



TENNESSEE VALLEY AUTHORITY

BILLING CODE: 8120-08-P

18 CFR Part 1304

RIN 3316-AA23

Floating Cabin Regulation

AGENCY: Tennessee Valley Authority.

ACTION: Proposed rule.

SUMMARY: The Tennessee Valley Authority (TVA) is proposing to amend its regulations that govern floating cabins located on the Tennessee River and its tributaries. The mooring of floating cabins on the TVA reservoir system has increased, and TVA has determined that this poses an unacceptable risk to navigation, safety, and the environment. Left unaddressed, floating cabins convert the public waters under TVA's management to private use. The proposed amendments would re-define nonnavigable houseboats and floating cabins using one term—"floating cabins"—and prohibit new floating cabins on TVA-managed reservoirs after December 16, 2016. The proposed amendments also include limited mooring standards, limitations on expansions of floating cabins, and requirements for owners to register their floating cabins. Additional health, safety, and environmental standards for floating cabins will be addressed in a later rulemaking once TVA has had the opportunity to discuss such standards with various stakeholders.

In addition, and separate from the updated rule amendments for floating cabins, these proposed amendments contain a minor changes to clarify when TVA will allow some water-use facilities (e.g., docks) to be as large as 1800 square feet.

DATES: Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send comments by mail or hand delivery to David B. Harrell, Program Manager, Floating Cabins, Tennessee Valley Authority, 260 Interchange Park Drive, Lenoir City, TN 37772 or by email to dbharrell@tva.gov.

FOR FURTHER INFORMATION CONTACT: David B. Harrell, 865-632-1327.

SUPPLEMENTARY INFORMATION:

Legal Authority

These proposed amendments are promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831–831ee, Title V of the Independent Offices Appropriations Act of 1955, 31 U.S.C. 9701, and OMB Circular No. A–25. Under Section 26a of the TVA Act, no obstructions affecting navigation, flood control, or public lands or reservations shall be constructed, operated, or maintained across, along, or in the Tennessee River System without TVA’s approval. TVA has long considered nonnavigable structures such as floating cabins to be obstructions that require its approval. In addition, Section 9b of the TVA Act provides that TVA “may establish regulations to prevent the construction of new floating cabins.” 16 U.S.C. 831h-3(e).

Background and Proposed Amendments

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purpose of navigation, flood control, and power production. Consistent with those purposes, TVA

uses the system to improve water quality and water supply and to provide a wide range of public benefits including recreation.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act, as amended. “Obstruction” is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and nonnavigable houseboats. TVA also owns, as agent for the United States, much of the shoreline and inundated land along and under its Reservoir System.

Since 1971, TVA has used its authority under Section 26a to prohibit the mooring on the Tennessee River System of new nonnavigable houseboats that are used primarily for habitation or occupation and not for navigation or water transportation. In particular, TVA amended its regulations in 1971 to prohibit the mooring or anchoring of new nonnavigable houseboats except for those in existence before November 21, 1971. Criteria were established then to identify when a houseboat was considered “navigable” and the conditions under which existing nonnavigable houseboats would be allowed to remain. These criteria were characteristics that TVA determined were indicative of real watercraft; i.e., boats or vessels that are designed and used primarily to traverse water. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, most notably in 1978 when TVA updated the prohibited mooring of nonnavigable houseboats on its reservoir system except for those in existence on or

before February 15, 1978. The navigability criteria, however, largely have remained unchanged.

A “nonnavigable houseboat” under TVA’s current regulations is identified as any houseboat not in compliance with the following criteria:

Built on a boat hull or on two or more pontoons;

Equipped with a motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180-degree range;

Compliant with all applicable state and federal requirements relating to vessels;

Registered as a vessel in the state of principal use; and

State registration numbers clearly displayed on the vessel.

