing Regulations* (90 FR 10610; Feb. 25, 2025). CEQ’s rescission of its regulations was necessitated by and is consistent with E.O. 14154, *Unleashing American Energy* (90 FR 8353; January 29, 2025), in which President Trump rescinded President Carter’s E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which directed CEQ to issue regulations to Federal agencies for implementing NEPA’s procedural provisions. E.O. 14154 further directed agencies to revise their NEPA implementing procedures consistent with the E.O. and implementation guidance from CEQ.

Congress passed the Fiscal Responsibility Act of 2023, Public Law 118–5, signed into law on June 3, 2023, that among other things added substantial detail and direction in Title I of NEPA, including procedural issues that CEQ, TVA, and other agencies had previously addressed in their own regulations. In addition, Congress passed the One Big Beautiful Bill Act of 2025, Public Law 119–21, title VI, § 60026, (July 4, 2025), adding Section 112 of NEPA, entitled “Project Sponsor Opt-in Fees for Environmental Reviews.” This provision allows project sponsors to pay a fee to obtain shortened NEPA review deadlines. TVA needs to update its procedures in light of these statutory changes.

Finally, the Supreme Court on May 29, 2025, issued *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), which affirmed that agencies have broad discretion when conducting NEPA reviews, including with regard to the scope of the analysis in agencies’ NEPA reviews given the agency’s authority and the importance of the issue to the decisionmaker. In issuing this interim final rule, TVA seeks to align its procedures with the Supreme Court’s guidance in this decision.

NEPA requires Federal agencies to “identify and develop methods and procedures,” in consultation with CEQ, with respect to their environmental analysis of their proposed actions, *see* 42 U.S.C. 4332(2)(B). E.O. 14154 directs agencies to ensure their NEPA implementing regulations “prioritize efficiency and certainty” in the NEPA process.

TVA is revising its NEPA procedures at 18 CFR part 1318 to reflect the rescission of CEQ’s regulations, the direction to agencies under E.O. 14154, the statutory amendments to NEPA, and the Supreme Court’s decision in *Seven County*. TVA has completed an internal review of its NEPA procedures and practices and has identified opportunities to improve its practices and clarify its procedures. By these revisions, TVA intends to ensure it complies with NEPA and that the procedures reduce paperwork and delay to the extent possible. A summary of the procedures revised by TVA are described below. TVA is also moving its procedures at Subpart G, for compliance with E.O. 11988, *Floodplain Management*, and E.O. 11990, *Protection of Wetlands*, into a separate part of the CFR, a new Part 1319. These floodplain and wetland procedures are not part of TVA’s procedures for implementing NEPA. TVA made minor clarifying edits but is not proposing any

substantive changes to its floodplain and wetland procedures.

## II. Publication as an Interim Final Rule

### A. Notice-and-Commenting Rulemaking Is Not Required

NEPA is a “purely procedural statute” which prescribes a process for a federal agency to conduct environmental review of a project but does not require any substantive outcome for a project. *Seven County*, 145 S. Ct. at 1511. NEPA does not substantively constrain an agency’s ultimate decision on a proposed project, and “is relevant only to the question of whether an agency’s final decision . . . was reasonably explained.” *Id.* at 1511.

TVA is repealing and replacing its prior procedures for implementing NEPA. Notice and comment procedures are not required under the Administrative Procedure Act (APA) for “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). TVA’s procedures for implementing NEPA are themselves purely procedural. *See, e.g.*, 18 CFR 1318.10 (“This part establishes procedures for Tennessee Valley Authority (TVA) to use for compliance with . . . NEPA . . .”). They do not dictate outcomes or impose binding legal obligations on private citizens. They only prescribe how TVA will conduct NEPA reviews. Procedural regulations that do not require notice and comment procedures to promulgate similarly do not require notice and comment procedures to remove.

TVA’s revised implementing procedures are also procedural. Since NEPA itself is a procedural statute that does not mandate outcomes, *Seven County*, 145 S. Ct. at 1510, regulations implementing NEPA are also necessarily procedural. TVA’s regulations describe how TVA will implement the NEPA process, prepare and structure environmental documents, and incorporate NEPA as a part of agency decision-making. They will guide TVA’s internal practice in implementing NEPA but will not dictate substantive outcomes.

Notice and comment procedures are also not required under the APA for “interpretative rules” or “general statements of policy.” 5 U.S.C. 553(b)(A). Even if, and to the extent that, TVA’s regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy. An interpretative rule provides an interpretation of a statute, rather than making discretionary policy choices that establish enforceable rights or

obligations for regulated parties under delegated congressional authority. General statements of policy provide notice of an agency’s intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. To the extent anything in TVA’s regulations is not a procedural rule it would be considered TVA’s interpretation of NEPA or general policy statements about TVA’s application of NEPA. Both of these are expressly exempted from notice and comment by statute. Although TVA is voluntarily providing notice and an opportunity to comment on this interim final rule, the agency has determined that notice and comment procedures are not required.

### B. TVA Has Good Cause for Proceeding With an Interim Final Rule

TVA also finds that, even if prior notice and solicitation of public comment would otherwise be required or this action could not immediately take effect, the need to expeditiously replace its existing rules satisfies the APA’s “good cause” exceptions. 5 U.S.C. 553(b)(B), (d)(3). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is “impracticable, unnecessary, or contrary to the public interest,” and to make the rule effective immediately for good cause. 5 U.S.C. 553(b)(B), (d)(3). As discussed above, TVA’s prior procedures were promulgated with CEQ’s NEPA regulations as a foundation and to be used in conjunction with those regulations. *See* 85 FR 17434 (“Like TVA’s previous NEPA procedures, the final rule supplements the CEQ regulations. The rule was drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that the TVA-specific regulations would be applied with the CEQ regulations.”). With the rescission of CEQ’s NEPA regulations, TVA’s prior procedures were premised on a framework that no longer exists. In the interim, TVA has continued to apply its procedures as though CEQ’s NEPA regulations still existed where necessary to fill gaps. This makeshift substitute was, at best, a temporary solution; now that TVA has had the opportunity to draft revised standalone procedures in consultation with CEQ, it is critical that TVA begin following them as soon as possible. Immediate rescission of former procedures without replacement would result in uncertainty and potential

delays to TVA projects and authorizations. Therefore, if notice-and-comment were otherwise required, doing so here would be impracticable and contrary to the public interest. For these reasons, TVA finds that “good cause” exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This interim final rule will accordingly be effective immediately. TVA will consider comments submitted in response to this action and may address them when issuing a final rule, if warranted, after consideration of the comments received.

### C. TVA Solicits Comments

As explained above, notice and comment procedures are not required because TVA’s NEPA procedures were and are procedural and because, even if comment were otherwise required under the APA, good cause exists to forgo it. Nevertheless, TVA has elected to voluntarily solicit comments. TVA is soliciting comment on this interim final rule and its new procedures, which are available for review at <https://www.tva.gov/nepa>. TVA may make further revisions to its NEPA implementing procedures, if TVA’s review of any comments submitted suggests that further revisions are warranted. Commenters have 30 days from the date of publication of this interim final rule to submit comments.

### III. Description of Regulatory Changes

TVA’s revised NEPA procedures, developed in consultation with CEQ, will facilitate compliance with the statutory obligations of NEPA. TVA’s NEPA procedures will continue to be maintained at 18 CFR part 1318, subparts A through F. TVA is moving the regulations currently in Subpart G, procedures addressing floodplain management and protection of wetlands, to a new Part 1319. Moving the floodplain management and protection of wetlands procedures to a separate part clarifies that those procedures do not address the implementation of NEPA.

Throughout the revised procedures, TVA removes citations to the rescinded CEQ regulations and implements key structural features of the 2023 statutory amendments to NEPA, such as deadlines and page limits for environmental assessments (EA) and environmental impact statements (EIS), as directed at NEPA § 107(g). The procedures provide that TVA will adhere to the page limits and timelines established by Congress. The revised procedures also incorporate new definitions (NEPA § 111) and statutory

requirements for determining the appropriate level of NEPA review (NEPA § 106), content for EISs (NEPA § 102(2)(C)), and public notice associated with issuing a notice of intent to prepare an EIS (NEPA § 107(c)). In revising its procedures, TVA also relied upon CEQ’s Memorandum for Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act (September 29, 2025) (“CEQ Guidance”).<sup>1</sup>

TVA also revises the procedures by grouping similar subjects together to improve readability and clarity. Substantial revisions to subparts A through F are included, although some of TVA’s former implementing procedures remain intact. Throughout the procedures, and also in Part 1319, TVA removes references to specific TVA management and staff positions and office titles and replaces those with “TVA”; such detail about administrative roles and responsibilities within TVA is unnecessary in the regulations.

