



TENNESSEE VALLEY AUTHORITY

BILLING CODE: 8120–08–P

18 CFR Part 1304

RIN 3316–AA23

Floating Cabin Regulation

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority (TVA) is publishing a final rule 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 amendments 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 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 amendments contain minor changes to clarify when TVA will allow some water-use facilities (e.g., docks) to be as large as 1800 square feet.

DATES: This final rule is effective [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Legal Authority

This final rule is 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 Tennessee 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 existing 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 existing floating cabins 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 final 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 final 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, 2020, 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 encourages 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” will 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 Tennessee River System on or before December 16, 2016, may continue to be moored in the following locations: within harbor limits of a commercial marina; if the floating cabin is not associated with a marina, along shoreline approved in writing by TVA on or before December 16, 2016; where moored prior to December 16, 2016, along shoreline where land rights exist for a Section 26a permit; or, where moored prior to December 16, 2016, along shoreline where the owner of the floating cabin is the owner or lessee of the proposed mooring location. To prevent sprawl and to better contain the impacts of floating cabins, TVA will not allow an existing floating cabin to relocate except to the harbor limits of a commercial

marina that complies with 18 CFR 1304.404, the TVA regulation governing commercial marina harbor limits. 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 amendments to regulations concerning floating cabins, the final rule 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.

Comments on the Proposed Rule and TVA's Responses

TVA received 32 comments during the public review period consisting of three letters and 29 emails. This includes one comment that TVA received after the comment-close date, which TVA will include. Comments were received from 28 individuals and four representatives of nongovernmental organizations. The following discussion describes the comments received, provides TVA's response to the comments, and describes changes, if any, made by TVA to the rule based on the comments. Although several of the submitted comments do not pertain to the proposed rule published on January 17, 2018, TVA appreciates the perspectives, interests, and concerns expressed by all commenters.

Some of the comments were outside the scope of this rule and were more germane to the next phase of rulemaking where TVA will address: (1) the permitting process for existing floating cabins; (2) health, safety, and environmental standards; and (3) fees. Since August 2017, TVA has worked with a representative stakeholder group to develop more detailed rules and standards to guide future regulation of floating cabins. TVA expects to publish this second proposed rule and take public comments at a later date in 2018.

1. Comments related to other 26a-permitted structures and the need for 26a regulations

Comment: Some commenters stated that TVA's regulations, standards, inspections, and fees should not discriminate against floating cabin owners and should apply consistently to all structures on TVA reservoirs such as private residential docks. Commenters asserted it is unfair and unreasonable to treat floating cabins differently

from other 26a permitted structures. Some commenters stated that TVA is focusing on something that has never been a problem and docks are far more dangerous to navigation.

TVA Response: Section 26a of the TVA Act requires the advance written approval of TVA for all floating cabins, private residential docks, and other obstructions. Since 1971 TVA has recognized the necessity to prohibit construction of new nonnavigable houseboats (the early version of floating cabins) and establish regulations exclusively for their authorization and management on TVA reservoirs. This was due to their unique nature as a habitable enclosed structure, amenities, and their impacts on navigation, public land, and water quality. The 2016 WIIN Act allows existing floating cabins to remain on the water only if the owner maintains the structure in accordance with reasonable health, safety, and environmental standards set by the TVA Board of Directors.

TVA has previously established corresponding standards for private residential water use facilities. Subparts C and D of the TVA Section 26a regulations set forth the standards for private water use facilities such as boat docks in substantial detail and restrict these facilities in ways that floating cabins are not restricted. For example, living space or sleeping areas are prohibited; enclosed space is limited to 32 square feet for storage; and toilets, sinks, and electrical appliances are not allowed. Electrical lines and service to private docks must be installed in compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request); and electrical service must be installed with an electrical disconnect that is located above the 500-year floodplain or flood risk profile whichever is higher, and is accessible during flood events.

Floating cabins raise unique safety concerns because many have electrical service supplied by submerged electrical lines, and many are equipped with household appliances.