Despite the nonnavigable houseboat prohibition, new nonnavigable houseboats in the form of floating cabins have been moored on TVA reservoirs. TVA estimates that approximately 2000 floating cabins and older nonnavigable houseboats are now moored on TVA reservoirs. Some developers and owners of these floating cabins have asserted that they are not nonnavigable houseboats because they have been designed to meet the criteria for navigability in TVA’s regulations. Whether or not this is true, these floating cabins are designed and used primarily for human habitation at a fixed location rather than for transportation or navigation. These floating cabins are a modern version of the pre-1978 nonnavigable houseboats that TVA addressed in its 1971 and 1978 regulatory actions. They are not in any real sense watercraft, and absent action by TVA, the mooring of floating cabins on TVA reservoirs will continue to increase. Until now, TVA has discouraged the increased mooring of floating cabins without using the full scope of its regulatory authority under the TVA Act.

In determining what action to take, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assesses the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins and nonnavigable houseboats on TVA's reservoirs. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. Public reaction to this situation widely varied.

Many members of the general public urged TVA to require the removal of all floating cabins because TVA's reservoirs are public resources and owners of floating cabins are occupying public areas. Floating cabin owners generally supported additional reasonable regulation of their structures but argued against policies requiring their removal because of the investments they have made in the structures. Other commenters had concerns about discharges of black (sewage) and gray (showers, sinks, etc.) water from floating cabins and shock and electrocution risks associated with the electrical connections to floating cabins. Commenting agencies consistently supported better regulation of floating cabins. The final EIS and associated documents can be found at <https://www.tva.com/Environment/Shoreline-Construction/Floating-Cabins>.

After considering the comments it received during the EIS process and its analyses of impacts, TVA identified as its preferred policy one that establishes standards for floating cabins to enhance compliance with applicable water quality discharge requirements set by other agencies, adherence to electrical safety codes, and location of floating cabins within identified harbor limits of commercial marinas. Under the preferred policy, the mooring of additional floating cabins would be prohibited on the

TVA River System of which TVA reservoirs are a part. All existing floating cabins, including nonnavigable houseboats, would have to be removed from the Tennessee River System by January 1, 2036, and be subject to a regulatory program in the interim. On May 5, 2016, the TVA Board of Directors adopted the preferred policy with one exception—the Board changed the removal date to May 5, 2046.

On December 16, 2016, the Water Infrastructure Improvements for the Nation Act (WIIN Act) was enacted by the United States Congress. Title IV Section 5003 related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act specifically addresses floating cabins and provides that TVA may allow the use of floating cabins where the structure was located on waters under TVA's jurisdiction as of December 16, 2016; and where the owner maintains the structure in accordance with reasonable health, safety, and environmental standards set by the TVA Board of Directors. Section 9b also states that TVA may establish regulations to prevent the construction of new floating cabins and may levy fees to ensure compliance.

Section 9b provides the circumstances under which TVA may require the removal of existing floating cabins; i.e., those located on waters under TVA's jurisdiction as of December 16, 2016. For floating cabins that have a TVA permit as of December 16, 2016, TVA may not require their removal for 15 years; i.e., until December 16, 2031. For those without permits on December 16, 2016, TVA may not require their removal for five years; i.e., until December 16, 2021. During these 15- and 5- year periods, however, TVA may levy necessary and reasonable fees to ensure compliance with TVA's regulations. The new legislation also provides that, with respect to existing floating cabins, TVA “shall approve and allow the use of the floating cabin on waters under the jurisdiction of

[TVA] at such time and for such duration as (i) the floating cabin meets the requirements of [16 U.S.C. 831h–3(b)]; and (ii) the owner of the floating cabin has paid any fee assessed pursuant to [16 U.S.C. 831h–3(c)].” 16 U.S.C. 831h–3(d)(1)(B).

Section 9b of the TVA Act defines “floating cabin” as a watercraft or other floating structure (1) primarily designed and used for human habitation or occupation; and (2) not primarily designed or used for navigation or transportation on the water. This proposed rule clarifies the type of structure that TVA will regulate as a floating cabin and updates TVA’s regulations to clarify that floating cabins placed on TVA waters after December 16, 2016, are prohibited. The proposed rule also establishes limited mooring requirements; clarifies limitations on expansions; and requires all owners of floating cabins to register their structures with TVA by January 1, 2019, regardless of whether they already have a Section 26a permit. Although this deadline allows plenty of time for owners to register their floating cabins, TVA would encourage owners to begin the registration process without delay. A subsequent rulemaking will address: (1) the permitting process for existing floating cabins; (2) health, safety, and environmental standards; and (3) fees.