The following paragraphs contain a section-by-section summary of key changes under each subpart from those currently in TVA’s NEPA procedures.

#### Subpart A—General Information

**§ 1318.10 Purpose and policy.** In this section, TVA combines provisions relating to the purpose of the procedures and TVA’s related policy into one section. TVA removes reference to CEQ NEPA regulations at 40 CFR parts 1500 through 1508 and adds clarification of the purpose of the TVA NEPA procedures. The section addresses the procedural and interpretive nature of these provisions. TVA also adds provisions addressing when it will consult with CEQ.

**§ 1318.20 Abbreviations.** TVA removes abbreviations for the Environmental Protection Agency (EPA) and Record of Decision (ROD) from its procedures because the abbreviations are no longer used in its procedures.

**§ 1318.30 Definitions.** TVA removes its reference to the CEQ NEPA regulations in this section and cites new definitions in the statute (NEPA § 111). TVA adds definitions in this section for the following terms: authorization, effects, human environment, jurisdiction, mitigation, NEPA process, notice of intent, page, project sponsor, publish, reasonable alternatives, reasonably foreseeable, scope, and tiering. Several new definitions are based upon the CEQ guidance (*e.g.*, effects, mitigation, page, publish). The definitions of “controversial” and

“important farmland” are removed because the terms are sufficiently defined in the text of the procedures. Four definitions addressing the management of floodplains and protection of wetlands (floodplain, practicable, natural and beneficial floodplain and wetland values, and wetland) are removed from part 1318 and, as discussed below, will be added to definitions section (§ 1319.20) of the floodplains and wetlands procedures.

#### Subpart B—Initiating the NEPA Process

This subpart is revised to address additional procedures relating to the initiation of the NEPA process. Sections of this subpart are renamed, revised and reorganized to improve structure, organization, and readability. Sections addressing scoping, interagency cooperation, and the supplementation of, and reliance on, environmental documents are moved to Subpart B from other subparts because these are considerations made at the beginning of the NEPA process and apply to both EAs and EISs. TVA adds a section addressing NEPA schedules to incorporate deadline requirements from the Fiscal Responsibility Act of 2023.

**§ 1318.100 Determining when NEPA applies.** This section is added to clarify which actions taken by TVA would be subject to review under NEPA, consistent with provisions from NEPA §§ 106(a)(4) and 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and § 4336e(10)(B)(vii), respectively).

**§ 1318.101 Determining the appropriate level of NEPA Review.** This section is retitled and revised extensively. Previous paragraphs addressing internal administration are removed and replaced with new procedures that describe how TVA determines whether NEPA applies to a proposed action and, if so, the appropriate level of environmental review. In paragraph (b), TVA includes criteria for determining whether potential effects are significant, thereby requiring an EIS.

**§ 1318.102 Determination of NEPA Adequacy.** TVA has revised the procedures relating to making and documenting a determination of NEPA adequacy and the determination of when to supplement an environmental document. These considerations are key to a determination by TVA that an existing document provides adequate analysis to address a proposed action. TVA also removes a reference to CEQ regulations from this section.

**§ 1318.103 Supplements.** This section, previously included under Subpart E, is added to Subpart B because the procedures apply to EAs as

<sup>1</sup> Available at [www.nepa.gov](https://www.nepa.gov).

well as EISs. Like § 1318.102, the section addresses consideration of whether an existing document is adequate to address a proposed action. These provisions address instances in which the existing document does not adequately address a proposed action and additional, supplemental analysis is necessary to comply with NEPA.

**§ 1318.104 Reliance on existing environmental documents.** This section, previously included under Subpart E, is added to Subpart B because the procedures also apply to EAs and are considerations during the initiation of a NEPA process. The procedures are modified to improve clarity, and paragraphs addressing public notification are removed from Subpart B because the topic is addressed in Subpart F.

**§ 1318.105 Lead and cooperating agency determinations.** This section, previously included under Subpart E, is added to Subpart B because these procedures also apply to EAs and are considerations during the initiation of a NEPA process. Modifications address provisions of the Fiscal Responsibility Act of 2023, including those relating to the preparation of a single document when multiple agencies participate in the preparation of an environmental document. In addition, TVA clarifies that TVA will normally serve as the lead agency for TVA actions.

**§ 1318.106 Schedule for the NEPA process.** TVA adds this section to address the Fiscal Responsibility Act of 2023 emphasis that environmental documents be prepared in a timely manner and the importance of working with project sponsors to achieve the required deadlines. In the section, TVA outlines the statutory deadlines identified in NEPA § 107(g) and adds a provision requiring a certification regarding TVA's adherence to statutory deadlines. TVA adds a paragraph addressing how deadline extensions may be considered. A paragraph is added to ensure that concurrent environmental processes or requirements are also incorporated into the schedule, as appropriate, because these concurrent processes may influence the critical path for the NEPA process.

**§ 1318.107 Scoping process.** This section, previously included under Subpart E, is added to Subpart B because it addresses considerations made at the initiation of a NEPA process and that may also apply to EAs. This section is modified to clarify the scoping process and the types of information and issues that will be developed and identified. TVA modifies the public notice and comment

requirements associated with scoping and removes a paragraph that addressed the preparation of a scoping report because such reports are not required by statute.

#### *Subpart C—Categorical Exclusions*

**§ 1318.200 Purpose and scope.** TVA modifies this section for clarity and to address new methods in which categorical exclusions may be established, including the adoption of another agency's categorical exclusion consistent with the Fiscal Responsibility Act of 2023 (NEPA § 109). In paragraph (a), TVA defines categorical exclusions. In paragraph (b), TVA clarifies that more than one categorical exclusion may be applied to a proposed action if the exclusions collectively encompass the action. In paragraph (c), TVA defines a new process for establishing a new categorical exclusion that involves documenting in a sufficient record substantiation that additional categories of actions may be added to TVA's list of categorical exclusions (found in Appendix A of this subpart). The process includes consultation with CEQ and public notification. In paragraph (d), TVA addresses the procedures for adopting another agency's categorical exclusions. Paragraph (e) adds procedures that address TVA's reliance on a determination by another Federal agency that a categorical exclusion applies to a proposed action that is substantially the same as TVA's proposed action. TVA removes an unnecessary statement that TVA would comply with other laws or requirements when applying a categorical exclusion.

**§ 1318.201 Extraordinary circumstances.** This section is modified for clarity and to more accurately summarize the review for extraordinary circumstances that occurs prior to using a categorical exclusion. TVA includes examples of extraordinary circumstances in paragraph (b) and adds paragraph (d) to generally explain when it would prepare documentation for a review for extraordinary circumstances.

**§ 1318.202 Public notification.** TVA makes a grammatical revision to the section for clarity.

**Appendix A—Categorical exclusions.** In the introductory text of this appendix, TVA revised the second sentence referencing extraordinary circumstances and corrects the citation to text in the applicable text in Subpart C. There are no other changes to appendix A of Subpart C.

#### *Subpart D—Environmental Assessments*

TVA modifies this subpart by moving and modifying sections addressing supplements and relying on existing

environmental documents to Subpart B, as previously discussed, and by moving and modifying a section addressing public and stakeholder involvement in the preparation of EAs into Subpart F.

**§ 1318.300 Purpose and scope.** TVA revises this section to clarify when it is appropriate to prepare an EA.

**§ 1318.301 Environmental assessment preparation.** TVA modifies the section addressing the preparation of EAs, now numbered as section 1318.301 with the removal of procedures relating to public and stakeholder involvement. TVA removes a list of items that would be considered during the initiation of the NEPA process; those are adequately addressed under the revised Subpart B. In paragraph (a), TVA identifies core elements of an EA. In paragraph (b), TVA states that public comment on a draft EA is at its discretion and that substantive comments are addressed when such review periods are offered. TVA addresses the page limit established in the Fiscal Responsibility Act of 2023 (NEPA § 107(e)) in paragraph (d). Finally, TVA adds a provision in paragraph (e) addressing the use of appendices and a provision in paragraph (f) requiring a certification in an EA regarding TVA's adherence to statutory page limits.

**§ 1318.302 Finding of No Significant Impact.** In this section, TVA makes numerous revisions to clarify the contents of the finding of no significant impact document. TVA adds that a finding of no significant impact will identify any mitigation requirements and commitments that are necessary to address significant effects and the associated authority and/or applicable monitoring or enforcement provisions. TVA also adds that a finding of no significant impact may be published separately or as part of an EA. Procedures relating to public notification for findings are moved to Subpart F and modified.

