



## TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

RIN 3316-AA25

### Floating Cabins

**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 System.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** David B. Harrell, 865-632-1327, [dbharrell@tva.gov](mailto:dbharrell@tva.gov), Mail address: Tennessee Valley Authority, Attn: Floating Cabins, 400 West Summit Hill Drive, WT 11A-K, Knoxville, TN 37902.

### SUPPLEMENTARY INFORMATION:

#### Legal Authority

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831 et seq. 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 (16 U.S.C. 831h-3) provides that TVA may require floating cabins to be maintained by the owner to reasonable health, safety, and environmental standards.

## **Background**

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 purposes 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. “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 floating cabins. TVA also owns, as agent for the United States, much of the shoreland and inundated land along and under its reservoir system.

Since 1971, TVA has used its Section 26a authority to prohibit the mooring on the Tennessee River System of new floating cabins (formerly nonnavigable houseboats) that are designed and used primarily for habitation and not for 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. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, including in 1978 when TVA prohibited mooring of nonnavigable houseboats on the Tennessee River System except for those in existence on or before February 15, 1978. Effective October 1, 2018, TVA updated its regulations to change the terminology to floating cabins (rather than nonnavigable houseboats) and prohibit new

floating cabins that did not exist on the Tennessee River System on or before December 16, 2016.

Despite over 40 years of regulation related to floating cabins, the number of floating cabins on the Tennessee River System continued to increase. In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. 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. The final EIS and associated documents can be found at <https://www.tva.com/floatingcabins>.

After considering the comments received during the EIS process and the analyses of impacts, TVA identified as its preferred policy one that establishes standards to ensure safer mooring, electrical connections, and protection of water quality. Under the preferred policy, the mooring of new floating cabins would be prohibited on the Tennessee River System. The preferred policy would have required all existing floating cabins, including nonnavigable houseboats, 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, except the Board extended the removal date to May 5, 2046.

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act). Section 5003 related to floating cabins and amended the TVA Act to include Section 9b (16 U.S.C. 831h-3). This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is

maintained to reasonable health, safety, and environmental standards as required by the TVA Board of Directors and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) for a period of 15 years if it was granted a permit by TVA before enactment, or (2) for a period of 5 years if it was not granted a permit by TVA before enactment. It further stipulates that TVA may establish regulations to prevent the construction of new floating cabins.

### **Previous Floating Cabins Amendments to TVA's Section 26a Regulations**

TVA published "Phase I" rule amendments for floating cabins that became effective on October 1, 2018. These amendments clarified the types of structures that TVA will regulate as a floating cabin and prohibited new floating cabins from mooring on the Tennessee River System after December 16, 2016. TVA estimates that approximately 2,200 floating cabins were moored on the Tennessee River System on December 16, 2016.

TVA published "Phase II" rule amendments for floating cabins that became effective on October 12, 2021. These amendments included health, safety, environmental, and permitting standards that apply to all floating cabins and a deadline by which floating cabin owners were to apply to TVA for a Section 26a permit. A diverse stakeholder group composed of 18 members advised TVA on the development and drafting of these standards. Owners of floating cabins were given until October 1, 2024, to comply with the standards in TVA's regulations and submit a complete permit application that certifies compliance and includes the payment of a Section 26a permit application fee. The permit application submission date of October 1, 2024, gave owners approximately

three years from the effective date of the new standards to bring structures into compliance.

### **Final Rule**

The final rule for floating cabins applies to all existing floating cabins, including those formerly referred to as nonnavigable houseboats originally permitted on or before February 15, 1978. All floating cabins and attached structures must comply with the standards in TVA's regulations and submit a complete Section 26a permit application that certifies compliance and includes the payment of a permit application fee by October 1, 2029. TVA will not require floating cabin owners to pay the initial permit application fee if they possess a permit in their name issued before December 16, 2016, and the structure is compliant with the terms of the permit, constructed in accordance with the permit (same dimensions, attached structures such as docks, and utility connections), and moored at the permitted location.

TVA's Section 26a regulations previously required floating cabins to comply with the standards and apply for a new permit by October 1, 2024. This final rule extends that time until October 1, 2029. TVA has encouraged floating cabin owners to bring floating cabins into compliance and then apply for a permit without delay. TVA may deny an initial application for a floating cabin if it is submitted after the deadline of October 1, 2029.