Floating Cabins

To more clearly describe the type of floating structure that TVA regulates, the term “nonnavigable houseboat” would be replaced in TVA’s Section 26a regulations with the term “floating cabin,” the term adopted by Congress in the WIIN Act. Floating cabins are structures determined by TVA, in its sole judgment, to be designed and used primarily for human habitation or occupation and not designed or used primarily for

navigation or transportation on the water. TVA's judgment will be guided by, but not limited to, the following factors:

1. Whether the structure is usually kept at a fixed mooring point;
2. Whether the structure is actually used on a regular basis for transportation or navigation;
3. Whether the structure has a permanent or continuous connection to the shore for electrical, plumbing, water, or other utility service;
4. Whether the structure has the performance characteristics of a vessel typically used for navigation or transportation on the water;
5. Whether the structure can be readily removed from the water;
6. Whether the structure is used for intermittent or extended human-habitation or occupancy;
7. Whether the structure clearly has a means of propulsion and appropriate power/size ratio;
8. Whether the structure is safe to navigate or use for transportation purposes.

Mooring

Existing floating cabins, i.e., those located on the TVA River System on or before December 16, 2016, may continue to be moored within harbor limits of a commercial marina or, if the floating cabin is not associated with a marina, along shoreline approved in writing by TVA on or before December 16, 2016. However, to prevent sprawl and to better contain the impacts of floating cabins, TVA would not allow an existing floating cabin to relocate except to the harbor limits of a commercial marina that complies with

18 C.F.R. 1304.404, the TVA regulation governing commercial marina harbor limits. Existing floating cabins without TVA permits would have to be moored within identified and approved harbor limits of commercial marinas that comply with 1304.404. In some cases, existing floating cabins moored at a commercial marina are located outside of the designated harbor limits or the marina's land ownership has changed since the harbor limits were originally designated. In these and other situations, TVA may require a floating cabin to relocate to another location within the marina's harbor limits. Relocations to alternate marinas would require advance approval from TVA in the form of a new permit.

Dock size

Separate from the proposed amendments to regulations concerning floating cabins, the proposal would result in a minor change to clarify TVA's intent concerning the size of some water-use facilities (e.g., docks). The current regulation requires water-use facilities to be sited within a 1000-square-foot rectangular or square area. The proposed change would allow some water-use facilities to be as large as 1800 square feet, but only in one of two circumstances (1) where the water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least one water-use facility in the subdivision prior to November 1, 1999; or (2) if there is no subdivision, where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. TVA's current waiver or variance provisions, set forth in 1304.212 and 1304.408 respectively, may allow even larger facilities where an applicant requests and justifies a waiver or variance, but such allowances shall be made in TVA's discretion and on a case-by-case basis.

Administrative Requirements

A. Unfunded Mandates Reform Act and various Executive Orders including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children from Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act; and the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs dated January 30, 2017

This proposal contains no federal mandates for state, local, or tribal government or for the private sector. TVA has determined it will not have a significant annual effect of \$100 million or more or result in expenditures of \$100 million in any one year by state, local, or tribal governments or by the private sector. The proposal will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the federal Government and States or Indian tribes. Nor will the proposal have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low-income or minority populations. Unified development and regulation of the Tennessee River System through an approval process for obstructions across, along, or in the river system, and management of United States-owned land entrusted to TVA are federal functions for which TVA is responsible under the TVA Act. In general, the proposal updates or clarifies TVA's regulations to align