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

Numerous modifications to this subpart ensure that TVA's procedures more accurately reflect the statutory requirements for EISs and that the process for completing documents is efficient and timely. As noted above, sections addressing interagency cooperation, scoping, supplements, and reliance on existing environmental documents are moved to Subpart B.

**§ 1318.400 Purpose and scope.** TVA removes the list of actions normally requiring an EIS. TVA moves the description of the standard contents for an EIS to § 1318.401. In paragraphs (b)

and (c), TVA revises the previous procedures that address the scope of an EIS to emphasize the need for concise documents that focus on issues of significance and to address the consideration of indirect effects.

**§ 1318.401 Environmental Impact Statement preparation.** Two sections addressing the preparation of the draft and final EISs are combined into this section. TVA adds a list of contents that represent the standard format for an EIS, based on past CEQ NEPA regulations. TVA revises its procedures addressing the review of EISs in a manner consistent with NEPA § 102(C). Procedures addressing public reviews, minimum review periods, and responding to comments are addressed in Subpart F. Similar to the addition to § 1318.301, TVA addresses the page limit for EISs that is established in the Fiscal Responsibility Act of 2023 (NEPA § 107(e)) in paragraphs (d) and (e). TVA also adds a provision in paragraph (f) addressing the use of appendices and a provision in paragraph (e) requiring a certification in an EIS regarding TVA's adherence to statutory page limits.

**§ 1318.402 Agency decision.** This section addresses how TVA documents the completion of an EIS. NEPA mandates that TVA consider all relevant information relating to impacts on the quality of the human environment in making its decision but does not require any particular format for documenting an agency decision. TVA revised this section to remove specific requirements formerly applicable to a Record of Decision and provides a format that may be used to notify the public that the environmental review has been completed and considered.

#### *Subpart F—Miscellaneous Procedures*

TVA makes numerous revisions to this Subpart. TVA removes procedures addressing the review of EISs prepared by other agencies because those procedures addressed only internal administrative tasks and roles associated with providing comments to the agency and therefore are not necessary. TVA removes procedures stating that TVA may issue additional supplemental or explanatory guidance relating to its NEPA procedures and that TVA executives may modify the roles and responsibilities identified in the procedures; these procedures addressing administrative determinations are unnecessary. TVA revised a section addressing TVA's substantial compliance with TVA's NEPA procedures. TVA moves procedures relating to providing reports to the public on the status of ongoing NEPA reviews to § 1318.500 because they

pertain to public involvement. As described below, three sections are added to this subpart.

**§ 1318.500 Public and stakeholder involvement.** In this section, TVA consolidates procedures relating to public involvement in the NEPA process. The section revises previous procedures to reflect that public involvement in the preparation of environmental documents is at TVA's discretion. Minor modifications reaffirm and clarify TVA's commitments to provide notification and information relevant to its NEPA program and proposed actions. Paragraph (d) addresses how TVA makes documents available for public review, relying primarily on its public website. The section includes new procedures addressing how public comments are treated to streamline the process and time required to review and consider the public's input. These changes allow TVA to focus on those comments that improve the environmental document and its analysis. In the section, TVA commits to disclosing public comments submitted on environmental documents and updating the public when it ceases environmental reviews.

**§ 1318.501 Mitigation.** TVA includes minor revisions to this section for clarification. TVA removes details relating to which staff will be responsible for ensuring mitigation measures are met.

**§ 1318.502 Programmatic environmental documents and tiering.** TVA combines two sections addressing programmatic NEPA documents and tiering into one section. TVA adds a paragraph citing to new statutory requirements addressing programmatic environmental documents from the Fiscal Responsibility Act of 2023 (NEPA § 108). TVA modifies the section by removing a definition for programmatic documents because the definition is now established in statute (NEPA § 111). Two citations to CEQ's NEPA regulations are deleted. In paragraph (b), TVA clarifies that contents of tiered documents need only be summarized and incorporated by reference and will only address the subsequent action. In paragraph (c), TVA incorporates three criteria to determine whether ongoing or previously approved actions may be implemented during a programmatic review.

**§ 1318.503 Coordination with project sponsors and procedures for project sponsor-related environmental documents.** This section incorporates new provisions addressing "private applicants." Throughout this section, TVA now refers to such applicants as "project sponsors," consistent with

usage in the Fiscal Responsibility Act of 2023 and the One Big Beautiful Bill Act of 2025. The section is modified to acknowledge that project sponsors or their contractors may prepare environmental documents, while reaffirming that such documents must be independently evaluated and approved by TVA. TVA addresses support for project sponsors or their contractors in the preparation of environmental documents. TVA also adds a provision that requires project sponsors or sponsors preparing environmental documents to submit disclosure statements addressing their interest in the outcome of the action. In paragraph (h), TVA addresses section 112 of NEPA (a provision of the One Big Beautiful Bill Act of 2025) and the associated coordination with CEQ.

**§ 1318.504 Reducing paperwork and delay.** TVA modifies this section to emphasize practices that ensure efficient, concise environmental reviews are completed in accordance with new page and time limits. TVA incorporates and consolidates several procedures from other sections of its procedures into this modified section. Paragraph (b) addresses incorporating material by reference in environmental documents, based on long-standing CEQ NEPA regulations. Paragraph (c) addresses the need to write in plain language using a clear format.

**§ 1318.505 Information requirements.** TVA adds this section to ensure that long-standing standards for the information used in environmental reviews are addressed. Based on previous CEQ NEPA regulations, TVA adds procedures addressing methodology and scientific accuracy in paragraph (a) and incomplete and unavailable information in paragraph (b).

**§ 1318.506 Causes of action.** This section was added to clarify that minor deviations from TVA's procedures do not establish a cause of action for violation of NEPA.

**§ 1318.507 Emergency actions.** TVA makes no changes to this section.

**§ 1318.508 Unique identification numbers.** TVA adds this section to address the numbering system that it will apply to its environmental documents for tracking purposes. The numbering of TVA environmental documents will be consistent with CEQ guidance.

#### *Part 1319—Floodplains and Wetlands*

TVA is moving the regulations in Subpart G (Floodplains and Wetlands) from 18 CFR part 1318 to Part 1319 of title 18 of the Code of Federal Regulations. As noted above, those

procedures implement the requirements of two Executive Orders. Moving the floodplains and wetlands procedures to a separate part clarifies that those procedures do not implement the statutory requirements of NEPA and therefore should not be considered part of TVA's NEPA procedures.

Four definitions relevant to the floodplains and wetlands procedures were removed from § 1318.10 and added to this part at § 1319.20. In several places, TVA revises text to remove references to specific TVA offices that would be involved in various tasks. Other minor revisions are made for clarification, but TVA has not proposed substantive changes to these floodplains and wetlands procedures.

#### IV. Regulatory Requirements

##### A. Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. TVA has developed the interim final rule consistent with E.O. 13563. OIRA reviewed this interim final rule and determined that it is not a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563.

##### B. Regulatory Flexibility Act

Notice and comment is not required because TVA has invoked the APA's "good cause" exemption under 5 U.S.C. 553(b) and because it is a rule of agency procedure and practice and does not establish substantive requirements binding the public. However, TVA is voluntarily accepting comments for a period of 30 days.

##### C. Paperwork Reduction Act

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

##### D. Federalism

TVA has considered this interim final rule under the requirements of E.O. 13132, *Federalism*, and has determined that the interim final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have

substantial direct effects on the States, on the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, TVA concludes that this interim final rule will not have federalism implications, and no further assessment of federalism implications is necessary.

##### E. Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–38), TVA has assessed the effects of the interim final rule on State, local, and Tribal governments and the private sector. The interim final rule will not compel the expenditure of \$100 million or more, adjusted annually for inflation, in any one year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect subject to the requirements of 2 U.S.C. 1531–38.

##### F. National Environmental Policy Act

TVA's NEPA procedures assist in the fulfillment of its responsibilities under NEPA and do not authorize any specific agency activity or commit resources that may affect the environment. The procedures also do not represent the agency's final determination of what level of NEPA analysis is required for a particular agency action. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000).

##### G. Civil Justice Reform

Under section 3(a) of E.O. 12988, *Civil Justice Reform*, agencies must review their regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to ensure compliance with section 3(a). TVA has conducted this review and determined that this interim final rule complies with the requirements of E.O. 12988.

##### H. Consultation and Coordination With Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on

policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. This interim final rule does not impose substantial direct compliance costs on Tribal governments and does not preempt Tribal law. TVA has reviewed this interim final rule in accordance with the requirements of E.O. 13175 and has determined that it will not have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is not required for this interim final rule.