Concerning the impact of floating cabins, in its Environmental Impact Statement, TVA used an extensive amount of existing information and additional data collection and analysis to support its finding of potential impacts to human health and the environment from floating cabins. The finding of potential impacts are based on existing information, literature on the known effects on resources, comments by agencies and the public about impacts that they experience, internal TVA resource specialists, and professional judgment. The potential adverse impacts from sewage discharges into public waterways and the risk and potential harm to the public safety from poorly maintained electrical wiring are well established and understood. TVA acknowledged that the severity of current impacts is not well-sourced in available information. For example, TVA states that adverse water quality impacts cannot currently be associated with floating cabins, but available information, including the literature, supports TVA's conclusion that the severity of impacts will increase if the proliferation of floating cabins is not controlled and operating standards are not established. It is appropriate that TVA acts to address such potential impacts before they become severe.

2. Comments related to vessels

Comment: I fail to see the distinction between my in-harbor water access for which I pay a monthly marina fee and TVA gets money from the marinas and the distinction between houseboats who move twice a year, and certainly between docks that

literally jut out into the water in public (non-harbor-limits) that are not subject to annual fees as is proposed.

TVA Response: TVA is authorized by the WIIN Act to charge compliance fees for floating cabins. Additionally, permit requests for private water use facilities such as docks are usually considered only where the applicant owns the shoreline, or as an adjacent landowner possesses the necessary deeded land rights over TVA land to the reservoir.

TVA does not promulgate rules for vessels, only for obstructions. Vessels such as factory houseboats and wake board boats are regulated by the States and the U.S. Coast Guard. The States mandate and charge for vessel registration. EPA and the Coast Guard issue rules for the proper handling of sewage and waste from vessels. The Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR Part 183. This includes regulation of electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

Habitable structures such as floating cabins are subject to the same local, state, and federal laws and ordinances for management of sewage and waste water that apply to residences on land.

Comment: Why do factory houseboats get to dump their grey water in the lake and no one goes after them or wake board boats get to intake water and then release out as grey water. Consider these differences in your evaluation as it seems to be so one-sided.

TVA Response: The regulation of black water and gray water discharges is outside the scope of this rulemaking, but TVA notes that such discharges are regulated by the

Coast Guard for vessels and by state agencies that are responsible for issuing National Pollutant Discharge Elimination System (NPDES) permits for facilities that discharge sewage or other wastewaters.

3. TVA's interest in safety associated with other structures

Comment: TVA has no interest in safety issues on shoreline docks and factory houseboats and there are far more of these in bad condition that should be subject to inspections.

TVA Response: TVA disagrees. Current TVA Section 26a regulations and all permits require the owner to complete the approved facility in accordance with approved plans, and maintain it in a good state of repair and in good, safe, and substantial condition. If a facility is found to be in violation of the permit or in abandoned or derelict condition, the permit can be revoked and the owner required to remove the facility. TVA performs periodic compliance inspections along the shoreline to review existing facilities and detect violations. Also, see response to Comment Group 1.

The States are responsible for enforcing boating laws, and the Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR Part 183. This involves areas such as electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

4. Comments related to a sunset provision

Comment: I request that you not overreach on Section 9b of the act thus creating a sunset, even though the sunset provision was overturned in the Water Rights Act.

TVA Response: TVA will comply with Section 9b of the TVA Act as directed by the 2016 WIIN Act. There is no sunset provision in any existing or proposed regulations for floating cabins.

Comment: I believe that our sizable investment should remain for us, our kids and our grandkids. Our “floating cabin” is within the harbor boundaries of a very nice marina, out of the main traffic flow, has holding tanks for both black and gray water and a signed contract for weekly pump outs. In addition, insurance is mandatory, as are slip fees for both our “floating cabin” as well as our pontoon boat. With concern for my kids and grandkids who are just learning to boat, ski, swim and fish; we all insist on a clean and safe environment. In addition, these recreational activities provide countless jobs for the restaurants, marinas, shops and service providers in the area.

TVA Response: TVA will comply with Section 9b of the TVA Act as directed by the 2016 WIIN Act. There is no sunset provision in any existing or proposed regulations for floating cabins.

5. Comments that pertain to the next phase of rulemaking

Comment: Numerous commenters identified issues and made recommendations that do not pertain to the proposed amendments but will pertain to the next rulemaking phase. These included comments about the need for the following requirements: for sewage to be pumped or incinerated on board; for floating cabin owners to document the pump-out of sewage; for owners to maintain their floating cabins in a good state of repair; for TVA to offer a buy-back program to reduce the number of floating cabins; for TVA later to offer a limited number of permits back to the public; for floating cabins to be safe, clean, and well-maintained; for fees and regulations that incorporate the public’s

input and that take into account the impact on owners of floating cabins on Boone Reservoir; for a prohibition on the use of unencased Styrofoam; for mooring lines to have reflective markers or buoys at locations that show boaters the angle of the cables under the water; and for buoys, lights, and signs to warn of navigation and electrocution risks.

