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## TENNESSEE VALLEY AUTHORITY

### 18 CFR Part 1304

#### Approval of Construction in the Tennessee River System; Regulation of Structures; Residential Related Use on TVA-Controlled Residential Access Shoreline and TVA Flowage Easement Shoreline

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Proposed rule.

**SUMMARY:** TVA is today proposing to amend its regulations under section 26a of the TVA Act governing the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. The amendments would generally update the existing section 26a regulations to include new sections governing underground and aboveground storage tanks, marina sewage pump-out stations and holding tanks, wastewater outfalls and septic systems, development within flood control storage zones of TVA reservoirs, and requests for waivers or variances. The sections governing the application process and the handling of appeals would be revised for clarity. The rules for nonnavigable houseboats would be clarified, and a provision would be added governing sanitation for nonnavigable houseboats. In addition, new subparts would be added to implement TVA's recently-adopted "Shoreline Management Initiative" policy.

**DATES:** Written comments on these proposed rules will be accepted until November 20, 2000.

**ADDRESSES:** Written comments on the substance of the rulemaking should be addressed to Robert L. Curtis, Specialist-Land Policy, Resource Stewardship, Tennessee Valley Authority, Post Office Box 1589, 17 Ridgeway Road, Norris, Tennessee 37828. Electronic comments may be submitted to [rlcurtis@tva.gov](mailto:rlcurtis@tva.gov). Paperwork Reduction Act comments should be addressed as explained below.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Curtis, (865) 632-1552.

## SUPPLEMENTARY INFORMATION:

### I. Legal Authority

These regulations are proposed under the authority of section 26a of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y-1), and TVA's property rights under certain deeds and flowage easement instruments.

### II. Background

Section 26a of the TVA Act provides that no dam, appurtenant works, or other obstruction affecting navigation, flood control or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the Tennessee River system or any of its tributaries until the plans for such construction, operation, or maintenance shall have been submitted to and approved by the TVA Board of Directors, or its delegate. Commencement of construction, operation, or maintenance of such structures without such approval is prohibited.

On October 22, 1971, TVA promulgated regulations setting forth the approval process and establishing a number of policies regarding the exercise of TVA's section 26a authority. The regulations have since been amended from time to time. This proposed rulemaking would further amend the existing regulations by adding new sections regarding underground and aboveground storage tanks, marina sewage pump-out stations and holding tanks, wastewater outfalls and septic systems, and development within flood control storage zones of TVA reservoirs. A new section providing for the handling of requests for waivers or variances would be added, and the sections governing the application process and the handling of appeals would be revised for clarity.

TVA also proposes to add new subparts C and D regarding residential-related use of TVA-controlled residential access shoreline and TVA flowage easement shoreline. The rules contained in these subparts would implement the "Shoreline Management Initiative" policy adopted by TVA's Board of Directors on April 21, 1999. Through these rules, TVA would promote the conservation of shoreline resources to provide public use opportunities and protect environmentally sensitive resources, while also accommodating access to the shore by adjacent residents.

### III. Detailed Analysis of Proposed Rule

#### A. Approval of Construction

Today's proposal would make minor revisions to the existing process for

obtaining approvals required under section 26a of the TVA Act. This subpart would apply to all cases involving an obstruction subject to section 26a approval or otherwise requiring TVA approval under these rules (including, among other things, TVA-owned residential access shoreland uses described in proposed subpart C and certain uses of TVA flowage easement property under proposed subpart D).

1. *Scope and intent.* This section (§ 1304.1) sets forth the authorities for and the purposes of TVA's regulation of structures in the Tennessee River system and activities on land in which TVA has a property interest. Part 1304 is generally applicable to all obstructions in the river system and to activities conducted on reservoir-related property in TVA's custody or subjects to TVA flowage easements.

2. *Application.* If the rule is amended as proposed, section 26a facilities would, for purpose of the application process and certain other purposes, be divided into "minor" and "major" facilities. Applicants for minor facilities would have to include less information with their applications. Nonexclusive examples of minor and major facilities are provided in the proposed rule. TVA believes that in most cases it will be readily apparent whether a facility should be classified as minor or major. Generally, it is TVA's intention that most residential related facilities for individual use would be minor facilities. For application purposes, a request for a variance to the size limitations for a residential-related facility would be regarded as an application for a "major" facility. Commercial or community facilities likely would be much larger than individual facilities and usually would be classified as major. TVA would encourage applicants to inquire in advance for guidelines in cases where it may not be clear whether a proposed facility would be minor or major.

3. *Delegation of Authority and Application Review and Approval Process.* The rule would be revised to reflect the current organizational structure of TVA. The information required to be included with applications for each type of facility would be specified. The procedures for TVA's consideration of applications, including the procedures applicable to hearings and appeals, would be clarified.

#### B. Regulation of Nonnavigable Houseboats

The regulation governing nonnavigable houseboats would be

revised to better distinguish between navigable and nonnavigable houseboats and to more clearly specify where nonnavigable houseboats may be moored. A provisions governing sanitation would be added. As in the current rule, no new nonnavigable houseboats would be allowed.

### *C. Residential-Related Use of TVA-Controlled Residential Access Shoreline*

Today's proposal contains a new subpart (subpart C) regarding residential-related use of TVA-controlled residential access shoreline.

1. *Applicability.* This subpart addresses access across, and construction of facilities and vegetation management on, three categories of TVA-owned shoreland property by adjacent upland residential landowners (for ease of reference, property owned by the United States and under the custody and control of TVA is referred to in this preamble and throughout the proposed rule as "TVA-owned"):

- TVA-owned shorelands over which the adjacent upland residential landowners hold deeded rights of ingress and egress for access to the water (except where a particular activity is excluded by the deed language) and/or the right to apply to construct water-use facilities.

- TVA-owned shorelands designated in current, approved TVA Reservoir Land Management Plans as open for consideration of residential shoreline development.

- On reservoirs not having a current, approved TVA Reservoir Land Management Plan at the time of application, TVA-owned shorelands designated in TVA's property forecast system as "reservoir operations property," identified in a subdivision plat recorded prior to September 24, 1992, and containing at least one water-use facility developed prior to September 24, 1992.

Subpart C would apply only to TVA-owned property adjacent to reservoirs. It would not apply to land adjacent to a free-flowing river—whether or not TVA-owned. Obstructions on land adjacent to a free-flowing river would be regulated under amended subparts A, B, and E; if TVA owns the property, construction of facilities and vegetation management on, and access across such land would be controlled by TVA on a case-by-case basis. Subparts C and D would not apply to commercial marinas or other commercial facilities. Such facilities would be regulated in accordance with subparts A, B, and E, and, where TVA has a property interest, in accordance with the full exercise of TVA's rights under such interest.

No residential-related obstructions, shoreline structures, access corridors, or vegetation management activities would be allowed on any TVA-owned reservoir land not included in one of the three categories specified in the proposed rule.

2. *Vegetation Management.* It is expected that requests for permission to manage vegetation on TVA-owned lands would, for the most part, be made in conjunction with a request to construct a dock or other obstruction under section 26a. However, adjacent upland residential landowners may wish to engage in vegetation management activities on TVA-owned lands without constructing any facility regulated under section 26a. In such circumstances, the proposed rules would still require the adjacent landowner to apply for and obtain a permit before engaging in any vegetation management on TVA-owned lands.

3. *Docks, Piers, and Other Water-Use Facilities.* Under the proposed rule, adjacent property owners would be responsible for submitting drawings of proposed facilities for TVA review and approval to ensure that the applicable standards would be met and that the facility would otherwise be consistent with TVA's management of the Tennessee River system. To provide design suggestions for private water-use facilities, TVA makes available sample drawings for docks, piers, and boatslips. Adjacent property owners may use these drawings or create their own drawings reflecting their design preferences in a way that meets TVA's size and construction requirements.

Standards for the size and type of docks permitted by TVA help to avoid the construction of structures that obstruct or otherwise have an adverse impact on boating access into coves or along the shore. They also help to limit obstructions to visibility. The proposed dock standards are designed in a way that numerous different shapes, sizes, and combinations of facilities could be built. The standards are designed to define the maximum size of docks and other water-use facilities that are approvable by TVA. Unless there are environmental resources that must be avoided, navigation restrictions, or physical site constraints such as a narrow cove, decisions about the size and type of docking facilities to be built would be made by the applicant, provided the maximum standards are not exceeded. When site constraints preclude the building of maximum-size facilities, TVA would determine if a smaller facility could be approved and, if so, what size facility would be allowed.

4. *Group and Community Water-Use Facilities.* TVA recognizes that subdivision developers or chartered homeowner's associations may wish to develop group or community water-use facilities on a community lot or other site. In such cases, some deviation from the requirements applicable to individual adjacent upland landowners may be appropriate. Generally, where individual upland landowners have deeded ingress and egress rights, they may apply to construct individual water-use facilities and undertake vegetation management activities even though a community facility has been approved.

5. *Channel Excavation on TVA-Owned Residential Access Shoreland.* The standards for channel excavation are designed to minimize impacts upon water quality and aquatic communities and avoid obstructions that would adversely affect navigation or flood control.

6. *Shoreline Stabilization.* TVA generally will allow homeowners to choose between riprap, biostabilization, gabions, retaining walls, or a combination of the four approaches for erosion control. Retaining walls are not a favored method of treating shoreline erosion. They typically require extensive site disturbance during construction, which can destroy fish spawning and feeding areas. Their vertical surface does not provide desirable aquatic habitat conditions, and they often fail because of improper design, causing further site disturbance. As requested by the homeowner, TVA may assess shoreline erosion conditions and advise whether biostabilization, riprap, gabions, retaining walls, or some combination of these treatment methods would be most appropriate.

### *D. Activities on TVA Flowage Easement Shoreland*

This subpart governs use of privately-owned shorelands where TVA has acquired flowage easements and thus has the right to flood the land as part of its reservoir operations. TVA's authority with respect to such lands stems from its authority under section 26a of the TVA Act and the rights accorded to TVA under the flowage easement documentation. Under the proposed rule, TVA generally would apply to flowage easement lands the same standards regarding docks, piers, and other water-use facilities, shoreline stabilization, fish attractors, and channel excavation (to the extent it creates an obstruction regulated under section 26a) as would be applicable to residential-related use of TVA-controlled residential access shoreline.

