

shall have the same effect as though such action had been taken by TVA.

[38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20484, May 15, 1984; 68 FR 51355, Aug. 26, 2003]

APPENDIX A TO PART 1302—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

1. Transfers, leases and licenses of real property for nominal consideration to states, counties, municipalities, and other public agencies for development for public recreation.

2. Furnishing funds, property and services to state agencies, local governments and citizen organizations to advance economic growth in watersheds of Tennessee River tributaries through cooperative resource development programs.

3. Furnishing funds, property and services to land grant colleges for use in a cooperative program utilizing test-demonstration farms to test experimental fertilizers developed by TVA and to educate farmers and other interested persons concerning these new fertilizers. This program also includes the furnishing of fertilizers at reduced prices by TVA, through its fertilizer distributors, to such test-demonstration farms.

4. Furnishing space and utilities without charge under agreements with state agencies for use in accordance with the Vending Stands for Blind Act.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979]

PART 1303—PROPERTY MANAGEMENT

Subpart A—General Information

Sec.

1303.1 Applicability.

Subpart B—Tobacco Products

1303.2 Definition.

1303.3 Prohibition on tobacco products.

AUTHORITY: 16 U.S.C. 831-831dd.

SOURCE: 61 FR 6110, Feb. 16, 1996, unless otherwise noted.

Subpart A—General Information

§ 1303.1 Applicability.

This part sets out certain regulations applicable to buildings, structures, and other property under TVA control.

Subpart B—Tobacco Products

§ 1303.2 Definition.

Tobacco product means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

[61 FR 6110, Feb. 16, 1996; 61 FR 54849, Oct. 22, 1996]

§ 1303.3 Prohibition on tobacco products.

(a) Sale of tobacco products by vending machine on TVA property is prohibited. Tobacco product vending machines already in place on TVA property as of November 15, 1995, may continue in operation for one year from February 16, 1996 while TVA completes review of whether such machines should be exempted under paragraph (c) of this section.

(b) Distribution of free samples of tobacco products on TVA property is prohibited.

(c) TVA may, as appropriate, designate areas not subject to this section if individuals under the age of 18 are not allowed in such areas.

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

Subpart A—Procedures for Approval of Construction

Sec.

1304.1 Scope and intent.

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

Subpart C—TVA-Owned Residential Access Shoreland

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- 1304.201 Applicability.
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- 1304.203 Vegetation management.
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- 1304.205 Other water-use facilities.
- 1304.206 Requirements for community docks, piers, boathouses, or other water-use facilities.
- 1304.207 Channel excavation on TVA-owned residential access shoreland.
- 1304.208 Shoreline stabilization on TVA-owned residential access shoreland.
- 1304.209 Land-based structures/alterations.
- 1304.210 Grandfathering of preexisting shoreland uses and structures.
- 1304.211 Change in ownership of grandfathered structures or alterations.
- 1304.212 Waivers.

Subpart D—Activities on TVA Flowage Easement Shoreland

- 1304.300 Scope and intent.
- 1304.301 Utilities.
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- 1304.303 Channel excavation.

Subpart E—Miscellaneous

- 1304.400 Flotation devices and material, all floating structures.
- 1304.401 Marine sanitation devices.
- 1304.402 Wastewater outfalls.
- 1304.403 Marina sewage pump-out stations and holding tanks.
- 1304.404 Commercial marina harbor limits.
- 1304.405 Fuel storage tanks and handling facilities.
- 1304.406 Removal of unauthorized, unsafe, and derelict structures or facilities.
- 1304.407 Development within flood control storage zones of TVA reservoirs.
- 1304.408 Variances.
- 1304.409 Indefinite or temporary moorage of recreational vessels.
- 1304.410 Navigation restrictions.
- 1304.411 Fish attractor, spawning, and habitat structures.
- 1304.412 Definitions.

AUTHORITY: 16 U.S.C. 831–831ee.

SOURCE: 68 FR 46936, Aug. 7, 2003, unless otherwise noted.

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, fish attractors, shoreline stabilization projects, channel excavations, and nonnavigable houseboats as defined in §1304.101. Any person considering constructing, operating, or maintaining any such obstruction 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 TVA-owned land alongside TVA reservoirs and to land subject to TVA flowage easements. TVA uses and permits use of the lands and land rights in its custody alongside and subjacent 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 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, and the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. 1251 *et seq.*, 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

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these purposes, and this part shall be interpreted and applied to that end.