Upon submission of the application, owners of floating cabins may remain in place until TVA acts on the application. If TVA approves the application, TVA will issue a Section 26a permit to the owner. If TVA denies the application, the owner must remove the structure in accordance with Section 9b of the TVA Act and 18 CFR 1304.406.

### **Rebuilding**

This final rule also clarifies language on rebuilding floating cabins. Any alterations to the dimensions or approved plans for an existing floating cabin (monolithic

frame or attached structure) are deemed a structural modification and require written approval from TVA.

## **Electrical**

Floating cabins can pose a threat to public safety due to unsafe electrical systems. TVA is aware that floating cabins are currently obtaining electricity from the shore via underwater cables, through onboard portable generators, and by other methods. When the final Phase II rule on floating cabins was published in 2021, TVA was not aware of any local, state, or federal entity that monitored the construction of floating cabins and enforced building codes. However, after working with multiple state agencies, it became clear that state and local entities have the ability and expertise to regulate and inspect electrical requirements for floating cabins within their jurisdiction. Separate standards in TVA's Section 26a regulations have potential to create confusion for floating cabin owners about applicable requirements.

This final rule does not change the requirement that floating cabin owners comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment. If a floating cabin is documented to be in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency, TVA may revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the relevant regulatory agency in accordance with the agency's requirements. The final rule removes the separate electrical standards for floating cabins from the Section 26a regulations and removes the requirement that floating cabin owners submit a certification of compliance to TVA every even-numbered year. This appropriately recognizes that state and local agencies are best equipped to adopt and enforce electrical standards for floating cabins while reinforcing that compliance with those other agency standards is a condition of the Section 26a permit. This final rule also clarifies that applicants must provide documentation, upon

TVA's request, that demonstrates the floating cabin is in compliance with applicable wastewater and electric standards. In the event that a floating cabin owner fails to provide satisfactory evidence of compliance upon request, TVA may revoke the Section 26a permit and require removal of the floating cabin from the reservoir.

### **Other Changes to Section 26a Regulations**

In addition to the changes affecting floating cabins listed above, this final rule provides other minor amendments to the Section 26a regulations. These include minor edits for clarity and consistency in the regulations. This includes a clarification that TVA's issuance of a Section 26a permit for any proposed facility or obstruction does not mean the proposed facility or obstruction has been deemed safe by TVA. TVA is also clarifying that TVA may proceed with the review of a Section 26a application absent the submission of some of the application materials identified in 18 CFR 1304.2.

### **Comments on the Proposed Rule and TVA's Responses**

TVA published the proposed rule for public review and comment in the *Federal Register* on August 29, 2024 (89 FR 70145). TVA received six comments during the public review period, all via email, from six individuals. Only three of the comments provided input on the proposed rule. The other three comments posed questions about individual floating cabins. The following discussion describes a summary of the comments received and provides TVA's response to the comments. TVA appreciates the perspectives, interests, and concerns expressed by all commenters. After careful consideration of all comments received, TVA is finalizing the rule as proposed.

#### *1. Comment Related to Wastewater*

*Comment:* One commenter stated that graywater discharge was not included in the regulations and referenced rumors about only the discharge of untreated sewage being prohibited.

*TVA Response:* Discharges of blackwater and graywater are regulated by the EPA and the state agencies that are responsible for issuing National Pollutant Discharge Elimination System permits for facilities that discharge sewage or other wastewater. Pursuant to Section 401 of the Clean Water Act, if a structure or activity for which federal approval is sought may result in any discharge into navigable waters of the United States, then the applicant must also request certification from the relevant state certifying agency when applying for a Section 26a permit. If the certifying agency denies certification on appropriate grounds, TVA will not be able to issue the Section 26a permit. If the certifying agency grants certification with appropriate conditions, those conditions are required to be incorporated in the Section 26a permit. If the conditions of that certification are violated or TVA is notified of an unresolved violation by one of these regulatory agencies, TVA is authorized to revoke the Section 26a permit and require removal of the floating cabin in compliance with the WIIN Act.