Decisions about vegetation management and any other activities not subject to regulation under section 26a or prevented or regulated by the terms of the flowage easement would be made by the landowner. Subpart D specifically identifies the sections of subpart C that are applicable to flowage easement shoreland.

#### *E. Miscellaneous*

This subpart contains rules of general applicability and other miscellaneous provisions. To the extent anything contained in this subpart may be inconsistent with the standards set forth in subparts C and D, those subparts shall take precedence on the lands to which they apply.

1. *Definitions.* A number of new definitions would be added to improve clarity.

2. *Flotation Devices and Materials.* The proposed rule (§ 1304.401) would impose minimum specifications for flotation devices associated with docks, boat mooring buoys, and other water-use structures and facilities.

3. *Discharges From Houseboats, Watercraft, and Floating Structures.* This section (§ 1304.402) would continue the existing prohibition against the mooring over TVA land of any watercraft or floating structure equipped with a marine sanitation device unless such device is in compliance with all applicable requirements.

4. *Wastewater Outfalls and Septic Systems.* New § 1304.403 would require facilities required to have a wastewater permit to obtain such permit before a section 26a permit would be issued. Septic tank systems where any portion of the system is located on TVA flowage easement property would be subject to permitting requirements and certain specified standards. No portion of any septic tank system would be allowed on TVA-owned shoreland property.

5. *Marina Sewage Pump-out Stations and Holding Tanks.* The proposed rule would establish minimum design and operating requirements for new marina sewage pump-out stations and holding tanks (§ 1304.404). Other Federal, State, or local laws or rules may require installation of such facilities or otherwise regulate them in some circumstances.

6. *Fuel Storage Tanks and Handling Facilities.* The proposed regulations (§ 1304.406) would establish minimum requirements for the installation of underground and aboveground storage tanks in connection with commercial facilities subject to TVA approval. TVA is considering new requirements for fuel handling piping systems associated with storage tanks and for fuel containment

provisions at fuel pumps located on commercial docks, piers, and marinas. Generally, except in unusual circumstances where there is no other practicable solution, TVA does not approve storage tanks on TVA lands. Tanks must be located on land owned by the applicant. Also, TVA would not approve fuel handling facilities of any kind on private non-commercial docks, piers, and boathouses.

7. *Development Within Flood Control Storage Zones of TVA Reservoirs.* A new section (§ 1304.408) imposing certain requirements when a project would result in a loss of flood control storage would be added.

8. *Request for Waiver or Variance.* A new section (§ 1304.409) would establish a mechanism for requesting a waiver of or variance from a provision of the rules. Good cause would be required for approval of such requests, and approval or disapproval would be at the sole discretion of the Vice President, Resource Stewardship, TVA.

#### **IV. Compliance With Other Laws**

##### *A. Unfunded Mandates Reform Act*

The proposed rule contains no Federal mandates for State, local, and tribal Governments or the private sector. Rather, it simply codifies policies and requirements regarding the use of TVA land and the size, type, and use of obstructions to be allowed in the Tennessee River. In addition, any expenditures by State, local and tribal governments or the private sector in connection with the rule would be substantially less than \$100 million in any one year.

##### *B. Regulatory Flexibility Act*

This proposed action will not have a significant economic impact on a substantial number of small entities. There will be no significant economic impact from the amendments since the proposed rule would not significantly add to the costs of one who chooses to use TVA land or construct an obstruction in the Tennessee River system. Existing obstructions that are or could be permitted under current regulations would not have to be modified to conform to new standards.

Any economic impact that would occur as a result of the proposed rule would not affect a substantial number of small entities because TVA only processes about 300 applications annually for nonresidential facilities.

##### *C. Environmental Review*

TVA prepared a detailed draft environmental impact statement (EIS) assessing residential shoreline

development impacts in the Tennessee Valley. Copies of the Executive Summary and/or draft EIS were distributed to numerous State agencies and public libraries in the Tennessee Valley and to approximately 8,000 interested individuals. Sixteen public meetings were held, and numerous oral and written comments were received and considered. A final EIS adopting the residential access policies that would be implemented by these rules has been released, and a record of decision has been issued. This proposed rulemaking reflects the involvement of the interested public during the environmental review process. An Environmental Assessment is being prepared for those aspects of the proposed rule not addressed in the residential shoreline development EIS.

##### *D. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval of the Office of Management and Budget (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 Wilma H. McCauley, Agency Clearance Officer, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402-2801 or by calling (423) 751-2523.

The only information collection activity contained in the proposed rule is a requirement that persons seeking approval to construct an obstruction along or in the Tennessee River system or authorization to use certain property under TVA's control submit an application to TVA. The application consists of an application form plus, in the case of an obstruction, detailed plans, maps, and other information necessary for TVA to evaluate the request for approval. The estimated time to complete the application form and prepare the supplemental material is 1.5 hours. The time may vary depending upon the nature and complexity of the proposed action.

Comments are requested on TVA's need for this information, the accuracy of the provided burden estimates, and any suggestions for minimizing respondent burden. Send comments on the ICR to the Agency Clearance Officer, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402-2801; and to the Officer of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for Tennessee

Valley Authority." Include the ICR number in any correspondence. Comments should be received by OMB no later than thirty (30) days after the date of public of this proposed rule. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### List of Subjects in 18 CFR Part 1304

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

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended by revising part 1304 to read as follows:

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

#### Subpart A—Procedures for Approval of Construction

- Sec.
- 1304.1 Scope and intent.
  - 1304.2 Application.
  - 1304.3 Delegation of authority.
  - 1304.4 Application review and approval process.
  - 1304.5 Conduct of hearings.
  - 1304.6 Appeals.
  - 1304.7 Conditions of approvals.
  - 1304.8 Denials.
  - 1304.9 Initiation of construction.
  - 1304.10 Change in ownership of approved structures.
  - 1304.11 Little Tennessee River; date of formal submission.

#### Subpart B—Regulation of Nonnavigable Houseboats

- 1304.100 Scope and intent.
- 1304.101 Nonnavigable houseboats.
- 1304.102 Numbering of nonnavigable houseboats and transfer of ownership.
- 1304.103 Approval of plans for structural modifications or rebuilding of approved nonnavigable houseboats.

#### Subpart C—TVA Owned Residential Access Shoreland

- 1304.200 Scope and intent.
- 1304.201 Applicability.
- 1304.202 General sediment and erosion control provisions.
- 1304.203 Vegetation management.
- 1304.204 Dock, piers, and boathouses.
- 1304.205 Other water-use facilities.
- 1304.206 Requirements for community dock, pier, boathouse, or other water-use facilities.
- 1304.207 Channel excavation on TVA-owned residential access shoreland.
- 1304.208 Shoreline stabilization.
- 1304.209 Fish attractor, spawning, and habitat structures.
- 1304.210 Land-based structures/alterations.
- 1304.211 Grandfathering of preexisting shoreline uses and structures.

- 1304.212 Change in ownership of grandfathered structures or alterations.
- 1304.213 Waivers on TVA-owned residential access shoreland.
- 1304.214 Numbering of structures.

#### Subpart D—Activities On TVA Flowage Easement Shoreline

- 1304.300 Scope and intent.
- 1304.301 Septic tanks.
- 1304.302 Utilities.
- 1304.303 Vegetation management on flowage easement shoreline.
- 1304.304 Channel excavation.

#### Subpart E—Miscellaneous

- 1304.400 Definitions.
- 1304.401 Flotation devices and material, all floating structures.
- 1304.402 Marine sanitation devices.
- 1304.403 Wastewater outfalls; septic tanks.
- 1304.404 Marina sewage pump-out stations and holding tanks.
- 1304.405 Commercial marina harbor limits.
- 1304.406 Fuel storage tanks and handling facilities.
- 1304.407 Removal of unauthorized, unsafe, and derelict structures.
- 1304.408 Development within flood control storage zones of TVA reservoirs.
- 1304.409 Variances.
- 1304.410 Indefinite or temporary moorage of recreational vessels.
- 1304.411 Navigation restrictions.

Authority: 16 U.S.C. 831–831ee.

#### Subpart A—Procedures for Approval of Construction

##### § 1304.1 Scope and intent.

The Tennessee Valley Authority Act of 1933 among other things confers on TVA broad authority related to the unified conservation and development of the Tennessee River Valley and surrounding area and directs that property in TVA's custody be used to promote the Act's purposes. In particular, section 26a of the Act requires that TVA's approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. 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, and nonnavigable houseboats as defined in § 1304.101. Any person considering constructing, operating, or maintaining any such structure on a stream in the Tennessee River Watershed should carefully review the regulations in this part and the 26a Applicant's Package before doing so. The regulations also apply to certain activities on land subject to TVA

flowage easements. TVA uses and permits use of the lands and land rights in its custody alongside and adjacent to TVA reservoirs and exercises its land rights to carry out the purposes and policies of the Act. In addition, the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.* and the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.* (FWPCA), have declared it to be congressional policy that agencies should administer their statutory authorities so as to restore, preserve, and enhance the quality of the environment and should cooperate in the control of pollution. It is the intent of the regulations in this part 1304 to carry out the purposes of the Act and other statutes relating to these purposes, and this part shall be interpreted and applied to that end.