##### I. Executive Orders 14154 and 14192

TVA has determined that this interim final rule is consistent with the policies and directives outlined in E.O. 14154 "Unleashing American Energy" and E.O. 14192, "Unleashing Prosperity Through Deregulation." This rule is an E.O. 14192 deregulatory action.

##### J. Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this interim final rule as not a major rule as defined by 5 U.S.C. 804(2). This procedural action, in any event, is not a rule at all under 5 U.S.C. 804(3)(C).

#### List of Subjects

##### 18 CFR Part 1318

Administrative practice and procedure, Environmental impact statements, Environmental protection.

##### 18 CFR Part 1319

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

■ For the reasons stated in the preamble, TVA revises and republishes part 1318 to chapter XIII of title 18 of the Code of Federal Regulations to read as follows:

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

### Subpart A—General Information

- Sec.  
1318.10 Purpose and policy.  
1318.20 Abbreviations.  
1318.30 Definitions.

### Subpart B—Initiating the NEPA Process

- 1318.100 Determining when NEPA applies.  
1318.101 Determining the appropriate level of NEPA review.  
1318.102 Determination of NEPA Adequacy.  
1318.103 Supplements.  
1318.104 Reliance on existing environmental documents.  
1318.105 Lead and cooperating agency determinations.  
1318.106 Schedule for the NEPA process.  
1318.107 Scoping process.

### Subpart C—Categorical Exclusions

- 1318.200 Purpose and scope.  
1318.201 Extraordinary circumstances.  
1318.202 Public notification.

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

### Subpart D—Environmental Assessments

- 1318.300 Purpose and scope.  
1318.301 EA preparation.  
1318.302 Finding of No Significant Impact.

### Subpart E—Environmental Impact Statements

- 1318.400 Purpose and scope.  
1318.401 EIS preparation.  
1318.402 Agency decision.

### Subpart F—Miscellaneous Procedures

- 1318.500 Public and stakeholder involvement.  
1318.501 Mitigation.  
1318.502 Programmatic environmental documents and tiering.  
1318.503 Coordination with project sponsors and procedures for project sponsor-prepared environmental documents.  
1318.504 Reducing paperwork and delay.  
1318.505 Information requirements.  
1318.506 Causes of action.  
1318.507 Emergency actions.  
1318.508 Unique identification numbers.

**Authority:** 16 U.S.C. 831 *et seq.*; 42 U.S.C. 4321 *et seq.*

### Subpart A—General Information

#### § 1318.10 Purpose and policy.

This part establishes procedures for Tennessee Valley Authority (TVA) to use for compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*).

(a) *Purpose.* The purpose of these procedures is to integrate NEPA into

TVA's decision-making processes. Specifically, the procedures: describe the process by which TVA determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process to ensure informed decision making; enable TVA to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.

(b) *Procedural and Interpretive Rule.* This document sets forth TVA's procedures and practices for implementing NEPA. It further explains TVA's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which TVA will typically fulfill its requirements under NEPA.

(c) *Consultation with the Council on Environmental Quality (CEQ).* In addition to the process for establishing or revising categorical exclusions set forth in § 1318.200(c), TVA will consult with CEQ while developing or revising proposed NEPA implementing procedures, in accordance with NEPA sec. 102(2)(B), 42 U.S.C. 4332(B).

#### § 1318.20 Abbreviations.

- (a) CE—Categorical Exclusion  
(b) CEQ—Council on Environmental Quality  
(c) EA—Environmental Assessment  
(d) EIS—Environmental Impact Statement  
(e) FONSI—Finding of No Significant Impact  
(f) NEPA—National Environmental Policy Act  
(g) TVA—Tennessee Valley Authority

#### § 1318.30 Definitions.

The following definitions apply throughout this part. Other applicable terms should be given the same meaning as set forth in section 111 of NEPA unless such a reading would make the terms inconsistent with the context in which they appear.

(a) *Authorization* means any license, permit, approval, finding, determination, or other decision issued by an agency that is required or authorized under Federal law to implement a proposed action.

(b) *Effects or impacts* means changes to the human environment from the

proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(1) Effects may include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(2) A “but for” causal relationship is insufficient to make TVA responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

(c) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of “effects” in paragraph (b) of this section.)

(d) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(e) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or decision document that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation may include:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing effects by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(f) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA sec. 102(2), 42 U.S.C. 4332(2).

(g) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document.

(h) *Official responsible for NEPA compliance* refers to the TVA official(s) who manages the NEPA compliance staff and is responsible for overall review of TVA NEPA compliance.

(i) *Page* means an 8.5" x 11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5" x 11", each such item will count as one page.

(j) *Project sponsor* refers to a private applicant, individual, or other non-Federal entity that proposes to undertake an action that will require TVA's authorization.

(k) *Publish* means a method found by TVA to efficiently and effectively make environmental documents and information available for interested persons, including publication on TVA's website.

(l) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.

(m) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(n) *Scope* consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.

(o) *Tiering* refers to the coverage of general matters in a broader EIS or EA (such as a regional program or policy statements) with subsequent narrower statements or environmental analyses (such as site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

## Subpart B—Initiating the NEPA Process

### § 1318.100 Determining when NEPA applies.

(a) At the earliest possible time, TVA will determine whether a proposed action requires an environmental review under NEPA and, if so, the level of environmental review.

(b) TVA will determine that NEPA does not apply to a proposed agency action when:

(1) The activities or decision do not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. 704, or other relevant statute that also includes a finality requirement;

(2) The proposed activity or decision is exempted from NEPA by law;

(3) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;

(4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that TVA retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of TVA is nondiscretionary within the meaning of NEPA sec. 106(a)(4) and/or sec. 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(5) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act; or

(6) The proposed action is not a "major Federal action." The terms "major" and "federal action," each have independent force. NEPA applies only when both of these two criteria are met. Such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of TVA in each instance.

(7) NEPA does not apply to "non-Federal actions." Therefore, under the terms of the statute, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project. NEPA sec. 111(10)(B)(i), 42 U.S.C. 4336e(10)(B)(i). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. By the same token, minimal Federal funding or involvement does not by itself convert that action into a Federal action within the meaning of the language of the statute.

(c) The issuance or update of TVA's NEPA procedures is not subject to NEPA review.

(d) In determining whether NEPA applies to a proposed agency action, TVA will consider only the action or project at hand.

### § 1318.101 Determining the appropriate level of NEPA review.

(a) If TVA determines under § 1318.100 that NEPA applies to a proposed action or decision, TVA will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, TVA will consider the proposed action or project at hand and its effects.

(1) If TVA has established, or adopted pursuant to NEPA sec. 109, 42 U.S.C. 4336c, a categorical exclusion that covers the proposed action, TVA will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to subpart C of this part.

(2) If another agency has already established a categorical exclusion that covers the proposed action, TVA will consider whether to adopt that exclusion pursuant to § 1318.200(d) so that it can be applied to the proposed action at issue, and to future actions or decisions of that type.

(3) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 1318.200(c), TVA will consider whether to establish or revise, and then apply the categorical exclusion to the proposed action pursuant to subpart C of this part.

(4) If TVA cannot apply a categorical exclusion to the proposed action consistent with paragraphs (a)(1) through (3) of this section, TVA will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b) of this section, and then will:

(i) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an EA, as described in subpart D of this part; or

(ii) if the proposed action is likely to have reasonably foreseeable significant effects, develop an EIS, as described in subpart E of this part.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, TVA will analyze the potentially affected environment and degree of the effects of the proposed action. TVA may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

(1) In considering the potentially affected environment, TVA may consider, as appropriate to the specific

proposed action, the affected area and its resources.

(2) In considering the degree of the effects, TVA may consider the following, as appropriate to the specific proposed action:

- (i) Both short- and long-term effects.
- (ii) Both beneficial and adverse effects.
- (iii) Effects on public health and safety.
- (iv) Economic effects
- (v) Effects on the quality of life of the American people.

**§ 1318.102 Determination of NEPA Adequacy.**

TVA will determine whether a proposed action is already evaluated by an existing NEPA review, including a programmatic or generic review. In making a determination, TVA will evaluate and document whether the following conditions are met:

- (a) The new proposed action is substantially similar to an action previously analyzed in an existing environmental document(s);
- (b) The reasonably foreseeable environmental effects that would result from the new proposed action are similar to those analyzed in an existing environmental document(s); and
- (c) Any new information or circumstances relevant to environmental concerns would not substantially change the analysis in an existing environmental document(s).

**§ 1318.103 Supplements.**

(a) After completion of an environmental document, if TVA makes substantial changes in the proposed action that are relevant to environmental concerns or there is substantial new circumstances or information about the significance of the adverse effects that bear on the proposed action or its impact, and important components of the proposed action remain to be implemented, TVA will determine how the environmental document should be supplemented or modified. TVA may supplement an environmental document by issuing a new document that addresses changes in the proposed action or new circumstances or information or may modify the existing document so that revisions and edits to the original document are apparent. A supplemented or modified environmental document will be published.