them with the status quo. First, the proposal clarifies that no new structures are allowed and codifies 1) an updated definition for floating, habitable structures that are allowable on TVA reservoirs; 2) where such structures may be located; and 3) the types of modifications that are allowed. The proposal also amends TVA's regulations to align better with its policy for allowing some obstructions, usually docks, to be larger than 1000 square feet. Accordingly, the proposal has no implications for any of the referenced authorities, including the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs dated January 30, 2017, which affects only "significant regulatory actions" as defined by Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. The statute defines "small entity" as a "small business," "small organization" (further defined as a "not-for-profit enterprise"), or a "small governmental jurisdiction." Most applications for water-use facilities are submitted by residential landowners for personal use. Since residential landowners are not businesses, not-for-profit enterprises, or small governmental jurisdictions, there are relatively few "small entities" affected by TVA's proposal. Moreover, nothing in this proposal significantly adds to the cost of applying for and constructing any regulated facility. Accordingly, this rule will not have a significant impact on a substantial number of small entities; no regulatory flexibility analysis is required; and TVA's Chief Executive Officer has made the requisite certification.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces TVA's intent to request approval from the Office of Management and Budget (OMB) for amendment of a currently approved information collection. The information collection requirements proposed under this rule for registration of floating cabins will be included within the Section 26a Permit Application information collection. For this information collection, we estimate an increase in the number of responses and the burden hours in the first year of the floating cabin registration process. The number of responses is estimated to increase from 1,500 to 3,700 in the first year, then return to close to the previous number in following years. The estimated burden per response remains at 2 hours. Therefore in the first year, the estimated burden will increase from 3,000 hours to 7,400 hours. The estimated overall burden for the information collection will return to about 3,000 hours in following years.

Title of Information Collection: Section 26a Permit Application

Current OMB Approval Number: 3316-0060

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit organizations, federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 3,700.

Estimated Total Annual Burden Hours: 7,400.

Estimated Average Burden Hours per Response: 2.0.

Need for and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions and is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

The information collection requirements in this proposed rule have been submitted for review by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

An Information Collection Request (ICR) document has been prepared by TVA, and a copy may be obtained from the Senior Privacy Program Manager: Christopher A. Marsalis, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902-1401; telephone (865) 632-2467 or by email at camarsalis@tva.gov; or to the Agency Clearance Officer: Philip D. Propes, Tennessee Valley Authority, 1101 Market Street (MP 2C), Chattanooga, Tennessee 37402-2801; telephone (423) 751-8593 or email at pdpropes@tva.gov.

Under the Paperwork Reduction Act, TVA is soliciting public comment before the ICR is submitted to OMB for final review and approval. We are soliciting comment to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the ICR must be submitted to TVA by the date indicated above. Comments must be submitted by mail or hand delivery to David B. Harrell, Program Manager, Floating Cabins, Tennessee Valley Authority, 260 Interchange Park Drive, Lenoir City, TN 37772 or by email to dbharrell@tva.gov.

Comments may also be sent to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, marked "Attention: Desk Officer for Tennessee Valley Authority, OMB #3316-0060."

Comments on the ICR will be summarized and included in the request for OMB approval.

List of Subjects in 18 CFR Part 1304

Administrative practice and procedure, Natural resources, Navigation (water), Rivers, Water pollution control.

For the reasons set out in the preamble, the Tennessee Valley proposes to amend 18 CFR part 1304 of the Code of Federal Regulations as follows:

PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES AND OTHER ALTERATIONS

1. The authority citation for 18 CFR part 1304 continues to read as follows:

Authority: 16 U.S.C 831–831ee.

2. Amend §1304.1 by revising the third sentence to read as follows:

§1304.1 Scope and intent.

* * * By way of example only, such obstructions may include boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluent, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins as described in §1304.101.

* * *

Subpart B—Regulation of Floating Cabins

3. Revise the subpart B heading to read as set forth above.

4. Revise §1304.100 to read as follows:

§1304.100 Scope and intent.