*2. Comment Related to the Sunset Period in the TVA Board Policy, WIIN Act, and Flotation Deadline*

*Comment:* One commenter expressed concern about the extension as it relates to the original TVA Board of Directors (Board) Policy sunset date of May 15, 2046, the section of the WIIN Act that addresses removal of floating cabins, and the December 31, 2031, deadline to remove unencased flotation. There appears to be confusion around these deadlines.

*TVA Response:* There are several different dates that are relevant to maintaining floating cabins on the Tennessee River System based on the TVA Act and TVA's Section 26a regulations. On May 5, 2016, the TVA Board adopted a policy that would have required all existing floating cabins to be removed from the Tennessee River System by May 5, 2046 (sunset period).

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act), which related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act removed the 30-year sunset period and provided that floating cabins that were located on waters under the jurisdiction of TVA as of December 16, 2016, may remain if the floating cabin is maintained to reasonable health, safety, and environmental standards as required by TVA. The WIIN Act further stipulated that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) for a period of 15 years if it was granted a permit by TVA before the WIIN Act's enactment, or (2) for a period of five years if it was not granted a permit by TVA before the WIIN Act's enactment.

TVA's Section 26a regulations include a deadline of December 31, 2031, when all unencased flotation must be removed and replaced with flotation commercially manufactured for marine use and consistent with standards defined in the regulations. This requirement applies to all water-use facilities permitted by TVA, including floating cabins.

This final rule requires floating cabin owners to comply with the regulations and apply for a permit no later than October 1, 2029. Any permit issued will be contingent upon compliance with the flotation rule by December 31, 2031. The Board sunset period no longer applies. The WIIN Act removal date for floating cabins that were not granted a permit before the WIIN Act has already passed; TVA may not require the removal of previously permitted floating cabins until December 16, 2031.

### *3. Comments in Support of the Final Rule*

*Comment:* Two commenters expressed general support for the final rule amendments, particularly the extension of the compliance and application deadline.

*TVA Response:* TVA acknowledges these comments and agrees with the need for the extension and to avoid confusion around electrical requirements.

#### *4. Questions About Floating Cabins*

*Comment:* Three commenters posed questions about the proposal, including questions on individual floating cabins and the corresponding deadlines for electrical standards.

*TVA Response:* Questions about individual floating cabins and compliance may be directed to TVA at [fh@tva.gov](mailto:fh@tva.gov).

### **Administrative Requirements**

A. Unfunded Mandates Reform Act, National Environmental Policy 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 E.O. 14094, Modernizing Regulatory Review

In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. 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. The final EIS and associated documents can be found at <https://www.tva.com/floatingcabins>.

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 \$200 million or more or result in expenditures of \$200 million in any one year by state, local, or tribal governments or by the private sector. This final 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 this final 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, as amended. In general, this final rule updates TVA's regulations relating to the standards that floating cabins will be required to meet in order to remain on the Tennessee River System. Absent a request for these services for a Section 26a permit, no entity or individual would be forced to pay a charge. None of the charges would be applied retroactively. TVA will continue to appropriately review specific requests in accordance with applicable laws, regulations, and Executive Orders.

#### 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. TVA's Chief Executive Officer has certified that this 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 floating cabins are owned by individuals and not businesses, not-for-profit enterprises, or small governmental jurisdictions, and therefore relatively few “small entities” will be affected by TVA’s proposal. Even if the final rule tangentially impacts marinas that accommodate floating cabins, a relatively small number of marinas will be impacted. 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.

OMB Approval Number:

3316-0060.

This rule contains information collection requirements for registration and permitting of floating cabins, which were approved by the Office of Management and Budget (OMB) on July 31, 2024.

#### **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 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 § 1304.2 by:

- a. Revising the first sentence of paragraph (b);
- b. Adding a sentence at the end of paragraph (c); and
- c. Adding paragraph (e).

The revision and additions read as follows:

**§1304.2 Application.**

\* \* \* \* \*

(b) Applications shall be submitted on TVA’s online application system or addressed to the Tennessee Valley Authority, at the appropriate location as listed on the application and on TVA’s website. \* \* \*

(c) \* \* \* TVA, in its sole discretion, may proceed with the review of an application in the absence of some materials listed in this section.