(b) After completion of an environmental document, if TVA determines that changes to the proposed action that are relevant to environmental concerns are not

substantial or new circumstances or information are not significant or relevant to environmental concerns, and therefore supplemental analysis is not warranted, TVA will document this determination consistent with § 1318.102.

**§ 1318.104 Reliance on existing environmental documents.**

(a) TVA may rely on another Federal agency's EA or EIS (including an EA or EIS prepared by a Tribal, State, or local agency on behalf of a Federal agency), or a portion thereof, if TVA determines that TVA's proposed action is substantially the same or similar to the other agency's action, and the other agency's document meets the standards for an adequate statement or assessment under these procedures.

(b) In making this determination, TVA will consider whether the scope and analyses in the other agency's EA or EIS adequately address the TVA action. TVA will cite, briefly describe the content and relevance to the environmental document, and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA analytic requirements for the action at hand. TVA will publish this determination and the EA or EIS relied upon and notify affected Federal, Tribal, State, and local agencies and other interested entities.

(c) TVA may supplement another agency's EA or EIS in accordance with § 1318.103.

**§ 1318.105 Lead and cooperating agency determinations.**

(a) As soon as practicable after the determination is made to prepare an EA or EIS, TVA will determine whether inviting other Federal, Tribal, State, or local agencies to participate in the preparation of the EA or EIS as lead, joint lead, or cooperating agencies is appropriate (NEPA sec. 107(a), 42 U.S.C. 4336a, and NEPA sec. 111, 42 U.S.C. 4336e). TVA will typically serve as the lead Federal agency for TVA actions. Any designation of lead federal agency will be made in accordance with NEPA sec. 107, U.S.C. 4336a.

(b) If TVA is participating with other Federal agencies in a NEPA review, TVA will cooperate with the other Federal agency(ies) to designate agency roles (e.g., lead agency, joint lead agency, cooperating agency).

(c) When participating with other Federal agencies, TVA will, to the extent practicable, work with the other Federal, Tribal, State, or local agencies to prepare a single environmental document.

**§ 1318.106 Schedule for the NEPA process.**

(a) Once TVA has made a determination of the level of NEPA review, TVA, and if applicable, project sponsors or other participating agencies, will establish a schedule for the completion of the environmental document, consistent with deadlines identified in NEPA sec. 107(g), 42 U.S.C. 4336a(g). Prior to establishing the schedule, TVA will review for completeness any information, data, materials, and/or any applications or agreements that are necessary to determine the level of NEPA review.

(b) TVA will address in the schedule, as appropriate, any concurrent and integrated surveys and studies required by other applicable environmental review laws and Executive Orders, including but not limited to the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(c) As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA sec. 107(g), 42 U.S.C. 4336a(g). These deadlines indicate Congress's determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis.

(1) TVA will complete an EIS not later than the date that is 2 years after the sooner of the date on which TVA determines that NEPA requires the preparation of an EIS with response to the proposal; the date on which TVA notifies the applicant that the application to establish a right-of-way for the proposal is complete; and the date on which TVA issues a notice of intent to prepare the EIS. (42 U.S.C. 4336a(g)(1)(A))

(2) TVA will complete an EA not later than the date that is 1 year after the sooner of the date on which TVA determines that NEPA requires the preparation of an EA with response to the proposal; the date on which TVA notifies the applicant that the application to establish a right-of-way for such action is complete; and the date on which TVA issues a notice of intent to prepare the EA for the proposal. (42 U.S.C. 4336a(g)(1)(B))

(3) TVA will calculate EIS or EA schedules from the applicable start date to the date TVA publishes the EIS or a finding of no significant impact as the

end date. Where TVA has prepared an EA that results in a decision to prepare an EIS, TVA will use the start date for the EA as the start date for the EIS unless it exercises its discretion to determine otherwise by direction of the TVA official responsible for NEPA.

(4) The EIS or EA will publish (unless the deadline is extended pursuant to the provision below) on the day the deadline elapses, in as substantially complete form as is possible.

(5) TVA will document the start and completion dates of each EIS or EA to assist TVA in tracking the schedule and preparing a report to congressional committees required by NEPA § 107(h), 42 U.S.C. 4336a(h).

(d) If TVA determines it is not able to meet the deadline prescribed by NEPA sec. 107(g)(1), 42 U.S.C. 4336a(g)(1), TVA will consult with the applicant, if any, pursuant to NEPA sec. 107(g)(2), 42 U.S.C. 4336a(g)(2). After such consultation, if needed, and for cause stated, TVA may establish a new deadline and appropriately document the cause. Cause for establishing a new deadline is only established if the EIS or EA is so incomplete, at the time at which TVA determines it is not able to meet the statutory deadline, that issuance would, in TVA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EIS or EA. The announcement of the new deadline will specify the reason why the EIS or EA was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(e) When the EIS or EA is published, a responsible official will certify (and the certification will be incorporated into the EIS or EA) that the resulting EIS or EA represents TVA's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the TVA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in TVA's judgment, the analysis contained therein is adequate to inform and reasonably explain TVA's final decision regarding the proposed federal action.

#### **§ 1318.107 Scoping process.**

(a) TVA will publish a notice of intent for an EIS and request public comment on the proposed action and alternatives.

(b) TVA may use the scoping process to identify for analysis in an EA or EIS the substantive issues that meaningfully inform the consideration of environmental effects and reasonable alternatives to be considered. Scoping

may also identify non-substantive issues that do not require analysis and/or alternatives that are determined not to be reasonable. Scoping may include work conducted prior to publication of the notice of intent or formal initiation of the NEPA process, including prior public engagement to identify issues and alternatives that may inform the eventual alternatives analyzed.

(c) The scoping process may include interagency scoping sessions to coordinate an action with and obtain inputs from other interested agencies (including likely affected Federal, Tribal, State, and local agencies).

(d) On the basis of input received during the scoping process, TVA will determine whether to modify the scope, schedule, or the type of environmental document.

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

#### **§ 1318.200 Purpose and scope.**

(a) Categories of actions addressed in this section are those that do not normally have a significant effect on the human environment and therefore do not require the preparation of an EA or an EIS. Such categories of actions (categorical exclusions) include those:

(1) Identified in appendix A of this part;

(2) Adopted by TVA consistent with NEPA sec. 109, 42 U.S.C. 4336c; or

(3) Identified by TVA pursuant to paragraph (c) of this section.

(b) A proposed action may be categorically excluded if a single categorical exclusion encompasses the proposed action or multiple categorical exclusions collectively encompass the proposed action, subject to a review for extraordinary circumstances pursuant to § 1318.201. A proposed action will not be impermissibly segmented into smaller parts such that the use of a categorical exclusion for any such smaller part would irreversibly and irretrievably commit TVA to a particular plan of action for a broader proposed action.

(c) TVA may update or revise the categorical exclusions listed in appendix A of this part when it identifies new categories of actions or determines that the definition of actions listed in appendix A of this part warrants revision or removal, based on TVA's experience. In making this determination, TVA will:

(1) Develop a written record containing information to substantiate its determination or to justify its removal;

(2) Consult with the CEQ on its proposed categorical exclusion or revision, including the written record,

for a period not to exceed 30 days prior to providing public notice as described in paragraph (c)(3); and

(3) Provide public notice of TVA's establishment, revisions, or removal of the categorical exclusion and publish the written record.

(d) Consistent with NEPA sec. 109, 42 U.S.C. 4336c, TVA may adopt a CE listed in another agency's NEPA procedures. If, after consulting with the agency, TVA determines such an adoption is appropriate, TVA will provide public notification of the adoption. The notification will briefly describe the agencies' consultation, the category of actions to which TVA would apply the CE, and any information relevant to the application of the adopted CE. The CEs adopted by TVA under NEPA sec. 109, 42 U.S.C. 4336c, will be listed on TVA's web page.

(e) TVA may rely on another Federal agency's determination that a categorical exclusion applies to a particular proposed action if the action covered by that determination and TVA's proposed action are substantially the same. In these instances, TVA will review the records of the other Federal agency to ensure the records address the TVA proposed action. TVA will document that TVA is relying on the categorical exclusion determination and that no extraordinary circumstances are present that require the preparation of an environmental document.

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

(a) If TVA determines that a categorical exclusion(s) covers a proposed action, TVA will evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

(1) If an extraordinary circumstance exists, TVA may categorically exclude the proposed action if it determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects or that the action may be modified to avoid the potential to result in significant effects.