#### § 1304.2 Application.

(a) Applications shall be addressed to the Tennessee Valley Authority, Land Management Office, at one of the following locations:

- (1) 17 Ridgeway Road, Norris, TN 37828, (865) 632–1691, Reservoir: Norris
- (2) Suite 300, 804 Highway 321, North, Lenoir City, TN 37771–6440, (865) 988–2431, Reservoirs: Ft. Loudoun, Tellico, Fontana
- (3) 221 Old Ranger Road, Murphy, NC 28906, (704) 837–0237, Reservoirs: Hiwassee, Chatuge, Appalachia, Blue Ridge Nottely, Ocoee
- (4) 2611 W. Andrew Johnson Hwy., Morristown, TN 37814–3295, (865) 632–2753, Reservoirs: Cherokee, Douglas
- (5) Reservoir Road, P.O. Box 1010, Muscle Shoals, AL 35662–1010, (256) 386–2564, Reservoirs: Wheeler, Wilson, Tims Ford, Great Falls
- (6) 202 West Blythe Street, P.O. Box 280, Paris, TN 38242, (901) 642–2041, Reservoirs: Kentucky, Beech River, Columbia, Normandy
- (7) P.O. Box 1010, Muscle Shoals, AL 35662–1010, (256) 386–3782, Reservoirs: Pickwick, Bear Creek
- (8) Suite 218, Heritage Federal Bank Building, 4105 Fort Henry Drive, Kingsport, TN 37662, (423) 239–2001, Reservoirs: Boone, Watauga, Wilbur, Fort Patrick Henry, South Holston
- (9) 4833 Highway 58, Chattanooga, TN 37416, (423) 954–3811, Reservoirs: Chickamauga, Nickajack
- (10) 2009 Grubb Road, Lenoir City, TN 37771–6440, (865) 988–2445, Reservoirs: Watts Bar, Melton Hill
- (11) 2325 Henry Street, Guntersville, AL 35976–1868, (256) 571–4283, Reservoirs: Guntersville

(b) *Submittal of Section 26a Application.* Applicants must submit certain required information depending upon whether a proposed facility is a minor or major facility. Examples of the two categories are provided in paragraphs (b)(1) and (2) of this section. Most residential related facilities are minor facilities. Commercial or community facilities generally are major facilities. TVA shall determine whether a proposed facility is minor or major. An application shall not be complete until payment of the appropriate fee as determined in accordance with 18 CFR part 1310, and disclosed to the applicant in the materials provided with the application package or by such other means of disclosure as TVA shall from time to time adopt. For purposes of the information required to be submitted under this section and the determination of fees, a request for a variance to the size limitations for a residential-related facility shall be regarded as an application for a major facility.

(1) *Information required for review of minor facility.* By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, gazebos, and shoreline-based shelters. One copy of the application shall be prepared and submitted in accordance with the instructions included in the section 26a Applicant's Package. The application shall include:

(i) *Completed application form.* One (1) copy of the application shall be prepared and submitted. Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) *Project, plan, or drawing.* The project plan/drawing shall:

(A) Be prepared on paper suitable for reproduction (8½ by 11 inches);

(B) Identify the kind of structure, purpose/intended use;

(C) Show principal dimensions, size, and location in relation to shoreline;

(D) Show the height of the structure above the water; and

(E) Indicate the river or reservoir name, river mile, locator landmarks, and direction of water flow if known.

(iii) *A site photograph.* The photograph shall be at least 3 by 5 inches in size and show the location of the proposed shoreline structure or alteration and the adjacent shoreline area.

(iv) *Location map.* The location map shall clearly show the location of the

proposed facility and the extent of any site disturbance for the proposed project. An 8½ by 11-inch copy of one of the following is ideal: a TVA land map, a subdivision map, or a portion of a United States Geological Survey topographic map. The subdivision name and lot number and the map number or name shall be included, if available.

(2) *Information required for a major facility.* One (1) copy of the application shall be prepared and submitted according to instructions included in the section 26a Applicant's Package. By way of example only, major projects and facilities may include: marinas, community docks, barge terminals, utility crossing, bridges, culverts, roads, wastewater discharges, water intakes, dredging, and placement of fill. The application shall include:

(i) *Completed application form.* Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a narrative project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) *Project plan or drawing.* Adequate project plans or drawings shall accompany the application. They shall:

(A) Be prepared on paper suitable for reproduction (no larger than 11 by 17 inches) or contained on a 3½-inch floppy disc in "dxF" format.

(B) Contain the date; applicant name; stream; river or reservoir name; river mile; locator landmarks; and direction of water flow, if known;

(C) Identify the kind of structure, purpose/intended use;

(D) Include a plan and profile view of the structure;

(E) Show principal dimensions, size, and location in relation to shoreline;

(F) Show elevations (in context of normal summer pool if on a reservoir, or normal high water elevation above mean sea level if located on a free-flowing stream or river); and

(G) Show the north arrow.

(iii) *Location map.* The location map must clearly indicate the exact location and extent of site disturbance for the proposed project. An 8½ by 11-inch copy of the appropriate portion of a United States Geological Survey topographic map is recommended. The map number or name shall be included. In addition, recent photos of the location are helpful for TVA's review and may be included.

(iv) *Other information where applicable.* The location of any material laydown or assembly areas, staging areas, equipment storage areas, new access roads, and road/access closure required by the project or needed for

construction; the location of borrow or spoil areas on or off TVA land; the extent of soil and vegetative disturbance; and information on any special reservoir operations needed for the project, such as drawdown or water discharge restrictions.

(v) *Site plans.* Some projects, particularly larger ones, may require a separate site plan which details existing and proposed changes to surface topography and elevations (cut and fill, clearing, etc.), location of all proposed facilities, and erosion control plans.

(vi) *Environmental consultations and permits.* To the fullest extent possible the applicant shall obtain or apply for other required environmental permits and approvals before or at the same time as applying for section 26a approvals. Consultations under the National Historic Preservation Act of 1966 and the Endangered Species Act of 1973 shall take place, and permits from the U.S. Army Corps of Engineers and State agencies for water or air regulation shall be obtained prior to or applications made at the same time as application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(c) *Discharges into navigable waters of the United States.* If construction, maintenance, or operation of the proposed structure or any part thereof, or the conduct of the activity in connection with which approval is sought, may result in any discharge into navigable waters of the United States, applicant shall also submit with the application, in addition to the material required by paragraph (b) of this section, a certification from the State in which such discharge would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge would originate, or from the Environmental Protection Agency, that such State or interstate agency or the Environmental Protection Agency has determined that there is reasonable assurance that applicant's proposed activity will be conducted in a manner which will not violate applicable water quality standards. The applicant shall further submit such supplemental and additional information as TVA may deem necessary for the review of the application, including, without limitation, information concerning the amounts, chemical makeup, temperature differentials, type and quantity of suspended solids, and proposed treatment plans for any proposed discharges.

**§ 1304.3 Delegation of authority.**

The power to approve or disapprove applications under this part is delegated to the Vice President, Resource Stewardship, or the designee thereof, subject to appeal to the Board as provided in § 1304.6. In his/her discretion, the Vice President may submit any application to the Board for its approval or disapproval. Administration of the handling of applications is delegated to Resource Stewardship.

**§ 1304.4 Application review and approval process.**

(a) TVA shall notify the U.S. Army Corps of Engineers (USACE) and other Federal agencies with jurisdiction of the application as appropriate.

(b) Any interested person may become a party of record at any time before the Vice President's decision is issued (or the decision of the Board on matters referred by the Vice President) by writing to TVA at one of the locations identified in § 1304.2.

(c) Hearings concerning approval of applications are conducted (in accordance with § 1304.5) when:

(1) TVA deems a hearing is necessary or appropriate in determining any issue presented by the application;

(2) A hearing is required under any applicable law or regulation;

(3) A hearing is requested by the USACE pursuant to the TVA/Corps joint processing Memorandum of Understanding; or

(4) An applicant or other party of record appeals the decision of the Vice President in accordance with the provisions of § 1304, and any party of record requests or the TVA Investigator directs that a hearing be held.

(d) Upon completion of the review of the application, including any hearing or hearings, the Vice President shall issue a decision approving or disapproving the application. The basis for the decision shall be set forth in the decision. In his discretion the Vice President may refer any application and supporting materials to the Board for its approval or disapproval.

(e) Promptly following the issuance of the decision, the Vice President or the Board, as the case may be, shall furnish a written copy thereof to the applicant and to any parties of record. The Vice President's decision shall become final unless an appeal is made pursuant to § 1304.6. Any decision by the Board on a matter referred by the Vice President shall be a final decision.

**§ 1304.5 Conduct of hearings.**

(a) If a hearing is to be held for any of the reasons described in § 1304.4(c),

TVA shall give notice of the hearing to interested persons. Such notice may be given by publication in the **Federal Register**, publication in a daily newspaper of general circulation in the area of the proposed structure, personal written notice, posting on TVA's Internet website, or by any other method reasonably calculated to come to the attention of interested persons. The notice shall indicate the place, date, and time of hearing (to the extent feasible), the particular issues to which the hearing will pertain, and the manner of becoming a party of record, and shall provide other pertinent information as appropriate. The applicant shall automatically be a party of record.

(b) Hearings may be conducted by the Vice President and/or such other person or persons as may be designated by the Vice President or the Board for that purpose. Hearings are public and are conducted in an informal manner. Parties or record may be represented by counsel or other persons of their choosing. Technical rules of evidence are not observed although reasonable bounds are maintained as a relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. Cross-examination of witnesses or others providing statements or testifying at a hearing shall not be allowed. After the hearing has been completed, additional evidence will not be received unless it presents new and material matter that in the judgment of the person or persons conducting the hearing could not be presented at the hearing. Where construction of the project also requires the approval of another agency of the Federal Government by or before whom a hearing is to be held, the Vice President may arrange with such agency to hold a joint hearing.

**§ 1304.6 Appeals.**

(a) Decisions approving or disapproving an application may be appealed as provided in this section. Decisions by the Vice President's designee shall be reviewed by the Vice President; decisions by the Vice President shall be reviewed by the Board.

(b) If a designee of the Vice President disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Vice President, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828-1589, and mailed within thirty (30) days after receipt of the decision, obtain review of

the decision by the Vice President. If the Vice President, either initially or as the result of an appeal, disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Board of Directors, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, TN 37902, and mailed within thirty (30) days after receipt of the decision, obtain review of the decision by the Board. In either event, the request must contain a signed representation that a copy of the written request for review was mailed to each party of record at the same time as it was mailed to TVA. A decision by the Vice President is a prerequisite for seeking Board review. There shall be no administrative appeal of a Board decision approving or disapproving an application.