This subpart prescribes requirements for floating cabins on the Tennessee River System. Floating cabins as applied to this subpart include existing nonnavigable houseboats approved by TVA on or before December 16, 2016, and other existing structures whose design and use is primarily for human habitation or occupation, not for navigation or transportation on the water. Floating cabins that were not located or moored

on the Tennessee River System on or before December 16, 2016, shall be deemed new floating cabins. New floating cabins are prohibited and subject to the removal provisions of this part and Section 9b of the TVA Act. No new floating cabins shall be moored, anchored, or installed on the Tennessee River System. Floating cabins that were located or moored in the Tennessee River System on or before December 16, 2016 shall be deemed existing floating cabins. Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part.

5. Amend §1304.101:

a. By revising the section heading and paragraphs (a) and (b);

b. In paragraphs (c) introductory text and (c)(1) and (2) by removing the words “nonnavigable houseboat” and “nonnavigable houseboats” and adding in their place the words “floating cabin” and “floating cabins”, respectively;

c. By revising paragraph (d);

d. In paragraph (e) by removing the words “nonnavigable houseboats” and adding in their place the words “floating cabins”;

e. In paragraph (f) by removing the words “nonnavigable houseboat” and adding in their place the words “floating cabin”; and

f. By adding paragraph (g).

The revisions and additions read as follows:

§1304.101 Floating cabins.

(a)(1) Floating cabins include nonnavigable houseboats approved by TVA on or before December 16, 2016, and other floating structures determined by TVA in its sole discretion to be designed and used primarily for human habitation or occupation and not

designed and used primarily for navigation or transportation on the water. TVA's judgment will be guided by, but not limited to, the following factors:

- (i) Whether the structure is usually kept at a fixed mooring point;
- (ii) Whether the structure is actually used on a regular basis for transportation or navigation;
- (iii) Whether the structure has a permanent or continuous connection to the shore for electrical, plumbing, water, or other utility service;
- (iv) Whether the structure has the performance characteristics of a vessel typically used for navigation or transportation on water;
- (v) Whether the structure can be readily removed from the water;
- (vi) Whether the structure is used for intermittent or extended human-habitation or occupancy;
- (vii) Whether the structure clearly has a means of propulsion, and appropriate power/size ratio;
- (viii) Whether the structure is safe to navigate or use for transportation purposes.

(2) That a structure could occasionally move from place to place, or that it qualifies under another federal or state regulatory program as a vessel or boat, are factors that TVA also will consider but would not be determinative. Floating cabins are not recreational vessels to which §1304.409 applies.

(b)(1) Owners of floating cabins are required to register the floating cabin with TVA before January 1, 2019. Floating cabin owners must submit certain required information with their registration. Registration shall include the following information: clear and

current photographs of the structure; a drawing or drawings showing in reasonable detail the size and shape of the floating cabin (length, width, and height) and attached structures, such as decks or slips (length, width, and height); and a completed and signed TVA registration form. The completed TVA registration form shall include the mailing and contact information of the owner(s); the TVA permit or TVA-issued numbers (when applicable); the mooring location of the floating cabin; how the floating cabin is moored; how electrical service is provided; how waste water and sewage is managed; and an owner's signature.

(2) Existing floating cabins may remain on TVA reservoirs provided they stay in compliance with the rules contained in this part and pay any necessary and reasonable fees levied by TVA to ensure compliance with TVA's regulations. Existing floating cabins must be moored within the designated and approved harbor limits of a commercial marina that comply with §1304.404. Alternatively, provided the owner obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location on or before December 16, 2016, floating cabins may be moored to the bank of the reservoir at locations where the owner of the floating cabin is the owner or lessee (or the licensee of such owner or lessee) of the proposed mooring location, and at locations described by §1304.201(a)(1), (2), and (3). Existing floating cabins that have not been permitted by TVA must moor within designated and approved harbor limits of a commercial marina that complies with §1304.404. As provided in §1304.404, TVA may adjust harbor limits and require relocation of an existing floating cabin within the harbor limits.

(3) All floating cabins must be moored in such a manner as to:

- (i) Avoid obstruction of or interference with navigation, flood control, public lands or reservations;
- (ii) Avoid adverse effects on public lands or reservations;
- (iii) Prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas;
- (iv) Protect land and landrights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses; and
- (v) Maintain, protect, and enhance the quality of the human environment.