(2) If TVA cannot categorically exclude the proposed action due to the presence of an extraordinary circumstance, TVA will prepare an EA or EIS, as appropriate.

(b) Examples of extraordinary circumstances to be considered are:

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

(i) Species listed or proposed to be listed under the Endangered Species Act, or the proposed or designated Critical Habitat for these species;

(ii) Wetlands or floodplains;

(iii) Cultural or historical resources;  
 (iv) Areas having special designation or recognition such as wild and scenic rivers, sacred sites, parklands, or wilderness areas; and

(v) Important farmland, as defined in 7 CFR part 657; and

(2) There is substantial scientific controversy regarding the significance of the environmental impacts of the proposed action.

(c) The mere presence of one or more of the resources under paragraph (b)(1) of this section does not by itself preclude the use of a categorical exclusion. Rather, the determination that an extraordinary circumstance(s) exists depends upon the finding of a causal relationship between a proposed action and the potential effect on these resource conditions, and, if such a relationship exists, the relative degree of the potential effect of a proposed action on these resource conditions.

(d) TVA will document its review for extraordinary circumstances for categories of actions that are likely to result in a physical effect on the environment. No documentation of the extraordinary circumstances review is required for categories of actions that would not result in a physical effect on the environment or carry little risk of significant environmental effects.

#### § 1318.202 Public notification.

TVA may, in its sole discretion, provide public notification on any action for which a categorical exclusion is used if TVA determines that the public may have relevant and important information relating to the proposal that will assist TVA in its decisionmaking.

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

TVA has established the following classes of actions as categorical exclusions. Individual actions must be reviewed to determine whether extraordinary circumstances are present (see § 1318.201). If an extraordinary circumstance cannot be addressed sufficiently to render the action's impacts not significant, an EA or an EIS must be prepared.

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

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

3. Personnel actions.

4. Procurement actions.

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

6. Contracts or agreements for the sale, purchase, or interchange of electricity.

7. Administrative actions consisting solely of paperwork.

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

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

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

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

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

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

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

15. Reserved.

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

17. Routine modification, repair, and maintenance of, and minor upgrade of and addition to, existing transmission infrastructure, including the addition, retirement, and/or replacement of breakers, transformers, bushings, and relays; transmission line uprate, modification, reductoring, and clearance resolution; and limited pole replacement. This exclusion also applies to improvements of existing access roads and construction of new access roads outside of the right-of-way that are generally no more than 1 mile in length.

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

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

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

between TVA and other utilities and/or customers.

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

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

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

24. Minor actions conducted by non-TVA entities on TVA property to be authorized under contract, license, permit, or covenant agreements, including those for utility crossings, agricultural uses, recreational uses, rental of structures, and sales of miscellaneous structures and materials from TVA land.

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

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

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

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

29. Actions to restore and enhance wetlands, riparian, and aquatic ecosystems that generally involve physical disturbance of no more than 10 acres, including, but not limited to, construction of small water control structures; revegetation actions using native materials; construction of small berms, dikes, and fish attractors; removal of debris and sediment following natural or human-caused disturbance events; installation of silt fences; construction of limited access routes for purposes of routine maintenance and management; and reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range.

30. Actions to maintain, restore, or enhance terrestrial ecosystems that generally involve physical disturbance of no more than 125 acres, including, but not limited to, establishment and maintenance of non-invasive vegetation; bush hogging; prescribed

fires; installation of nesting and roosting structures, fencing, and cave gates; and reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range.

31. The following forest management activities:

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

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

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

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

33. Actions to protect cultural resources including, but not limited to, fencing, gating, signing, and bank stabilization (generally up to 1/2 mile in length when along stream banks or reservoir shoreline).

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

35. Installation or modification (but not expansion) of low-volume groundwater withdrawal wells (provided that there would be no drawdown other than in the immediate vicinity of the pumping well and that there is no potential for long-term decline of the water table or degradation of the aquifer), or plugging of groundwater or other wells at the end of their operating life. Site characterization must verify a low potential for seismicity, subsidence, and contamination of freshwater aquifers.

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

or facility grounds, and actions requiring new permits or changes to an existing permit(s) are addressed in CE 37). Such actions may include, but are not limited to, the following:

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

b. Regular servicing of power equipment and structures within existing transmission substations and switching stations;

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

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

e. Repair or replacement of plumbing, electrical equipment, small HVAC systems, sewerage, pipes, and telephone and other communication service;

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

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

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

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

j. Repair or replacement of gates and fences;

k. Maintenance of hazard buoys;

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

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

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

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

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

37. Modifications, upgrades, uprates, and other actions that alter existing buildings,

infrastructure systems, facility grounds, and plant equipment, or their function, performance, and operation. Such actions, which generally will not physically disturb more than 10 acres, include but are not limited to, the following:

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

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

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

d. Installation or upgrades of large HVAC systems;

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

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

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

38. Siting, construction, and use of buildings and associated infrastructure (e.g., utility lines serving the building), physically disturbing generally no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed.

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

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

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

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

43. Actions to enhance and control access to TVA property including, but not limited to, construction of new access roads and

parking areas (generally no greater than 1 mile in length and physically disturbing no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed) and installation of control measures such as gates, fences, or post and cable.

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

45. Installation, modification, and operation of the following types of renewable or waste-heat recovery energy projects which increase generating capacity at an existing TVA facility, generally comprising of physical disturbance to no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed:

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

b. Solar photovoltaic systems mounted on the ground, an existing building or other structure (such as a rooftop, parking lot or facility and mounted to signage lighting, gates or fences).

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

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

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

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

50. Financial assistance for the following actions: approving and administering grants, loans and rebates for continued operations or purchase of existing facilities and infrastructure for uses substantially the same as the current use; purchasing, installing, and replacing equipment or machinery at existing facilities; and completing engineering designs, architectural drawings, surveys, and site assessments (except when tree clearing,

geotechnical boring, or other land disturbance would occur).

#### Subpart D—Environmental Assessments

##### § 1318.300 Purpose and scope.

(a) If an action is subject to NEPA and unless TVA finds that the proposed action is excluded from having to prepare an EA or EIS pursuant to a categorical exclusion as determined following the procedures in subpart C of this part, or by another provision of law, TVA will prepare an EA with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. TVA is mindful of Congress' direction that EAs are to be "concise." NEPA sec. 106(b)(2); 42 U.S.C. 4336(b)(2).

(b) An EA will concisely communicate information and analyses about issues that are potentially significant and a reasonable range of alternatives.

##### § 1318.301 EA preparation.

(a) The EA will briefly describe the proposed action and include brief discussions of the purpose and need for action, alternatives required by NEPA sec. 102(2)(H), 42 U.S.C. 4332(2)(H), and the environmental effects of the proposed action and alternatives.

(b) TVA may, in its sole discretion, request public and stakeholder involvement in the preparation of an EA and provide a public comment period. When public comment is requested, the EA will address substantive comments made in accordance with § 1318.500.

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

(d) The text of an EA is strictly prohibited from exceeding 75 pages, not including citations or appendices.

(e) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the EA. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(f) The breadth and depth of analysis in an EA will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the EA, a responsible official will certify (and the certification will be incorporated into the EA) that TVA has considered the factors mandated by NEPA; that the EA

represents TVA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects TVA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in TVA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed. Such certification may be combined with the certification required under § 1318.106(e).

##### § 1318.302 Finding of No Significant Impact.

(a) TVA will prepare a finding of no significant impact if TVA determines, based on the EA, not to prepare an EIS because the proposed action will not have significant effects. The finding of no significant impact will:

(1) Include the EA or incorporate it by reference;

(2) Document TVA's determination that the proposed action will not have a significant effect on the quality of the human environment;

(3) State the authority for any mitigation that TVA has adopted and any applicable monitoring or enforcement provisions. If TVA finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by TVA or voluntary mitigation commitments that will be undertaken to avoid significant effects;

(4) Identify any other documents related to the finding of no significant impact; and

(5) State that an EIS will not be prepared, concluding the NEPA process for the action.

(b) TVA will publish a FONSI as part of an EA or as a separate document.

#### Subpart E—Environmental Impact Statements

##### § 1318.400 Purpose and scope.

(a) TVA will prepare an EIS for major Federal actions significantly affecting the quality of the human environment. The EIS will address each of the elements identified in section 102(2)(C) of NEPA.

(b) TVA will focus its analysis on whether the environmental effects of the proposed action are significant.

(c) Similarly, TVA will document in the EIS where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or

project at hand that extend outside the geographical territory of the project or might materialize later in time.