§ 1304.2 Application.

(a) If the facility is to be built on TVA land, the applicant must, in addition to the other requirements of this part, own the fee interest in or have an adequate leasehold or easement interest of sufficient tenure to cover the normal useful life of the proposed facility in land immediately adjoining the TVA land. If the facility is to be built on private land, the applicant must own the fee interest in the land or have an adequate leasehold or easement interest in the property where the facility will be located. TVA recognizes, however, that in some cases private property has been subdivided in a way that left an intervening strip of land between the upland boundary of a TVA flowage easement and the waters of the reservoir, or did not convey to the adjoining landowner the land underlying the waters of the reservoir. In some of these situations, the owner of the intervening strip or underlying land cannot be identified or does not object to construction of water-use facilities by the adjacent landowner. In these situations, TVA may exercise its discretion to permit the facility, provided there is no objection from the fee owner of the intervening strip or underlying land. A TVA permit conveys no property interest. The applicant is responsible for locating the proposed facility on qualifying land and ensuring that there is no objection from any owner of such land. TVA may require the applicant to provide appropriate verification of ownership and lack of objection, but TVA is not responsible for resolving ownership questions. In case of a dispute, TVA may require private parties requesting TVA action to grant or revoke a TVA permit to obtain a court order declaring respective land rights. TVA may exercise its discretion to permit a facility on TVA land that is located up or downstream from the land which makes the applicant eligible for consideration to receive a permit.

(b) Applications shall be addressed to the Tennessee Valley Authority, at one of the following Watershed Team locations:

(1) P.O. Box 1589, Norris, TN 37828, (865) 632-1539, Reservoir: Norris;

(2) Suite 300, 804 Highway 321, North, Lenoir City, TN 37771-6440, (865) 988-2420, Reservoirs: Ft. Loudoun, Tellico, Fontana;

(3) 221 Old Ranger Road, Murphy, NC 28906, (704) 837-7395, Reservoirs: Hiwassee, Chatuge, Appalachia, Blue Ridge, Nottely, Ocoee;

(4) 2611 W. Andrew Johnson Hwy., Morristown, TN 37814-3295, (865) 632-3791, Reservoirs: Cherokee, Douglas;

(5) P.O. Box 1010, Muscle Shoals, AL 35662-1010, (256) 386-2560, Reservoirs: Tim's Ford, Normandy, Wheeler, Wilson;

(6) 202 West Blythe Street, P.O. Box 280, Paris, TN 38242, (901) 642-2026, Reservoirs: Kentucky, Beech River;

(7) P.O. Box 1010, Muscle Shoals, AL 35662-1010, (256) 386-2228, Reservoirs: Pickwick, Bear Creek;

(8) Suite 218, Heritage Federal Bank Building, 4105 Fort Henry Drive, Kingsport, TN 37662, (423) 239-2000, Reservoirs: Boone, Watauga, Wilbur, Fort Patrick Henry, South Holston;

(9) 1101 Market Street, Chattanooga, TN 37402, (423) 697-6006, Reservoirs: Chickamauga, Nickajack;

(10) 2009 Grubb Road, Lenoir City, TN 37771-6440, (865) 988-2440, Reservoirs: Watts Bar, Melton Hill;

(11) 2325 Henry Street, Guntersville, AL 35976-1868, (256) 571-4280, Reservoirs: Guntersville.

(c) *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 (c)(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 (other than a waiver request under §1304.212 or §1304.300(a)) shall be regarded as an application for a major facility. In addition to the information required in paragraphs (c)(1) and (2) of this section, TVA may require the applicant to provide such other information as TVA deems necessary for adequate review of a particular application.

(1) *Information required for review of minor facility.* By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, and gazebos. 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 elevation of the structure above the full summer pool; 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 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.

(v) *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 or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(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 crossings, 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 the elevations of the structure above full summer pool if located

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on a TVA reservoir or above the normal high water elevation if 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 or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(d) *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 re-

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sult 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 (c) 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 the 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.