(d) Existing floating cabins shall be maintained in a good state of repair and may be maintained without additional approval from TVA. Existing floating cabins may be rebuilt without TVA approval; but owners are required to notify TVA and submit their proposed plans for rebuilding the floating cabin and submit a photo of the rebuilt floating cabin for TVA's records. Plans for any structural modification that alters the length, width or height of the floating cabin or any attached structures (such as decks or walkways) shall be submitted to TVA for review and approval pursuant to the requirements of subpart A of this part authorizing such construction. TVA will determine if modifying or rebuilding a floating cabin requires a new Section 26a permit and any new fees.

(g) All floating cabins not in compliance with this part are subject to the applicable removal provisions of §1304.406 and Section 9b of the TVA Act.

6. Amend § 1304.102 by removing the words “nonnavigable houseboat” and “nonnavigable houseboats” and adding in their place the words “floating cabin” and “floating cabins”, respectively, wherever they appear, and by adding a sentence to the end of paragraph (a) and revising paragraph (c).

The addition and revision read as follows::

§ 1304.102 Numbering of floating cabins and transfer of ownership.

(a) * * * If TVA provided a placard or tag, the tag must be displayed on a readily visible part of the outside of the floating cabin.

* * * * *

(c) A floating cabin moored at a location approved pursuant to the regulations in this subpart shall not be relocated and moored at a different location without prior approval by TVA, except for movement to a new location within the designated harbor limits of the same commercial dock or marina.

§ 1304.103 [Removed and Reserved]

7. Remove and reserve §1304.103.

8. Amend §1304.204 by revising paragraphs (a), (b), and (n) to read as follows:

§1304.204 Docks, piers, and boathouses.

* * * * *

(a) Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of greater than 1000 square feet, unless the proposed water-use facility will be located in an area of preexisting development. For the purpose of this regulation, “preexisting development” means either (1) the water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least

one water-use facility in the subdivision prior to November 1, 1999; or (2) if there is no subdivision, where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. TVA may allow even larger facilities where an applicant requests and justifies a waiver or variance, set forth in 1304.212 and 1304.408 respectively, but such waivers or variances shall be made in TVA's discretion and on a case-by-case basis.

(b) Docks, boatslips, piers, and fixed or floating boathouses are allowable. These and other water-use facilities associated with a lot must be sited within a 1000- or 1800-square-foot rectangular or square area as required by §1304.204(a) at the lakeward end of the access walkway that extends from the shore to the structure. Access walkways to the water-use structure are not included in calculating the 1000- or 1800-square foot area.

* * * * *

(n) Except for floating cabins approved in accordance with subpart B of this part, toilets and sinks are not permitted on water-use facilities.

* * * * *

§ 1304.406 [Amended]

9. Amend § 1304.406 in the first sentence by removing the words “nonnavigable houseboat” and adding in their place the words “floating cabin”.

10. Amend §1304.412 by:

a. Adding in alphabetical order definitions for “Existing floating cabin” and “New floating cabin”;

b. Removing the definition of “Nonnavigable houseboat”; and

c. Adding in alphabetical order definitions for “Rebuilding” and “Tennessee River”.

The additions read as follows:

§1304.412 Definitions.

* * * *

Existing floating cabin means a floating cabin that was located or moored on the Tennessee River System on or before December 16, 2016.

* * * *

New floating cabin means a floating cabin that was not located or moored on the Tennessee River System on or before December 16, 2016.

* * * *

Rebuilding means replacement of all or a significant portion of a floating cabin to the same approved plans, standards and conditions of the Section 26a permit.

* * * *

Tennessee River System means TVA reservoirs, the Tennessee River or any of the Tennessee River's tributaries.

* * * *

David L. Bowling,
VP Land & River Management

[FR Doc. 2018-00323 Filed: 1/16/2018 8:45 am; Publication Date: 1/17/2018]