TVA Response: TVA acknowledges and appreciates these comments and anticipates the stated issues and recommendations will be addressed in the next rulemaking phase.

6. Comments related to the private use of public waters and water quality

Comment: A number of commenters stated that they believed that floating cabins are an inappropriate private use of public resources. Floating cabins were referred to as “squatting” on public waters by one commenter who also urged a no expansion policy and complete compliance of these structures with all environmental and safety regulations. One commenter stated that any plan that allows floating cabins to remain is unacceptable. Another commenter stated that allowing people to live in floating cabins is unfair to the original landowners who had to leave their property when the dams were built. One commenter stated that TVA’s mission requires the agency to preserve the environment by removing floating cabins from the river.

TVA Response: TVA will comply with the direction provided by the U.S. Congress in the WIIN Act of 2016, which established Section 9b of the TVA Act. That legislation underscored TVA’s authority to regulate floating cabins, and expressly stated that TVA could prohibit floating cabins that were not located on waters under TVA’s jurisdiction as of December 16, 2016. Thus, this final rule clarifies that new structures are

prohibited, which will prevent the proliferation of new structures and allow TVA to remove such new structures.

With respect to existing floating cabins that were located on waters under TVA jurisdiction prior to or on December 16, 2016, the WIIN Act prohibits removal for a period of 5 or 15 years from December 16, 2016, depending on whether the existing floating cabin received a TVA permit prior to December 16, 2016. After that, existing floating cabins may remain if: maintained in compliance with reasonable standards as required by the TVA Board; fees are paid that are necessary and reasonable for ensuring compliance; a Section 26a permit is obtained by the deadline provided in the next phase of rulemaking; and the floating cabin remains in compliance with the terms and conditions of the permit.

Comment: TVA has attempted unsuccessfully to reduce the mooring of floating cabins on the waters that it governs without using the full extent of its legal powers. This suggests that it is time for a more forceful solution. Furthermore, a 30-year grace period for removal of all existing houseboats is more than fair, given that the statute only requires 15 years to require removal. 16 U.S.C.A. 831h-3(d)(1)(A). While negative economic impacts on regulated parties are never desirable, preserving the nation's water quality is of paramount importance. Prioritizing the needs of floating cabin owners over those people who make their living off the pristine environment of the Tennessee River Basin is unfair, and short sighted. In order to fulfill the purpose of Tennessee Valley Authority to preserve the environment of this area while promoting unified economic development, these floating cabins must be removed from the river.

TVA Response: TVA recognizes the public’s concern with this issue. In its Environmental Impact Statement, TVA’s Preferred Policy would have required the removal of existing floating cabins after 30 years; however, Congress’s passage of the WIIN Act prevents TVA from mandating removal after 30 years. The WIIN Act does underscore TVA’s authority to prohibit new structures, however, which this final rule amendment clarifies. Only structures located on waters under TVA’s jurisdiction by December 16, 2016 may remain, and those structures must comply with TVA’s standards and fees. Structures installed after that date are prohibited, and TVA has the authority to remove them. Thus, the WIIN Act and this final rule help stop the proliferation of floating cabins.

7. Comments related to TVA’s Environmental Impact Statement and the 30-year sunset policy that the TVA Board adopted prior to passage of the WIIN Act of 2016

Comment: A few commenters objected to TVA’s preferred alternative in TVA’s Environmental Impact Statement to remove floating cabins by 2036, and the TVA Board’s May 2016 Policy in which TVA determined that existing floating cabins should be removed by 2046. One commenter stated that TVA should change the removal date to 2036.

TVA Response: These comments pertain to the management alternatives considered in the Floating Houses Policy Review EIS (February 2016). Although the TVA Board approved a policy on May 5, 2016, incorporating Alternative B2 from TVA’s EIS with a 30-year “sunset” provision, that policy has been modified by subsequent legislation. In particular, the WIIN Act of 2016 amended the TVA Act to prevent the removal of floating cabins where 1) the floating cabins remain in compliance

with TVA standards and fees and 2) the floating cabins existed on waters under TVA's jurisdiction on or prior to December 16, 2016. Thus, there is no longer a sunset provision mandating removal of floating cabins in the future. As a result, Alternative B1 from TVA's EIS is being implemented for the future management of floating cabins.