(c) A party of record who is aggrieved or adversely affected by any decision approving an application may obtain review by the Board or by the Vice President, as appropriate, of such decision by written request prepared, addressed and mailed as provided in paragraph (b) of this section.

(d) Requests for review by the Vice President shall specify the reasons why it is contended that the determination of the Vice President's designee is in error.

(e) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Vice President within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Vice President will conduct such review as he or she deems appropriate. If additional information is required of the applicant or other person requesting the review, the Vice President shall allow for at least thirty (30) days in which to provide the additional information. At the conclusion of the review, the Vice President shall render his or her decision approving or disapproving the application.

(f) Requests for review by the Board shall specify the reasons why it is contended that the Vice President's determination is in error and indicate whether a hearing is requested.

(g) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Board within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Board will review the material on which the Vice President's decision was based and any additional

information submitted by any party of record, or a summary thereof, and may conduct or cause to be conducted such investigation of the application as the Board deems necessary or desirable. In the event the Board decides to conduct an investigation, it shall appoint an Investigating Officer. The Investigating Officer may be a TVA employee, including a TVA Resource Stewardship employee, or a person under contract to TVA, and shall not have been directly and substantially involved in the decision being appealed. The Investigating Officer shall be the hearing officer for any hearing held during the appeal process. At the conclusion of his or her investigation, the Investigating Officer shall summarize the results of the investigation in a written report to the Board. The report shall be provided to all parties of record and made part of the public record. Based on the review, investigation, and written submissions provided for in this paragraph, the Board shall render its decision approving or disapproving the application.

(h) A written copy of the decision in any review proceeding under this section, either by the Vice President or by the Board, shall be furnished to the applicant and to all parties of record promptly following determination of the matter.

#### **§ 1304.7 Conditions of approvals.**

Approvals of applications shall contain such conditions as are required by law and may contain such other general and special conditions as TVA deems necessary or desirable.

#### **§ 1304.8 Denials.**

TVA may, at its sole discretion, deny any application to construct, operate, conduct, or maintain any obstruction, structure, facility, or activity that in TVA's judgment would be contrary to the unified development and regulation of the Tennessee River system, would adversely affect navigation, flood control, public lands or reservations, the environment or sensitive resources (including, without limitation, federally listed threatened or endangered species, high priority State-listed species, wetlands with high function and value, archaeological or historical sites of national significance, and other sites or locations identified in TVA Reservoir Land Management Plans as requiring protection of the environment), or would be inconsistent with TVA's Shoreline Management Initiative. In lieu of denial, TVA may require mitigation measures where, in TVA's sole judgment, such measures would

adequately protect against adverse effects.

#### **§ 1304.9 Initiation of construction.**

A permit issued pursuant to this part shall expire unless the applicant initiates construction within eighteen (18) months after the date of issuance.

#### **§ 1304.10 Change in ownership of approved structures.**

(a) When ownership of a permitted structure changes, the new owner shall notify TVA within sixty (60) days of the change of ownership. Upon application to TVA by the new owner, a permit for those existing structures or alterations shall be reissued to the new owner.

(b) The new owner and any subsequent owners may, upon application for and receipt of a permit, continue to use existing permitted structures.

(c) Subsequent owners are not required to modify existing structures constructed and maintained in accordance with the standards in effect at the time the permit was first issued provided they:

(1) Maintain such structures in good repair; and

(2) Obtain TVA approval for any repairs that would alter the size of the facility or for any new construction.

#### **§ 1304.11 Little Tennessee River; date of formal submission**

As regards structures on the Little Tennessee River, applications are deemed by TVA to be formally submitted within the meaning of section 26a of the Act, on that date upon which applicant has complied in good faith with all applicable provisions of § 1304.2.

### **Subpart B—Regulation of Nonnavigable Houseboats**

#### **§ 1304.100 Scope and intent.**

This subpart prescribes regulations governing existing nonnavigable houseboats that are moored, anchored, or installed in the Tennessee River system or its tributaries. No new nonnavigable houseboats shall be moored, anchored, or installed in any portion of the Tennessee River system or its tributaries.

#### **§ 1304.101 Nonnavigable houseboats**

(a) Any houseboat failing to comply with the following criteria shall be deemed a non-navigable houseboat and may not be moored, anchored, installed, or operated on any part of the Tennessee River System or its tributaries except as provided in paragraph (b) of this section:

(1) Built on a boat hull or on two or more pontoons;

(2) 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;

(3) Complaint with all applicable State and Federal requirements relating to vessels;

(4) Registered as a vessel in the State of principal use; and

(5) State registration numbers clearly displayed on the vessel.

(b) Nonnavigable houseboats approved by TVA prior to [the effective date of the final rule] shall be deemed existing houseboats and may remain on TVA reservoirs provided they remain in compliance with the rules contained in this part. Such houseboats shall be moored to mooring facilities contained within the designated and approved harbor limits of a commercial marina.

Alternatively, provided the owner has obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location, nonnavigable houseboats may be moored to the bank of the reservoir at locations where the owner of the houseboat is the owner or lessee (or the licensee of such owner or lessee) of the shoreline land, and at locations described by § 1304.201(a)(1), (2) and (3). All nonnavigable houseboats must be moored in such a manner as to:

(1) Avoid obstruction of or interference with navigation, flood control, public lands or reservations;

(2) Avoid adverse effects on public lands or reservations;

(3) Prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas;

(4) Protect land and landrights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable users; and

(5) Maintain, protect, and enhance the quality of the human environment.

(c) All approved nonnavigable houseboats must be equipped as follows with properly installed and operating Marine Sanitation Device (MSD) or Sewage Holding Tanks and pumpout capability:

(1) Nonnavigable houseboats moored on "Discharge Lakes" must be equipped with a Type I or Type II MSD.

(2) Nonnavigable houseboats moored in: "No Discharge Lakes" must be equipped with holding tanks and pumpout capability. If a nonnavigable houseboat moored in a "No Discharge Lake" is equipped with a Type I or Type II MSD, it must be secured to prevent discharge into the lake.

(d) Approved nonnavigable houseboats shall be maintained in a

good state of repair. Such houseboats may be structurally repaired or rebuilt without additional approval from TVA, but any expansion in length, width, or height is prohibited except as approved in writing by TVA.

(e) All nonnavigable houseboats shall comply with the requirements for flotation devices contained in § 1304.401.

(f) Applications for mooring of a nonnavigable houseboat outside of designated harbor limits will be disapproved if TVA determines that the proposed mooring location would be contrary to the intent of this subpart.

**§ 1304.12 Numbering of nonnavigable houseboats and transfer of ownership.**

(a) All approved nonnavigable houseboats shall display a number assigned by TVA. The owner of the nonnavigable houseboat shall paint or attach a facsimile of the number on a readily visible part of the outside of the facility in letters at least 3 inches high.

(b) The transferee of any nonnavigable houseboat approved pursuant to the regulations in this subpart shall, within thirty (30) days of the transfer transaction, report the transfer to TVA.

(c) A nonnavigable houseboat 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 new locations to or between mooring facilities within the designated harbor limits of a commercial dock or marina.

**§ 1304.103 Approval of plans for structural modifications or rebuilding of approved nonnavigable houseboats.**

Plans for the structural modification, or rebuilding of an approved nonnavigable houseboat shall be submitted to TVA for review and approval in advance of any structural modification which would increase the length, width, height, or flotation of the structure.

**Subpart C—TVA Owned Residential Access Shoreland**

**§ 1304.200 Scope and intent.**

Subpart C applies to residential water-use facilities, specifically the construction of docks, piers, boathouses (fixed and floating), retaining walls, and other structures and alterations, including channel excavation and vegetation management, on or along TVA-owned residential access shoreland. TVA manages the TVA-owned residential access shoreland to conserve, protect, and enhance shoreland resources, while providing

reasonable access to the water of the lake by qualifying adjacent residents.

**§ 1304.201 Applicability.**

This subpart addresses residential-related (all private, noncommercial uses) shoreland construction activities along and across shoreland property owned by the United States and under the custody and control of TVA. Individual residential landowners wishing to construct shoreline facilities, clear vegetation and/or maintain an access corridor on adjacent TVA-owned lands are required to apply for and obtain a permit from TVA before conducting any such activities.

(a) This subpart applies to the following TVA-reservoir shoreline classifications:

(1) TVA-owned shorelands over which the adjacent residential landowner holds rights of ingress and egress to the water (except where TVA's deeded rights exclude a particular activity);

(2) TVA-owned shorelands designated in current TVA Reservoir Land Management Plans as open for consideration of residential shoreline development; and

(3) On reservoirs not having a current approved TVA Reservoir Land Management Plan at the time of application, TVA-owned shorelines designated in TVA's property forecast system as "reservoir operations property," identified in a subdivision plan recorded prior to September 24, 1992, and containing at least one water-use facility developed prior to September 24, 1992.

(b) Construction of residential shoreline structures, access corridors, and vegetation management activities by owners of adjacent upland residential property shall not be allowed on any TVA-owned lands other than those described in one or more of the classifications identified in paragraph (a) of this section.

(c) Flowage easement shoreland. Except as otherwise specifically provided in subpart D of this part, subpart C does not apply to shorelines where TVA's property interest of ownership of a flowage easement. The terms of the particular flowage easement and subparts A, B, D and E of this part govern the use of such property.

**§ 1304.202 General sediment and erosion control provisions.**

(a) During shoreline construction activities TVA shall require that appropriate erosion and sediment control measures be utilized to prevent pollution of the waters of the reservoir.

(b) All material which accumulates behind sediment control structures must

be removed from TVA land and placed at an upland site above the 100-year floodplain elevation or the Flood Risk Profile Elevation (whichever is applicable).

(c) Disturbed sites must be promptly stabilized with seeding, vegetative planting, erosion control netting, and/or mulch material.