EFFECTIVE DATE NOTE: At 68 FR 46936, Aug. 7, 2003, §1304.2 was revised. Paragraphs (b), (c), and (d) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 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 and supporting materials 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) If a hearing is held for any of the reasons described in paragraph (c) of

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this section, any interested person may become a party of record by following the directions contained in the hearing notice.

(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) 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.

(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 per-

son 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 of 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 to relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. Cross-examination by parties 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)

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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 at a hearing 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 Policy. 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 facilities or activities.

(a) When there is a change in ownership of the land on which a permitted facility or activity is located (or ownership of the land which made the applicant eligible for consideration to receive a permit when the facility or activity is on TVA land), the new owner shall notify TVA within sixty (60) days. Upon application to TVA by the new owner, the new owner may continue to use existing facilities or carry out permitted activities pending TVA's decision on reissuance of the permit. TVA shall reissue the permit upon determining that the facilities are in good repair and are consistent with the standards in effect at the time the permit was first issued.

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

(1) Maintain such facilities 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 TVA reservoirs. No new nonnavigable houseboats shall be moored, anchored, or installed in any TVA reservoir.

§ 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 in any TVA reservoir 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) Compliant 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 February 15, 1978, 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 proposed mooring location, 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;

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(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 uses; and

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

(c) All approved nonnavigable houseboats with toilets must be equipped as follows with a properly installed and operating Marine Sanitation Device (MSD) or Sewage Holding Tank 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 §1304.400.

(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.

§ 1304.102 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 three inches high.

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(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 a new location 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.

This subpart C applies to residential water-use facilities, specifically the construction of docks, piers, boat-houses (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 reservoir by qualifying adjacent residents.

§ 1304.201 Applicability.

This subpart addresses residential-related (all private, noncommercial uses) 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 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 shoreland classifications:

(1) TVA-owned shorelands over which the adjacent residential landowner holds rights of ingress and egress to the water (except where a particular activity is specifically excluded by an applicable real estate document), including, at TVA's discretion, cases where the applicant owns access rights across adjoining private property that borders on and benefits from rights of ingress and egress across TVA-owned shoreland.

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

(3) 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.

(b) Construction of 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, this subpart C does not apply to shoreland where TVA's property interest is 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 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 Shoreland 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 mowing of lawns established and existing before November 1, 1999, 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 September 8, 2003) 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-use facility.

(c) The access corridor will be located to minimize removal of trees or 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 by TVA on TVA property; provided, however, that where TVA ownership is insufficient to establish a 50-foot-deep SMZ, the SMZ shall consist only of all of the TVA land at the location (private land shall not be included within

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the SMZ). 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, selective thinning of trees or other vegetation under three 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 section. Mowing is allowed only within the access corridor.

(k) Planting of trees, shrubs, wildflowers, native grasses, and ground covers within the SMZ is allowed to create, 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 on TVA-owned shoreland 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 size standards specified in this section. Where and if site constraints at the proposed construction location preclude a structure of the maximum size, 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 residential 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. Access walkways 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 on Pickwick, Wilson, Wheeler, Gunter'sville, and Nickajack Reservoirs shall have deck elevations at least 18 inches above full summer pool level; facilities on all other reservoirs, shall be a minimum of 24 inches above full summer pool.

(e) All docks, piers, and other water-use facilities must be attached to the shore with a single 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 piers to provide shade are allowed on all reservoirs.

(h) Docks proposed in subdivisions recorded after November 1, 1999, must be placed at least 50 feet from the neighbors' docks. When this density requirement cannot be met, TVA may require group or community facilities.

(i) 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.

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

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

(l) 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.

(m) 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.

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

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

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

(q) In congested areas or in other circumstances deemed appropriate by TVA, TVA may require an applicant's dock, pier, or boathouse to be located on an area of TVA shoreline not directly fronting the applicant's property.

§ 1304.205 Other water-use facilities.

(a) A marine railway or concrete boat launching ramp with associated driveway may be located within the access corridor. 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 such as stoves, refrigerators, freezers, and microwave ovens are not permitted on docks, piers, or boathouses.

(e) Mooring buoys/posts may be permitted provided the following requirements are met.

(1) Posts and buoys shall be placed in such a manner that in TVA's judgment they would not create a navigation hazard.