#### **§ 1318.401 EIS preparation.**

(a) The following standard format may be used unless TVA determines that a different format is more appropriate:

- (1) Executive summary.
- (2) Purpose and need.
- (3) Reasonable range of alternatives including the proposed action.
- (4) Affected environment.
- (5) Environmental consequences.
- (6) Appendix.

(b) During the process of preparing an EIS, TVA will obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and appropriate Federal, Tribal, State, and local agencies that are authorized to develop and enforce environmental standards. Consistent with § 1318.500, TVA may, in its sole discretion, seek comments from the public and Tribal, State, and local agencies that may be affected by the proposed action or have expressed interest in the proposed action. TVA will address any substantive comments received in the EIS and will determine whether modifications to the EIS are necessary.

(c) TVA will publish the EIS and notify the Environmental Protection Agency; other interested Federal, Tribal, State, and local agencies; and other entities and individuals who have expressed interest in the proposed action.

(d) Except as provided in paragraph (e) of this section, the text of an EIS will not exceed 150 pages, not including citations or appendices.

(e) An EIS for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. TVA will determine at the earliest possible stage of preparation of an EIS whether the conditions for exceeding the page limit in paragraph (d) of this section are present.

(f) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the EIS. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(g) The breadth and depth of analysis in an EIS will be tailored to ensure that the EIS does not exceed these page limits. In this regard, as part of the finalization of the EIS, a responsible official will certify that TVA has considered the factors mandated by

NEPA; that the EIS represents TVA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects TVA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in TVA's judgment, comparatively unimportant or frivolous. Such certification may be combined with the certification required under § 1318.106(e).

#### **§ 1318.402 Agency decision.**

(a) When TVA is considering a proposed action, TVA will not take action that would have a significant adverse environmental effect or limit the choice of reasonable alternatives until TVA determines that the requirements of these procedures have been met.

(b) After completion of the EIS, TVA may prepare and timely publish a concise decision document notifying the public that TVA has considered all relevant information raised in the NEPA process in making its decision.

(c) The decision document would normally address the decision, the basis for the decision, and any monitoring and/or mitigation commitments.

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

#### **§ 1318.500 Public and stakeholder involvement.**

(a) TVA may, in its sole discretion, request public involvement in the preparation of an environmental document. The type of and format for notification and public participation will be selected as appropriate to best facilitate timely and meaningful public input. Any process of obtaining and requesting comments may be undertaken at any time that is reasonable in the process of preparing the environmental document. TVA will ensure that the process of obtaining and requesting comments, and TVA's analysis of and response to those comments, does not cause TVA to violate NEPA's deadlines for completion of an environmental document.

(b) TVA will maintain a public website on which it publishes completed environmental documents, decision documents, relevant notices, the list of established and adopted categorical exclusions, and other information relating to TVA's NEPA compliance program.

(c) When TVA seeks comments from the public, TVA will publish the document and provide it by other reasonable means upon request. TVA will specify an appropriate comment

period and method for submission of comments. TVA will consider substantive comments submitted within the period and method specified. TVA is not required to respond to comments or objections of any kind that were not submitted in the time or manner specified, and any such comments shall be considered not properly submitted.

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

(e) If TVA determines that an individual comment or group of comments is substantive, TVA will respond in the environmental document by:

- (1) Modifying alternatives including the proposed action;
- (2) Developing and evaluating alternatives not previously given serious consideration;
- (3) Supplementing, improving, or modifying its analyses;
- (4) Making factual corrections; or
- (5) Stating that no action is needed.

(f) Changes to the document resulting from substantive comments will be briefly summarized in the environmental document.

(g) TVA will publish all comments received during the comment period when the environmental document is published.

(h) TVA may provide notification on its website if TVA withdraws, cancels, or otherwise ceases the consideration of a proposed action before completing an environmental document.

#### **§ 1318.501 Mitigation.**

(a) TVA will identify, as appropriate, measures to mitigate expected significant adverse environmental effects in an environmental document. Those mitigation measures to which TVA commits must be identified in the associated FONSI or decision document (or the documentation, if any, prepared for a categorical exclusion).

(b) Circumstances may arise that warrant modifying or cancelling previously made commitments. TVA may modify or cancel a commitment after considering the environmental significance of such a change.

#### **§ 1318.502 Programmatic environmental documents and tiering.**

(a) A programmatic environmental document may be prepared to address a proposed program, policy, or plan, or a proposed action that has a wide geographic scope.

(b) A programmatic environmental document can support high-level or

broad decisionmaking and can provide the foundation for the efficient review of specific tiered implementing actions. When TVA has prepared an environmental document for programs, plans, and policies, the tiered document need only summarize and incorporate by reference the issues discussed in the broader document. The tiered document will concentrate on the subsequent proposed action.

(c) Ongoing or previously planned and approved actions that are within the scope of a programmatic review may continue during the programmatic review period, so long as the planned and approved actions are justified independently of the program, are accompanied by an adequate environmental review, and would not prejudice the ultimate decision on the contemplated program.

(d) The identification of significant impacts in a programmatic EIS does not preclude the review of specific implementing actions in a subsequent tiered NEPA review if the implementing actions would not result in new or different significant impacts.

(e) TVA will rely on programmatic environmental documents in accordance with section 108 of NEPA.

**§ 1318.503 Coordination with project sponsors and procedures for project sponsor-prepared environmental documents.**

(a) When a project sponsor proposes to undertake an action that will require TVA's authorization, TVA will determine whether NEPA is triggered and the scope of the review of TVA's proposed action.

(b) When TVA prepares an environmental document to consider authorization of a project sponsor's action, TVA will provide the project sponsor with information on its responsibilities for assisting TVA in conducting the necessary NEPA review. At TVA's discretion, this assistance can include providing TVA detailed information about the scope and nature of the proposed action, environmental analyses and studies, and copies of associated environmental permit applications submitted to other Federal, Tribal, State, or local agencies. TVA will independently evaluate the submitted information for accuracy.

(c) In accordance with NEPA sec. 107(f), 42 U.S.C. 4336a(f), TVA allows project sponsors, or contractors hired by project sponsors, to prepare NEPA documents under TVA's supervision.

(d) TVA will independently evaluate the environmental document and will take responsibility for its contents.

(e) TVA will assist project sponsors and project sponsor-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. TVA will work with the project sponsor to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.

(f) A project sponsor normally will be required to reimburse TVA for all of the costs in reviewing the project sponsor's proposed action or environmental document. (*See* 16 U.S.C. 831c(d); 18 CFR part 1310.) Participation of a project sponsor in a TVA NEPA review, including reimbursement of TVA's costs, does not commit TVA to any favorable action on a request for authorization.

(g) Project sponsors or contractors assisting in the preparation of the environmental documents will submit a disclosure statement to TVA that specifies any financial or other interest in the outcome of the action.

(h) Project sponsors intending to pay a fee for an expedited EA or EIS deadline pursuant to NEPA sec. 112, 42 U.S.C. 4336f, for which TVA would be the lead agency should consult with TVA before submitting a request to CEQ. TVA will use such consultation to assist the project sponsor in providing an accurate description of the project as it relates to the anticipated EA or EIS-associated costs and understanding the anticipated scope of the environmental review including whether to prepare an EA or an EIS.

(i) TVA's compliance with NEPA sec. 107(g), 42 U.S.C. 4336a(g), and NEPA sec. 112, 42 U.S.C. 4336f, is contingent on receipt of complete and accurate project information from a project sponsor.

(j) Project sponsors must not take actions concerning a proposal that may have an environmental impact or that would limit or affect TVA's decision until TVA determines that the requirements of these procedures have been met. If such actions are taken prior to that determination, TVA may deny the project sponsor's request for TVA's authorization. This section does not preclude a project sponsor from developing plans or designs or taking other actions that will not have environmental impact to support an application or proposal for TVA's authorization.

**§ 1318.504 Reducing paperwork and delay.**

(a) To reduce paperwork and delay and to meet NEPA's page limits and time limits, TVA will prepare analytic

and concise environmental documents, with emphasis placed on portions of the environmental documents that are useful to decision makers and the public. Data and analyses will be commensurate with the importance of associated impacts. Less important material will be briefly discussed, summarized, consolidated, or referenced as appropriate.

(b) TVA may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference. TVA will cite to incorporated material in the document and briefly describe its content.

(c) Environmental documents will be written in plain language and follow a clear format that excludes content that is not critical to compliance with NEPA section 101.

(d) An environmental document may be combined with any other document to reduce duplication, paperwork, and delay.

**§ 1318.505 Information requirements.**

(a) *Methodology and scientific accuracy.* To ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents, TVA will rely on reliable existing applicable data and resources. TVA will identify any methodologies used and reference to scientific and other sources relied upon for its conclusions in environmental documents. TVA is not required to undertake new scientific and technical research to inform the analysis but may do so at its discretion.