**§ 1304.203 Vegetation management.**

No vegetation management shall be approved on TVA-owned Residential Access Shoreline until a Vegetation Management Plan meeting the vegetation management standards contained in this section is submitted to and approved by TVA.

(a) Except for the moving of lawns established and existing before [the effective date of the final rule], all vegetation management activities on TVA-owned property subject to this subpart (including all such activities described in paragraphs (b) through (m) of this section as "allowed" and all activities undertaken in connection with a section 26a permit obtained before [the effective date of the final rule]) require TVA's advance written permission. Special site circumstances such as the presence of wetlands may result in a requirement for mitigative measures or alternative vegetation management approaches.

(b) Vegetation may be cleared to create and maintain an access corridor up to but not exceeding 20 feet wide. The corridor will extend from the common boundary between TVA and the adjacent landowner to the water at normal summer pool.

(c) The access corridor will be located to minimize removal of trees of other vegetation on the TVA land.

(d) Grass may be planted and mowed within the access corridor, and stone, brick, concrete, mulch, or wooden paths, walkways and/or steps are allowed. Pruning of side limbs that extend into the access corridor from trees located outside the access corridor is allowed.

(e) A 50-foot-deep shoreline management zone (SMZ) shall be designated along the shoreline. The SMZ shall begin at the normal summer pool elevation and extend 50 feet horizontally inland on TVA property or a lesser distance coincidental with TVA ownership. Within the SMZ, no trees may be cut or vegetation removed, except that which is preapproved by TVA within the access corridor.

(f) Within the 50-foot SMZ and elsewhere on TVA land as defined in § 1304.201, clearing of specified understory plants (poison ivy, Japanese honeysuckle, kudzu, and other exotic



plants on a list provided by TVA) is allowed.

(g) On TVA land situated above the SMZ (more than 50 feet upland from normal summer pool), selective thinning of trees or other vegetation under 3 inches in diameter at the ground level is allowed.

(h) Removal of trees outside of the access corridor but within the SMZ may be approved to make the site suitable for approved shoreline erosion control projects.

(i) Vegetation removed for erosion control projects must be replaced with native species of vegetation.

(j) The forest floor must be left undisturbed, except as specified in this § 1304.203. Mowing is allowed only within the access border.

(k) Planting of trees, shrubs, wildflowers, and ground covers is allowed to improve or enhance the vegetative cover, provided native plants are used.

(l) Fertilizers and herbicides shall not be applied within the SMZ or elsewhere on TVA land, except as specifically approved in the Vegetative Management Plan.

(m) Restricted use herbicides and pesticides shall not be applied within the shoreline management zone except by a State certified applicator. All herbicides and pesticides shall be applied in accordance with label requirements.

#### **§ 1304.204 Docks, piers, and boathouses.**

Applicants are responsible for submitting plans for proposed docks, piers, and boathouses that conform to the standards that define the size of water-use facility that will be approved by TVA. Where and if site constraints at the proposed construction location preclude the building of a maximum allowable-sized structure, TVA shall determine the size of facility that may be approved. Applicants are required to submit accurate drawings with dimensions of all proposed facilities.

(a) Docks, piers, boathouses, and all other resident water-use facilities shall not exceed a total footprint area of greater than 1000 square feet.

(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-square-foot rectangular or square area at the lakeward end of the access walkway that extends from the shore to the structure. Walkways from shoreline to the water-use structure are not included in calculating the 1000-foot area.

(c) Docks and walkway(s) shall not extend more than 150 feet from the

shoreline, or more than one-third the distance to the opposite shoreline, whichever is less.

(d) All fixed piers and docks shall have deck elevations at least 18 inches above normal summer pool level (facilities on Chickamauga, Watts Bar, Fort Loudoun, and Tellico, shall be a minimum of 24 inches above normal summer pool).

(e) All docks, piers and other water-use facilities must be attached to the shore with a walkway which must connect from land to the structure by the most direct route and must adjoin the access corridor.

(f) Docks, piers, and boathouses may be fixed or floating or a combination of the two types.

(g) Roofs are allowed on boatslips, except on Kentucky Reservoir where roofs are not allowed on *fixed* structures due to extreme water level fluctuations. Roofs over docks or pier to provide shade are allowed on all reservoirs.

(h) Docks proposed in subdivisions recorded after [the effective date of the final rule] must be placed at least 50 feet from the neighbor's docks. When this density requirement cannot be met, TVA may require group or community facilities.

(i) Covered boatslips may be open or enclosed with siding.

(j) Access walkways constructed over water and internal walkways inside of boathouses shall not exceed 6 feet in width.

(k) Enclosed space shall be used solely for storage of water-use equipment. The outside dimensions of any completely enclosed storage space shall not exceed 32 square feet and must be located on an approved dock, pier, or boathouse, not on TVA land.

(l) Docks, piers, and boathouses shall not contain living space or sleeping areas. Floor space shall not be considered enclosed if three of the four walls are constructed of wire or screen mesh from floor to ceiling, and the wire or screen mesh leaves the interior of the structure open to the weather.

(m) Toilets or sinks creating discharges into the lake are not permitted.

(n) Covered docks, boatslips, and boathouses shall not exceed one story in height.

(o) Second stories on covered docks, piers, boatslips, or boathouses may be constructed as open decks with railing but shall not be enclosed with siding, screening, or covered by a roof.

#### **§ 1304.205 Other water-use facilities.**

(a) A marine railway or concrete boat launching ramp with associated driveway may be located within the

access corridors. Construction must occur during reservoir drawdown. Excavated material must be placed at an upland site. Use of concrete is allowable; asphalt is not permitted.

(b) Tables or benches for cleaning fish are permitted on docks or piers.

(c) All anchoring cables or spud poles must be anchored to the walkway or to the ground in a way that will not accelerate shoreline erosion. Anchoring of cables, chains, or poles to trees on TVA property is not permitted.

(d) Electrical appliances, including stoves, refrigerators, freezers, and microwave ovens are not permitted on docks, piers, or boathouses.

(e) Mooring buoys/posts may be permitted in association with docks, piers, and boathouses provided the following requirements are met.

(1) Posts and buoys shall not extend farther into the lake than the associated waterfront structure.

(2) Posts must be 36 inches in height above the 100-year-flood elevation.

(3) Buoys must conform to the Uniform State Waterway Marking system.

(f) Where the applicant owns or controls less than 50 feet of property adjoining TVA shoreline, the overall width of the facilities permitted along the shore shall be limited to ensure sufficient space to accommodate other property owners.

(g) Structures shall not be wider than the width of the lot.

(h) In congested areas, TVA may establish special permit conditions requiring dry-docking of floating structures when a lake reaches a specific drawdown elevation to prevent these structures from interfering with navigation traffic, recreational boating access, or adjacent structures during winter drawdown.

#### **§ 1304.206 Requirements for community dock, pier, boathouse, or other water-use facilities.**

(a) Community facilities where individual facilities are not allowed:

(1) TVA may limit water-use facilities to community facilities where physical or environmental constraints on the shoreline preclude approval of individual docks piers or boathouses.

(2) When individual water-use facilities are not allowed, no more than one slip for each lot adjoining the TVA shoreland will be approved for any community facility.

(3) In narrow coves or other situations where shoreline frontage is limited, shoreline development may be limited to one landing dock for temporary moorage of boats not to exceed the 1000-square-foot footprint requirement, and/

or a boat launching ramp, if the site, in TVA's judgment, will accommodate such development.

(4) TVA will establish harbor limits for all community facilities exceeding 1000 square feet.

(b) Community facilities at jointly-owned community outlots:

(1) Plans for community facilities must be submitted by the developer of the subdivision or by a State-chartered homeowner's association representing all persons with a property interest in the community lot where the facilities are proposed.

(2) Size and number of slips at community water-use facilities lots shall be determined by TVA with consideration of the following:

(i) Size of community outlet;  
 (ii) Parking accommodations on the community outlet;  
 (iii) Length of shoreline frontage associated with the community outlet;  
 (iv) Number of property owners with access rights to the community outlet; and

(v) Other site specific conditions as determined by TVA.

(3) Vegetation management shall be in accordance with the requirements of § 1304.203 except that, at TVA's discretion, the community access corridor may exceed 20 feet in width, and thinning of vegetation outside of the corridor within or beyond the SMZ may be allowed to enhance views of the lake.

**§ 1304.207 Channel excavation on TVA-owned residential access shoreland.**

(a) Excavation of individual boat channels shall be approved only when TVA determines there is no other practicable alternative to achieving sufficient navigable water depth and the action would not substantially impact sensitive resources.

(b) No more than 150 cubic yards of material shall be removed for any individual boat channel.

(c) The length, width, and depth of approved boat channels shall not exceed the dimensions necessary to achieve 3-foot water depths for navigation of the vessel at the minimum winter drawdown elevation.

(d) Each side of the channel shall have a slope ratio of at least 3:1.

(e) Only one boat channel or harbor may be considered for each abutting property owner.

(f) The grade of the channel must allow drainage of water during lake drawdown periods.

(g) Channel excavations must be accomplished during the lake drawdown when the lake bottom is exposed and dry.

(h) Spoil material from channel excavations must be placed on

accordance with any applicable local, State, and Federal regulations at an upland site above the TVA Flood Risk Profile elevation. For those reservoirs that have no flood control storage, dredge spoil must be disposed of and stabilized above the limits of the 100-year floodplain and off of TVA property.

**§ 1304.208 Shoreline stabilization.**

TVA may allow homeowners to stabilize eroding shorelines. TVA will determine if shoreline erosion is sufficient to approve the proposed stabilization treatment.

(a) *Biostabilization of eroded shorelines.*

(1) Moderate contouring of the bank may be allowed to provide conditions suitable for planting of vegetation.

(2) Tightly bound bundles of coconut fiber, logs, or other natural materials would be placed at the base of the eroded site to deflect waves.

(3) Willow stakes and bundles and live cuttings of suitable native plant materials may be planted along the surface of the eroded area.

(4) Native vegetation may be planted within the shoreline management zone to help minimize further erosion.

(5) Riprap may be allowed along the base of the eroded area to prevent further undercutting of the bank.