\* \* \* \* \*

(e) TVA’s issuance of a permit does not mean that TVA has determined a facility or obstruction is safe for any purpose or that TVA has any duty to make such a determination. In issuing a permit, TVA assumes no liability to the applicant or to any third party for any damages to property or personal injuries arising out of or in any way connected with applicant’s construction, operation, or maintenance of the permitted facility.

3. Amend § 1304.100 by:

- a. Revising the seventh sentence; and
- b. Adding a sentence after the seventh sentence.

The revision and addition read as follows:

**§ 1304.100 Scope and intent.**

\* \* \* Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part and obtain a

section 26a permit from TVA issued after October 12, 2021. Existing floating cabins that do not apply for a permit by the deadline in this part or do not remain in compliance with the rules in this part are subject to the removal provisions of this part and section 9b of the TVA Act. \* \* \*

4. Amend § 1304.101 by:

- a. Revising paragraph (c);
- b. Revising paragraph (h)(2) introductory text;
- c. Revising paragraph (h)(3); and
- d. Revising paragraph (i)(3).

The revisions read as follows:

**§ 1304.101 Floating cabins**

\* \* \* \* \*

(c) All floating cabins shall comply with the rules contained in this part and make application for a section 26a permit by October 1, 2029. TVA may, at its sole discretion, deny an initial application for a floating cabin submitted after this date. Unpermitted structures are subject to the removal provisions of this part and section 9b of the TVA Act.

\* \* \* \* \*

(h) \* \* \*

(2) Any alterations to the dimensions or approved plans for an existing floating cabin (monolithic frame or attached structure) shall be deemed a structural modification and shall require prior written approval from TVA. All expansions in length, width, or height are prohibited, except under the following circumstances if approved in writing in advance by TVA. Structural modifications to attached structures are subject to § 1304.101(i).

\* \* \* \* \*

(3) Owners must submit an application to TVA sixty (60) days in advance of proposed rebuilding of an entire or significant portion of a floating cabin (monolithic frame or attached structures). The owner shall not begin construction until prior written acknowledgment from TVA is received. Plans for removal of the existing floating cabin or portions to be rebuilt shall be acknowledged in writing by TVA before removal occurs, and the removal shall be at the owner's expense before construction of the rebuild may begin. The owner shall provide evidence of approval from the marina operator to rebuild within the approved harbor limits of a commercial marina. TVA may require a new permit for the proposed rebuilding. Construction of the rebuilt floating cabin must be completed within 18 months. The rebuilt monolithic frame of the floating cabin shall match the exact configuration and dimensions (length, width, and height) of both the total monolithic frame and the enclosed and open space as approved by TVA; attached structures are subject to § 1304.101(i). The footprint of the attached structures shall not be incorporated into the footprint of the monolithic frame of the floating cabin.

\* \* \* \* \*

(i) \* \* \*

(3) Attached structures shall not exceed 14 feet in height from the lowest floor level, shall not be enclosed, shall not be connected to the monolithic frame by a single roofline, and shall comply with § 1304.204(p).

\* \* \* \* \*

5. Amend § 1304.103 by:

- a. Revising paragraph (a);
- b. Revising paragraph (d); and
- c. Removing paragraph (e).

The revisions read as follows:

**§ 1304.103 Health, safety, and environmental standards**

(a) *Wastewater.* Floating cabins shall comply with § 1304.2(d) with regard to discharges into navigable waters of the United States. All discharges, sewage, and wastewater, and the pumping, collection, storage, transport, and treatment of sewage and wastewater shall be managed in accordance with all applicable federal, state, and local laws and regulations (satisfactory evidence of compliance to be provided to TVA upon request). Upon receipt of documentation that a floating cabin is in violation of any federal, state, or local discharge or water quality regulation by the respective regulatory agency or upon failure to provide satisfactory evidence of compliance at TVA's request, TVA is authorized to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements or if satisfactory evidence of compliance is not provided to TVA.

\* \* \* \* \*

(d) *Electrical.* Floating cabins shall comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment (satisfactory evidence of compliance to be provided to TVA upon request). Upon receipt of documentation that a floating cabin is in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency or upon failure to provide satisfactory evidence of compliance at TVA's request, TVA is authorized to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements or if satisfactory evidence of compliance is not provided to TVA. Floating cabins shall comply with § 1304.209(c)(2).

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Michael McCall,

*Vice President, Environment and Sustainability.*

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