(b) *Incomplete and unavailable information.* When there is incomplete or unavailable information relating to the reasonably foreseeable significant adverse effects on the human environment, TVA will make clear that such information is lacking in the EIS. If the incomplete but available information is essential to a reasoned choice among alternatives and costs of obtaining it are reasonable, TVA will include the information in the EIS. If information cannot be obtained because the cost is unreasonable or the means to obtain it are not known, TVA will state in the EIS that the information is unavailable, explain the extent to which the information is relevant to its evaluation of reasonably foreseeable significant adverse effects, and summarize existing scientific evidence addressing the reasonably foreseeable significant adverse effects. TVA will include its evaluation of effects based upon theoretical approaches or research methods generally accepted in the scientific community.

**§ 1318.506 Causes of action.**

This part establishes the procedures by which TVA will typically fulfill the requirements of NEPA. Minor deviations do not establish that TVA failed to comply with NEPA and do not create a substantive right or cause of action for violation of NEPA.

**§ 1318.507 Emergency actions.**

(a) TVA may consolidate, modify, or omit provisions of these procedures for actions necessary in an emergency and ensure such changes would substantially comply with the intent of these procedures.

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

(c) TVA will document the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form and content of that documentation is within TVA's discretion.

**§ 1318.508 Unique identification numbers.**

For all environmental documents, TVA will provide a unique identification number for tracking purposes, which TVA will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. TVA will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

■ For the reasons stated in the preamble, TVA adds part 1319 to chapter XIII of title 18 of the Code of Federal Regulations to read as follows:

**PART 1319—FLOODPLAINS AND WETLANDS**

Sec.

- 1319.10 Purpose and scope.
- 1319.20 Definitions.
- 1319.30 Area of impact.
- 1319.40 Actions that will affect floodplains or wetlands.
- 1319.50 Public notice.
- 1319.60 Disposition of real property.
- 1319.70 General and class reviews.

**Authority:** 16 U.S.C. 831 *et seq.*; E.O. 11988, 42 FR 26951; E.O. 11990, 42 FR 26961

**§ 1319.10 Purpose and scope.**

(a) The review of a proposed action undertaken in accordance with §§ 1318.200, 1318.300, and 1318.400

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

(b) Floodplain evaluations must apply any existing Federal flood risk management standard to federally-funded projects.

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

**§ 1319.20 Definitions.**

The following definitions apply throughout this part.

(a) *Floodplain* refers to the lowland and relatively flat areas adjoining inland waters and reservoirs. Floodplain generally refers to an area that has a 1 percent or greater chance of flooding in any given year.

(b) *Practicable* refers to the capability of an action being performed within existing constraints. The test of what is practicable depends on the situation and includes an evaluation of all pertinent factors, such as environmental impact, economic costs, statutory authority, legality, technological achievability, and engineering constraints.

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

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

**§ 1319.30 Area of impact.**

(a) If a proposed action will potentially occur in or affect wetlands or floodplains, TVA will, as soon as practicable in the planning process, request the appropriate TVA staff with expertise in floodplain or wetland impact evaluations to determine whether the proposed action will occur in or affect a wetland or floodplain and

the level of impact, if any, on the wetland or floodplain.

(b) Further floodplain or wetland evaluation is unnecessary if the TVA staff with expertise in floodplain or wetland impact evaluations determines that the proposed action:

- (1) Is outside the floodplain or wetland;
- (2) Has no identifiable impacts on a floodplain or wetland; and
- (3) Does not directly or indirectly support floodplain development or wetland alteration.

**§ 1319.40 Actions that will affect floodplains or wetlands.**

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

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

(2) The TVA staff with expertise in floodplain or wetland impact evaluations determines that impacts on the floodplain or wetland would be minor.

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

- (1) The effect of the proposed action on natural and beneficial floodplain and wetland values and
- (2) Alternatives to the proposed action that would eliminate or minimize such effects.

(c) TVA must determine if there is no practicable alternative to siting in a floodplain or constructing in a wetland. If a determination of no practicable alternative is made, all practicable measures to minimize impacts of the proposed action on the floodplain or wetland must be implemented. If at any time prior to commencement of the action it is determined that there is a practicable alternative that will avoid affecting floodplains or wetlands, the proposed action must not proceed.

**§ 1319.50 Public notice.**

(a) Once a determination of no practicable alternative is made in accordance with § 1318.40, TVA must notify the public of a proposed action's potential impact on floodplains or wetlands if the proposed action is subject to executive order and not already covered by class review. Public notice of actions affecting floodplains or wetlands may be combined with any notice published by TVA or another Federal agency if such a notice generally

meets the minimum requirements set forth in this section. Issuance of a draft or final EA or EIS for public review and comment will satisfy this notice requirement.

(b) Public notices must at a minimum:

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

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

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

(4) State when appropriate whether the action conforms to applicable Federal, State or local floodplain protection standards;

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

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

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

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

#### **§ 1319.60 Disposition of real property.**

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

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

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

#### **§ 1319.70 General and class reviews.**

In lieu of site-specific reviews, TVA may conduct general or class reviews of

similar or repetitive activities that occur in floodplains.

**Michael McCall,**

*Vice President, Environment and Stewardship.*

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## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **20 CFR Part 652**

#### **RIN 1205-AC23**

### **Wagner-Peyser Act Staffing, Delay of Merit Staffing Compliance Date**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor's (Department's) Employment and Training Administration (ETA) is delaying by 1 year the date by which State grantees, as a condition on their grant funds, must comply with the regulatory requirements in the 2023 Wagner-Peyser Act Staffing Final Rule regarding the grant-funded staffing models States must use to deliver services in the Wagner-Peyser Act Employment Service (ES). The 2023 Final Rule became effective on January 23, 2024, and provided that all States have until January 22, 2026, 24 months after the effective date of the rule, to comply with the staffing requirements. With this 1-year delay, the compliance date is now January 21, 2027.

**DATES:** This final rule is effective on January 21, 2026.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Vitelli, Administrator, Office of Workforce Investment, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C-4526, Washington, DC 20210.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Wagner-Peyser Act of 1933, 29 U.S.C. 49 *et seq.*, established the ES program, which is a nationwide program of labor-exchange services. The ES program seeks to improve the functioning of the nation's labor markets by matching job seekers with employers that are seeking workers. Section 3(a) of the Wagner-Peyser Act directs the Secretary of Labor (Secretary) to assist States in coordinating the State public service employment offices throughout the country. The Department had

historically relied on the Secretary's authority in section 3(a) and 5(b) to require States to provide labor exchange services with State "merit staff," meaning government employees hired and managed under a merit-based personnel system described in 5 CFR 900, Subpart F.

Beginning in the early 1990s, the Department provided Colorado and Massachusetts with flexibility to set their own staffing requirements for the provision of ES services. In 1998, the Department permitted Michigan similar flexibility to deliver ES services, pursuant to a settlement agreement arising out of *Michigan v. Herman*, 81 F. Supp. 2d 840 (W.D. Mich. 1998).

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, which amended the Wagner-Peyser Act. WIOA did not include an ES merit-staffing requirement. Regulations implementing WIOA were published in the **Federal Register** on August 19, 2016 (81 FR 56072) and were effective on October 18, 2016. Among the provisions codified in the 2016 WIOA regulations was 20 CFR 652.215, which continued to require the use of State merit-staffing for the delivery of ES services, except for the three States that were previously granted exemptions: Colorado, Massachusetts, and Michigan.

Through rulemaking effective February 5, 2020, the Department removed the requirement that ES services be provided only by State merit staff (85 FR 592) (hereinafter referred to as the "2020 Final Rule"). In the preamble to the 2020 Final Rule, the Department explained that it sought to allow States maximum flexibility in staffing arrangements to allow them to better align WIOA and ES staffing. Following the 2020 Final Rule, several States were approved to use a variety of staffing models to provide their ES services, as described in their approved WIOA State plans.

On November 24, 2023, the Department issued the Wagner-Peyser Act Staffing Final Rule (88 FR 82658) (hereinafter referred to as "the 2023 Final Rule") to reinstate a requirement for States to use State merit staff to provide labor exchange services in the ES, with limited exceptions, see 20 CFR 652.215 (2024). The 2023 Final Rule also made changes to the ES Monitor Advocate System regulations in 20 CFR parts 653 and 658. This rule became effective on January 23, 2024, and provided States until January 22, 2026, 24 months from the effective date, to comply with the State merit-staffing requirement. The Department is issuing this final rule amending § 652.215 to