(b) *Use of gabions and riprap to stabilize eroded shorelines.*

(1) The riprap material must be quarry-run stone, natural stone, or other material approved by TVA.

(2) Rubber tires, concrete rubble, or other debris salvaged from construction sites shall not be used to stabilize shorelines.

(3) Gabions (rock wrapped with wire mesh) that are commercially manufactured for erosion control may be used.

(4) Riprap material must be placed so as to follow the existing contour of the bank.

(5) Site preparation must be limited to the work necessary to obtain adequate slope and stability of the riprap material.

(c) *Use of retaining walls for shoreline stabilization.*

(1) Retaining walls shall be allowed only where the erosion process is severe and TVA determines that a retaining wall is the most effective erosion control option or where the proposed wall would connect to an existing wall on the lot or to an adjacent owner's wall.

(2) The retaining wall must be constructed of stone, concrete blocks, poured concrete, gabions, or other materials acceptable to TVA. Railroad ties, rubber tires, broken concrete, brick, creosote timbers, and asphalt are not allowed.

(3) Reclamation of land that has been lost to erosion is not allowed.

(4) The base of the retaining wall shall not be located more than an average of two horizontal feet lakeward of the existing normal summer pool elevation. Riprap shall be placed at least two feet in depth along the footer of the retaining wall to deflect wave action and reduce undercutting that could eventually damage the retaining wall.

**§ 1304.209 Fish attractor, spawning, and habitat structures.**

Fish attractors constitute potential obstructions and require TVA approval.

(a) Fish attractors may be constructed of anchored brush piles, log cribs, and/or spawning benches, stake beds, vegetation, or rock piles, provided they meet *TVA Guidelines for Fish Attractor Placement in TVA Reservoirs (TVA, 1997)*.

(b) When established in connection with an approved dock, fish attractors shall not project more than 30 feet out from any portion of the dock.

(c) Any floatable materials must be permanently anchored.

**§ 1304.210 Land-based structures/alternations.**

(a) Except for steps, pathways, boat launching ramps, marine railways located in the access corridor, bank stabilization along the shoreline, and other uses described in this subpart, no permanent structures, fills or grading shall be allowed on TVA land.

(b) Portable items such as picnic tables and hammocks may be placed on TVA land; permanent land-based structures such as picnic pavilions, gazebos, satellite antennas, septic tanks, and drainfields shall not be allowed on TVA land.

(c) Utility lines (electric, water-intake lines, etc.) may be placed within the access corridor as follows:

(1) Power lines and poles must be installed:

(i) Above normal summer pool;  
 (ii) In a way that would not be hazardous to the public or interfere with TVA operations;

(iii) Solely to serve water-use facilities, and

(iv) In compliance with all State and local codes.

(2) Electrical service must be installed with an electrical disconnect that is:

(i) Located above the 500-year floodplain or the flood risk profile, whichever is higher, and

(ii) Is accessible during flood events.

(d) Fences crossing TVA residential access shoreland may be considered only where outstanding agricultural rights or fencing rights exist and the

land is used for agricultural purposes. Fences much have a built-in means for easy pedestrian passage by the public and they must be clearly marked.

**§ 1304.211 Grandfathering of preexisting shoreline uses and structures.**

In order to provide for a smooth transition to new standards, grandfathering provisions shall apply to preexisting development and shoreline uses established and permitted prior to November 1, 1999, which are located along or adjoin TVA-owned access residential shoreland or TVA flowage easement shoreline.

(a) Existing shoreline structures (docks, retaining walls, etc.) previously permitted by TVA are grandfathered.

(b) Grandfathered structures may continue to be maintained in accordance with previous permit requirements, and TVA does not require modification to conform to new standards.

(c) If a structure is destroyed by fire or storms, the permit shall be reissued if the replacement facility is rebuilt to specifications originally permitted by TVA.

(d) Vegetation management at grandfathered developments shall be as follows:

(1) Mowing of established preexisting lawns on TVA-owned residential access shoreland may be continued.

(2) At sites where established mowing is not specifically included as an authorized use in an existing permit, TVA will include mowing as a permitted use in the next permit action at that site.

(3) The SMZ is not required where established lawns existed prior to November 1, 1999.

(4) Any additional removal of trees or other vegetation (except for mowing of established, preexisting lawns) requires TVA's approval. Removal of trees greater than 3 inches diameter at ground level is not allowed.

**§ 1304.212 Change in ownership of grandfathered structures or alterations.**

(a) When ownership of a permitted structure or other shoreline alteration changes, the new owner shall comply with 1304.10 regarding notice to TVA.

(b) The new owner and any subsequent owners may, upon application for and receipt of a permit, continue to use existing permitted docks and other shoreline alterations.

(c) Subsequent owners are not required to modify existing prior to November 1, 1999.

(d) New owners wishing to continue existing grandfathered activities and structures must:

(1) Maintain existing permitted docks, piers, boathouses, and other shoreline structure in good repair.

(2) Obtain TVA approval for any repairs that would alter the size of the facility, for any new construction, or for removal of trees or other vegetation.

**§ 1304.213 Waivers on TVA-owned residential access shoreland.**

(a) Waivers or variances of standards contained in this subpart may be requested as provided in § 1304.409. Ordinarily, the following minimum criteria must be established before a request for waiver or variance of standards in this subpart C shall be considered:

(1) The property shall be within a preexisting development (an area where shoreline development existed prior to [the effective date of the final rule]); and

(2) The shoreline proposed alterations shall be compatible with surrounding permitted structures and uses within the subdivision or, if there is no subdivision, within the immediate vicinity (one-fourth mile radius).

(b) In approving waivers of or variances from the standards in subpart D of this part, TVA will consider, in addition to the factors listed in § 1304.409, the following:

(1) The prevailing permitted practices within the subdivision or immediate vicinity; and

(2) The uses permitted under the guidelines followed by TVA before [the effective date of the final rule].

**§ 1304.214 Numbering of structures.**

(a) All approved shoreline structures shall display a permit number assigned by TVA. The owner of the structure shall attach the number to the structure in a readily visible location on the lakeward facing side of the structure.

(b) Numbers shall be attached within ten (10) days of the completion of the structure.

(c) During construction, each structure will display a temporary poster with permit number supplied by TVA.

**Subpart D—Activities on TVA Flowage Easement Shoreline**

**§ 1304.300 Scope and intent.**

Any structure built upon land subject to a flowage easement held by TVA shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act. Such obstructions shall be subject to all requirements of this part except those contained in subpart C, which shall apply as follows:

(a) All of §§ 1304.204, 1304.209, and 1304.212 shall apply.

(b) Sections 1304.200, 1304.203, 1304.206, 1304.207 (except to the extent it creates an obstruction), 1304.210, and 1304.213 shall not apply.

(c) Section 1304.201 shall not apply except for paragraph (c).

(d) Section 1304.202 shall apply except that TVA shall determine on a case-by-case basis whether it is necessary to remove materials accumulated behind sediment control structures to an upland site.

(e) Section 1304.205 shall apply except as follows:

(1) The facilities described in paragraph (a) are not limited to locations within an access corridor.

(2) The "50 feet" trigger of paragraph (f) shall not apply, but TVA may impose appropriate requirements to ensure accommodation of neighboring landowners.

(f) Section 1304.208 shall apply except that TVA approval shall not be required to conduct the activities described in paragraph (a).

(g) Section 1304.211 shall apply except for paragraph (d).

(h) Nothing contained in this part shall be construed to be in derogation of the rights of the United States or of TVA under any flowage easement held by the United States or TVA.

**§ 1304.301 Septic tanks.**

All septic tanks and septic tank systems to be installed on flowage easement land after [the effective date of the final rule] are subject to the application and permit requirements of this part without regard to whether the associated facility or facilities are regulated, and shall comply with § 1304.403(b) (1) and (2). TVA may exercise its rights under particular flowage easement documents to deny permission to install any septic tank or septic tank system that, in TVA's judgment, would pose a threat of pollution.

**§ 1304.302 Utilities.**

Upon application to and approval by TVA, utility lines (electric, water-intake lines, etc.) may be placed within the flowage easement area as follows:

(a) Power lines and poles shall be installed:

(1) Above normal summer pool;

(2) In a way that would not be hazardous to the public or interfere with TVA operations; and

(3) In compliance with all State and local codes.

(b) Electrical service shall be installed with an electrical disconnect that is located above the 500-year floodplain or

the flood risk profile, whichever is higher, and is accessible during flood events.

**§ 1304.303 Vegetation management on flowage easement shoreline.**

Removal, modification, or establishment of vegetation on privately owned shoreline subject to a TVA flowage easements does not require approval by TVA. When reviewing proposals for docks or other obstructions on flowage easement shoreland, TVA shall consider the potential for impacts to sensitive plants or other resources and may establish conditions in its approval of a proposal to avoid or minimize such impacts consistent with applicable laws and executive orders.

**§ 1304.304 Channel excavation.**

(a) Channel excavation of privately owned lake bottom subject to a TVA flowage easement does not require approval by TVA under section 26a if:

(1) All dredged material is placed above the limits of the 100-year floodplain or the TVA flood risk profile elevation, whichever is applicable, and

(2) The dredging is not being accomplished in conjunction with the construction of a shoreline or water-based structure requiring a section 26a permit.

(b) Any fill material placed within the flood control zone of a TVA reservoir requires TVA review and approval.

(c) TVA shall encourage owners of flowage easement property to adopt the standards for channel excavation applicable to TVA-owned residential access shoreland.

**Subpart E—Miscellaneous**

**§ 1304.400 Definitions.**

Except as the context may otherwise require, the following words or terms, when used in this part 1304, have the meaning specified in this section.

*100-year floodplain* means that area inundated by the one percent annual chance (or 100-year) flood.

*500-year floodplain* means an area inundated by the 0.2 percent annual chance (or 500-year) flood; any land susceptible to inundation during the 500-year or greater flood.

*Act* means the Tennessee Valley Authority Act of 1933, as amended. Section 26a of the Act is reprinted in Appendix A to this part as a convenience to the reader.