8. Comments in support of the final rule

Comment: Numerous commenters expressed general support for the final rule amendments. Many commented that TVA's documentation, inventory, registration and inspection of floating cabins is an appropriate way to ensure owners are accountable for properly maintaining their structures. Others emphasized that TVA should regularly and fairly enforce the regulations. One commented that the rule should apply to houseboats as well.

TVA Response: TVA acknowledges these comments and agrees with the need to have reasonable standards and rules, have consistent enforcement of regulations, and avoid any burdensome requirements. Fees will be set only to the extent needed to offset TVA's costs for ensuring compliance as contained in Section 9b of the TVA Act and as directed by the WIIN Act of 2016.

TVA does not regulate vessels or enforce boating laws. The States and the U.S. Coast Guard have this responsibility and authority. The Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR Part 183. This involves areas such as electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

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 final rule 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 rule 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 rule 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 final rule updates or clarifies TVA's regulations to align them with the

status quo. First, the final rule 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 final rule 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 rule 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 rule 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 final rule. Moreover, nothing in this rule 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

Title of Information Collection: Section 26a Permit Application

Current OMB Approval Number: 3316-0060

This rule contains information collection requirements for registration of floating cabins which have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements under this rule will be included by amendment within the Section 26a Permit Application information collection. TVA provided burden information and requested comments on these requirements in the preamble to the proposed rule. No comments directed toward the information collection requirements were received.

The only information collection activity contained in the rule is a requirement that owners of floating cabins register them with TVA. The registration includes: photographs of the structure, drawings showing the size and shape of the floating cabin and attached structures, such as decks or slips, in reasonable detail; and a completed and signed TVA registration form. The registration form includes the owner's mailing and contact information; the TVA permit or TVA-issued numbers; the mooring location; how the floating cabin is moored; how electrical service is provided; how waste water and sewage is managed; and an owner's signature.

The information is necessary and will be used pursuant to TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, which 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.

Respondents will be the owners of floating cabins. The estimated time to complete a registration is 2 hours. TVA estimates that, in the first year of the floating cabin registration process, the number of responses will increase from 1,500 to 3,700. Accordingly, the estimated burden will increase from 3,000 hours to 7,400 hours in the first year, and then return to about 3,000 hours in following years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. TVA will publish a document in the Federal Register announcing OMB's 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 Authority amends 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 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 and other existing structures, whose design and use is primarily for human habitation or occupation and 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”, “Nonnavigable houseboats” and “nonnavigable houseboats” and adding in their place the words “floating cabin”, “Floating cabins” and “floating cabins”, respectively, wherever they appear;
- 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 moored on the Tennessee River System as of this date, and 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, 2020. 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 at one of the following locations:

- (i) 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 provided the floating cabin was moored at such location prior to December 16, 2016;
- (ii) At locations described by §1304.201(a)(1), (2), and (3) provided the floating cabin was moored at such location prior to December 16, 2016;
- (iii) To the bank of the reservoir at locations where the owner of the floating cabin obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location on or before December 16, 2016; or
- (iv) Within the 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. Accordingly, in the case of relocations that occur after December 16, 2016, an existing floating cabin can relocate only to the harbor limits of a commercial marina that complies with §1304.404.

(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 to the same configuration, total footprint, and dimensions (length, width, and height) as permitted without additional TVA approval. Owners are required to notify TVA thirty days in advance and submit their proposed plans for rebuilding the floating cabin. Within thirty days of completion, owners must submit a photo of the rebuilt floating cabin for TVA's records. Any expansion in length, width, or height is prohibited, except as approved in writing by TVA and necessary to comply with health, safety, and environmental requirements.

* * * * *

(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:

a. Revising the section heading;

b. In paragraphs (a) and (b), removing the words “nonnavigable houseboat” and “nonnavigable houseboats” and adding in their place the words “floating cabin” and “floating cabins”, respectively, wherever they appear;

c. Adding a sentence to the end of paragraph (a)’ and

d. Revising paragraph (c).

The addition and revisions 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: 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 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 System”.

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 an approved obstruction to the same configuration, total footprint, and dimensions (length, width, and height) as the 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,

Vice President, Land & River Management

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