*Applicant* means the person, corporation, State, municipality, political subdivision or other entity making application to TVA.

*Application* means a written request for the approval of plans pursuant to the regulations contained in this part.

*Backlot* means a residential lot not located adjacent to the shoreline but located in a subdivision associated with the shoreline.

*Board* means the Board of Directors of TVA.

*Community outlot* means a subdivision lot located adjacent to the shoreline and designated by deed or subdivision covenant as available for use by all property owners within the subdivision.

*Dredging* means the removal of material from a submerged location, primarily for deepening harbors and waterways.

*Enclosed structure* means a structure enclosed overhead and on all sides so as to keep out the weather.

*Flood control storage* means the volume within an elevation range on a TVA reservoir that is reserved for the storage of floodwater.

*Flood control storage zone* means the area within an elevation range on a TVA reservoir that is reserved for the storage of floodwater. TVA shall, upon request, identify the contour marking the upper limit of the flood control storage zone at particular reservoir locations.

*Flood risk profile elevation* means the elevation of the 500-year flood that has been adjusted for surcharge at the dam. Surcharge is the ability to raise the water level behind the dam above the top-of-gates elevation.

*Flowage easement shoreland* means privately owned properties where TVA has the right to flood the land.

*Footprint* means the total water surface area of either a square or rectangular shape occupied by an adjoining property's owner's dock, pier, boathouse, or boatwells.

*Maximum shoreline contour* means an elevation typically five feet above the top of the gates of a TVA dam. It is sometimes the property boundary between TVA property and adjoining private property.

*Nonnavigable houseboat* means any houseboat not in compliance with one or more of the criteria defining a navigable houseboat.

*Normal summer pool* means the level to which the reservoirs may be filled by June 1. Where storage space is available above this level, additional filing may be made as needed for flood control.

*Owner or landowner* means all of the owners of a parcel of land. In all cases where TVA approval is required to engage in an activity and the applicant's eligibility to seek approval depends on status as an owner of real property, the owner or owners of only a fractional

interest or of fractional interests totaling less than one in any such property shall under no circumstances be considered, by virtue of such fractional interests or interest only, to be an owner and as such eligible to seek approval to conduct the activity without the consent of the other co-owners.

*Shoreland* means same as shoreline area.

*Shoreline* means the line where the water of a TVA reservoir meets the shore when the water level is at the normal summer pool elevation.

*Shoreline* means the line where the water of a TVA reservoir meets the shore when the water level is at the normal summer pool elevation.

*Shoreline area* means the surface of land lying between minimum winter pool elevation of a TVA reservoir and the maximum shoreline contour.

*Shoreline Management Zone (SMZ)* means an area on TVA-owned land beginning at the normal summer pool elevations and extending 50 feet inland.

*Shoreline structure* means Any land-based structure constructed above the full summer pool elevation of a TVA lake but below the maximum shoreline contours of that lake.

*TVA* means the Tennessee Valley Authority.

*TVA property* means real property owned by the United States and under the custody and control of TVA.

*Vice President* means the Vice President, Resource Stewardship, TVA, or a functionally equivalent position.

*Water-based structure* means any structure, fixed or floating, constructed on or in navigable waters of the United States.

*Winter drawdown elevation* means the elevation to which a reservoir water level is lowered during fall to provide storage capacity for winter and spring floodwaters.

*Winter pool* means the lowest level expected for the reservoir during the flood season.

**§ 1304.401 Flotation devices and material, all floating structures.**

(a) Flotation for all docks, boat mooring buoys, and other water-use structures and facilities, shall be of materials commercially manufactured for marine use. Flotation materials shall not become waterlogged, crack, peel, fragment, or be subject to loss of beads. Flotation materials shall be resistant to puncture, penetration, damage by animals, and fire. Any flotation within 40 feet of a line carrying fuel shall be 100 percent impervious to water and fuel. Styrofoam flotation must be encased. Reuse of plastic, metal, or other previously used drums or

containers for encasement or flotation purpose is prohibited, except as provided in paragraph (c) of this section for certain metal drums already in use. Existing flotation (secured in place prior to [the effective date of the final rule]) in compliance with previous rules (contained in the 18 CFR, part 400 to End, edition revised as of April 1, 2000) is authorized until in TVA's judgment the flotation is no longer serviceable, at which time it shall be replaced with approved flotation upon notification from TVA. For any float installed after [the effective date of the final rule], repair or replacement is required when it no longer performs its designated function or exhibits any of the conditions prohibited by this subpart.

(b) Because of the possible release of toxic or polluting substances, and the hazard to navigation from metal drums that become partially filled with water and escape from docks, boathouses, houseboats, floats, and other water-use structures and facilities for which they are used for flotation, the use of metal drums in any form, except as authorized in paragraph (c) of this section, for flotation of any facilities is prohibited.

(c) Only metal drums which have been filled with plastic foam or other solid flotation materials and welded, strapped, or otherwise firmly secured in place prior to July 1, 1972, on existing facilities are permitted. Replacement of any metal drum flotation permitted to be used by this paragraph must be with a commercially manufactured flotation device or material, for example, pontoons, boat hulls, or other buoyancy devices made of steel, aluminum, fiberglass, or plastic foam, as provided for in paragraph (a) of this section.

(d) Every flotation device employed in the Tennessee River system must be firmly and securely affixed to the structure it supports with materials capable of withstanding prolonged exposure to wave wash and weather conditions.

#### **§ 1304.402 Marine sanitation devices.**

No person operating a commercial boat dock permitted under this part shall allow the mooring at such permitted facility of any watercraft or floating structure equipped with a marine sanitation device (MSD) unless such MSD is in compliance with all applicable statutes and regulations governing "no discharge" zones. All slip rental arrangements entered into after [the effective date of the final rule] by operators of such commercial boat docks shall contain a written provision implementing this requirements. Upon request of TVA, commercial dock operators shall provide evidence

satisfactory to TVA of their compliance with this section.

#### **§ 1304.403 Wastewater outfalls; septic tanks.**

(a) *Wastewater outfall.* Applicants for a wastewater outfall shall provide copies of all Federal, State, and local permits, licenses, and approvals required for the facility prior to applying for TVA approval, or shall concurrently with the TVA application apply for such approvals. A section 26a permit shall not be issued until other required water quality approvals are obtained, and TVA reserves the right to impose additional requirements.

(b) *Septic systems.* Septic tank and sewage disposal systems associated with facilities regulated under this part must meet the following requirements:

(1) Site approval by the local health department, including suitable soil conditions, percolation rates, slope, and area.

(2) A 2-foot vertical separation disposal field and the normal summer pool.

(3) When annual flood-frequency elevations are available for the mainstream reservoirs, they will be used instead of the normal summer pool elevation. Tributary reservoirs will use the normal maximum pool.

(4) Septic tank systems shall not be located on TVA-owned property within the shoreline area.

#### **§ 1304.404 Marina sewage pump-out stations and holding tanks.**

All pump-out facilities constructed after [the effective date of the final rule] shall meet the following minimum design and operating requirements:

(a) Spill-proof connection with shipboard holding tanks;

(b) Suction controls or vacuum breaker capable of limiting suction to such levels as will avoid collapse of rigid holding tanks;

(c) Available fresh water facilities for tank flushing;

(d) Check valve and positive cut-off or other device to preclude spillage when breaking connection with vessel being served;

(e) Adequate interim storage where storage is necessary before transfer to approved treatment facilities;

(f) No overflow outlet capable of discharging effluent into the reservoir;

(g) Alarm system adequate to notify the operator when the holding tank is full;

(h) Convenient access to holding tanks and piping system for purposes of inspection;

(i) Spill-proof features adequate for transfer of sewage from all movable

floating pump-out facilities to shore-based treatment plants or intermediate transfer facilities; and

(j) A reliable disposal method consisting of:

(1) An approved upland septic system that meets TVA, State, and local requirements; or

(2) Proof of a contract with a sewage disposal contractor;

(k) A written statement to TVA certifying that the system shall be operated and maintained in such a way as to prevent any discharge or seepage of wastewater or sewage into the lake.

#### **§ 1304.405 Commercial marina harbor limits.**

The landward limits of commercial marina harbor areas are determined by the extent of land rights held by the dock operator. The lakeward limits of harbors at commercial marinas will be designated by TVA on the basis of the size and extent of facilities at the dock, navigation and flood control requirements, optimum use of lands and land rights owned by the United States, and on the basis of the environmental effects associated with the use of the harbor. Mooring buoys or slips and permanent anchorage are prohibited beyond the lakeward extent of harbor limits.

#### **§ 1304.406 Fuel storage tanks and handling facilities**

Fuel storage tanks and handling facilities are generally either underground (UST) or aboveground (AST) storage tank systems. An UST is any one or combination of tanks or tank systems defined in applicable Federal or State regulations as an UST. Typically (unless otherwise provided by applicable Federal or State rules), an UST is used to contain a regulated substance (such as a petroleum product) and has 10 percent or more of its total volume beneath the surface of the ground. The total volume includes any piping used in the system. An UST may be a buried tank, or an aboveground tank with buried piping if the piping holds 10 percent or more of the total system volume including the tank. For purposes of this part, an aboveground storage tank (AST) is any storage tank whose total volume (piping and tank) is less than 10 percent underground or any storage tank defined by applicable law or regulation as an AST.

(a) TVA requires the following to be included in all applications submitted after [the effective date of the final rule] to install an UST or any part of an UST system below the 500-year flood elevation on a TVA reservoir, or regulated tailwater:

(1) A copy of the State approval for the UST along with a copy of the application sent to the State and any plans or drawings that were submitted for the State's review;

(2) Evidence of secondary containment for all piping or other systems associated with the UST;

(3) Evidence of Secondary containment to contain leaks from gas pump(s);

(4) Calculations certified by a licensed, professional engineer in the relevant State showing how the tank will be anchored so that it does not float during flooding; and

(5) Evidence, where applicable, that the applicant has complied with all spill prevention, control and countermeasures (SPCC) requirements.

(b) The applicant must accept and sign a document stating that the applicant shall at all times be the owner of the UST system, that TVA shall have the right (but no duty) to prevent or remedy pollution or violations of law, including removal of the UST system, with costs charged to the applicant, that the applicant shall at all times maintain and operate the UST system in full compliance with applicable Federal, State, and local UST regulations, and that the applicant shall maintain eligibility in any applicable State trust fund.

(c) An application to install an AST or any part of an AST system below the 500-year elevation on a TVA reservoir or a regulated tailwater is subject to all of the requirements of § 1304.406 (a) and (b) except that paragraph (a)(1) shall not apply in States that do not require application or approval for installation of an AST. Eligibility must be maintained for any applicable AST trust fund, and the system must be maintained and operated in accordance with any applicable AST regulations. The applicant must notify and obtain any required documents or permission from the State fire marshal's office prior to installation of the AST. The applicant must also follow the National Fire Protection Association Codes 30 and 30A for installation and maintenance of flammable and combustible liquids storage tanks at marine service stations.

(d) *Fuel handling on private, non-commercial docks and piers.* TVA will not approve the installation, operation, or maintenance of fuel handling facilities on any private, non-commercial dock or pier.

(e) *Demonstration of financial responsibility.* Applicants for a fuel handling facility to be located in whole or in part on TVA land shall be required to provide TVA, in a form and amount acceptable to TVA, a surety bond,

irrevocable letter of credit, pollution liability insurance, or other evidence of financial responsibility in the event of a release.

**§ 1304.407 Removal of unauthorized, unsafe, and derelict structures.**

If, at any time, any dock, wharf, boathouse (fixed or floating), nonnavigable houseboat, outfall, aerial cable, or other fixed or floating structure or facility (including any navigable boat or vessel that has become deteriorated and is a potential navigation hazard or impediment to flood control) is anchored, installed, constructed, or moored in a manner inconsistent with this part, or is not constructed in accordance with plans approved by TVA, or is not maintained or operated so as to remain in accordance with such plans, or is not kept in a good state of repair and in good, safe, and substantial condition, and the owner or operator thereof fails to repair or remove such structure (or operate or maintain it in accordance with such plans) within ninety (90) days after written notice from TVA to do so, TVA may cancel any license, permit, or approval and remove such structure, and/or cause it to be removed, from the Tennessee River system and/or lands in the custody or control of TVA. Such written notice may be given by mailing a copy thereof to the owner's address as listed on the license, permit, or approval or by posting a copy on the structure or facility. TVA will remove or cause to be removed any such structure or facility anchored, installed, constructed, or moored without such license, permit, or approval, whether such license or approval has once been obtained and subsequently canceled, or whether it has never been obtained. TVA's removal costs shall be charged to the owner of the structure, and payment of such costs shall be a condition of approval for any future facility proposed to serve the tract of land at issue or any tract derived therefrom whether or not the current owner caused such charges to be incurred. In addition, any applicant with an outstanding removal charge payable to TVA shall, until such time as the charge be paid in full, be ineligible to receive a permit or approval from TVA for any facility located anywhere along or in the Tennessee River or its tributaries. TVA shall not be responsible for the loss of property associated with the removal of any such structure or facility including, without limitation, the loss of any navigable boat or vessel moored at such a facility. Any costs voluntarily incurred by TVA to protect and store such property shall be removal costs within the meaning of

this section, and TVA may sell such property and apply the proceeds toward any and all of its removal costs. Small businesses seeking expedited consideration of the economic impact of actions under this section may contact TVA's Supplier and Diverse Business Relations staff, TVA Procurement, 1101 Market Street, Chattanooga, Tennessee 37402-2801.

**§ 1304.408 Development within flood control storage zones of TVA reservoirs.**

(a) Activities involving development within the flood control storage zone on TVA reservoirs will be reviewed to determine if the proposed activity qualifies as a repetitive action. Under TVA's implementation of Execution Order 11988, Floodplain Management, repetitive actions are projects within a class of Actions TVA has determined to be approvable without further review and documentation related to flood control storage, provided the loss of flood control storage caused by the project does not exceed one acre-foot. A partial list of repetitive actions includes:

- (1) Private and public water use facilities;
- (2) Commercial recreation boat dock and water use facilities;
- (3) Water intake structures;
- (4) Outfalls;
- (5) Mooring and loading facilities for barge terminals;
- (6) Minor grading and fills; and
- (7) Bridges and culverts for pedestrian, highway, and railroad crossings.

(b) Projects resulting in flood storage loss in excess of one acre-foot will not be considered repetitive actions.

(c) For projects not qualifying as repetitive actions, the applicant would be required, as appropriate, to evaluate alternatives to the placement of fill or the construction of a project within the flood control storage zone that would result in lost flood control storage. The alternative evaluation would either identify a better option or support and document that there is no reasonable alternative to the loss of flood control storage. If this determination can be made, the applicant must then demonstrate how the loss of flood control storage will be minimized.

(1) In addition, documentation should be provided regarding:

- (i) The amount of anticipated flood control storage loss;
- (ii) The cost of compensation of the displaced flood control storage (how much it would cost to excavate material from the flood control storage zone, haul it to an upland site and dispose of it);
- (iii) The cost of mitigation of the displaced flood control storage (how

much it would cost to excavate material from another site within the flood control storage zone, haul it to the project site and use as the fill material);

(iv) The cost of the project; and

(v) The nature and significance of any economic and/or natural resource benefits that would be realized as a result of the project.

(2) TVA may, in its discretion, decline to permit any project that would result in the loss of flood control storage.

(d) Recreational vehicles parked or placed within flood control storage zones of TVA reservoirs shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act unless they:

(1) Remain truly mobile and ready for highway use. The unit must be on its wheels or a jacking system and be attached to its site by only quick disconnect type utilities;

(2) Have no permanently attached additions, connections, foundations, porches, or similar structures; and

(3) Have an electrical cutoff switch that is located above the flood control zone and fully accessible during flood events.

#### § 1304.409 Variances.

The Vice President or the designee thereof is authorized, following consideration whether a proposed structure or other regulated activity would adversely impact navigation, flood control, public lands or reservations, power generation, the environment, or sensitive environmental resources, or would be incompatible with surrounding uses or inconsistent with an approved TVA reservoir land management plan, to approve a structure or activity the varies from the requirements of this part in minor aspects.

#### § 1304.410 Indefinite or temporary moorage of recreational vessels.

(a) Recreational vessels' moorage at unpermitted locations along the shoreline of any TVA lake may not exceed 14 consecutive days at any one place or at any place within one mile thereof.

(b) Recreational vessels may not establish temporary moorage within the limits of primary or secondary navigation channels.

(c) Moorage lines of recreational vessels may not be placed in such a way as to block or hinder boating access to any part of the lake.

#### § 1304.411 Navigation restrictions.

(a) Except for the placement of riprap along the shoreline, structures, land

based or water-use, shall not be located within the limits of safety harbors and landings establish for commercial navigation.

(b) Structures shall not be located in such a way as to block the visibility of navigation aids located on the shoreland or in the reservoir adjacent to the shoreline. Examples of navigation aids are lights, dayboards, and directional signs.

(c) Docks, piers, and boathouses located in coves, embayments, or creeks shall not extend more than one third the distance to the opposite shoreline at normal summer pool elevation.

(d) The establishment of "no-wake" zones outside approved harbor limits is prohibited at marinas or community dock facilities that are adjacent to or near a commercial navigation channel. In such circumstances, facility owners may, upon approval from TVA, install a floating breakwater along the harbor limit to reduce wave and wash action.

#### Appendix A To Part 1304—Section 26a of Tennessee Valley Authority Act of 1933, as Amended (49 Stat. 1079, 16 U.S.C. 831y-1)

Section 26a. The unified development and regulation of the Tennessee River system requires that no dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the said river or any of its tributaries until plans for such construction, operation, and maintenance shall have been submitted to and approved by the Board; and the construction, commencement of construction, operation, or maintenance of such structures without such approval is hereby prohibited. When such plans shall have been approved, deviation therefrom either before or after completion of such structures is prohibited unless the modification of such plans has previously been submitted to and approved by the Board.

In the event the Board shall, within sixty (60) days after their formal submission to the Board, fail to approve any plans or modifications, as the case may be, for construction, operation, or maintenance of any such structures on the Little Tennessee River, the above requirements shall be deemed satisfied, if upon application to the Secretary of War, with due notice to the Corporation, and hearing thereon, such plans or modifications are approved by the said Secretary of War as reasonable adequate and effective for the unified development and regulation of the Tennessee River system.

Such construction, commencement of construction, operation, or maintenance of any structures or parts thereof in violation of the provisions of this section may be prevented, and the removal or discontinuation thereof required by the injunction or order of any district court exercising jurisdiction in any district in which such structures or parts thereof may be

situated, and the Corporation is hereby authorized to bring appropriate proceedings to this end.

The requirements of this section shall not be constructed to be a substitute for the requirements of any other law of the United States or of any State, now in effect or hereafter enacted, but shall be in addition thereto, so that any approval, license, permit, or other sanction now or hereafter required by the provisions of any such law for the construction, operation, or maintenance of any structures whatever, except such as may be constructed, operated, or maintained by the Corporation, shall be required, notwithstanding the provisions of this section.

[Note: The official text of section 26a of the Tennessee Valley Authority Act of 1933, as amended, is published at 16 U.S.C. 831y-1.]

Dated: September 5, 2000.

**Kathryn J. Jackson,**

*Executive Vice President, River Systems Operations and Environment, Tennessee Valley Authority.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. 00N-1351]

#### Food Labeling; Use of the Term "Fresh" for Foods Processed With Alternative Nonthermal Technologies

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening to November 20, 2000, the comment period for a document published in the *Federal Register* of July 3, 2000 (65 FR 41029), that announced a public meeting to discuss use of the term "fresh" for foods processed with alternative technologies. FDA is taking this action in response to a request for more time to submit comments to FDA.

**DATES:** Submit written comments by November 20, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the FDA Internet at <http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm>.