(2) Mooring posts must be a minimum 48 inches in height above the full summer pool elevation of the reservoir or higher as required by TVA.

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

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

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

(h) Closed loop heat exchanges for residential heat pump application may be approved provided they are installed five feet below minimum winter water elevation and they utilize propylene glycol or water. All land-based pipes must be buried within the access corridor.

§ 1304.206 Requirements for community docks, piers, boathouses, 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 preclude approval of individual docks, piers, or boathouses.

(2) When individual water-use facilities are not allowed, no more than one slip for each qualified applicant will be approved for any community facility. TVA shall determine the location of the facility and the named permittees, taking into consideration the preferences of the qualified applicants and such other factors as TVA determines to be appropriate.

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(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.

(b) Private and community facilities at jointly-owned community outlots:

(1) Applications for private or community facilities to be constructed at a jointly-owned community outlot must be submitted either with 100 percent concurrence of all co-owners of such lot, or with concurrence of the authorized representatives of a State-chartered homeowners association with the authority to manage the common lot on behalf of all persons having an interest in such lot. If the community facility will serve five or more other lots, the application must be submitted by the authorized representatives of such an association. TVA considers an association to have the necessary authority to manage the common lot if all co-owners are eligible for membership in the association and a majority are members. TVA may request the association to provide satisfactory evidence of its authority.

(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 outlot;
- (ii) Parking accommodations on the community outlot;
- (iii) Length of shoreline frontage associated with the community outlot;
- (iv) Number of property owners having the right to use the community outlot;
- (v) Water depths fronting the community lot;
- (vi) Commercial and private vessel navigation uses and restrictions in the vicinity of the community lot;
- (vii) Recreational carrying capacity for water-based activities in the vicinity of the community lot, and
- (viii) Other site specific conditions and considerations as determined by TVA.

(3) Vegetation management shall be in accordance with the requirements of §1304.203 except that, at TVA's discre-

tion, 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 reservoir.

(c) TVA may approve community facilities that are greater in size than 1000 square feet. In such circumstances, TVA also may establish harbor limits.

§ 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 three-foot water depths for navigation of the vessel at the minimum winter water 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 reservoir drawdown periods.

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

(h) Spoil material from channel excavations must be placed in 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 on TVA-owned residential access shoreland.

TVA may issue permits allowing adjacent residential landowners to stabilize eroding shorelines on TVA-owned residential access shoreland. 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 may be placed at the base of the eroded site to deflect waves.

(3) Willow stakes and bundles of 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 TVA-approved wall on the lot or to an adjacent owner's TVA-approved 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 (unless determined by TVA to be of adequate size and integrity), 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 full summer pool water.

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 Land-based structures/alterations.

(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 and facilities such as picnic pavilions, gazebos, satellite antennas, septic tanks, and septic 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, poles, electrical panel, and wiring must be installed:

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

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

(iii) In compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request).

(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.

(3) TVA's issuance of a permit does not mean that TVA has determined the facilities are safe for any purpose or that TVA has any duty to make such a determination.

(d) Fences crossing TVA residential access shoreland may be considered only where outstanding agricultural

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

§ 1304.210 Grandfathering of pre-existing shoreland uses and structures.

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

(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 permitted 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 lawns established on TVA-owned residential access shoreland prior to November 1, 1999, may be continued without regard to whether the lawn uses are authorized by a TVA permit.

(2) At sites where mowing of lawns established prior to November 1, 1999, 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 lawns established prior to November 1, 1999) requires TVA's approval in accordance with §1304.203. Removal of trees greater than three inches in diameter at ground level is not allowed.

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§ 1304.211 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 may, upon application to TVA for a permit, continue to use existing permitted docks and other shoreline alterations pending TVA action on the application.

(c) Subsequent owners are not required to modify to new standards existing shoreline alterations constructed and maintained in accordance with the standards in effect at the time the previous permit was first issued, and they may continue mowing established lawns that existed 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 structures 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 (except for mowing of lawns established prior to November 1, 1999).

§ 1304.212 Waivers.

(a) Waivers of standards contained in this subpart may be requested when the following minimum criteria are established:

(1) The property is within a pre-existing development (an area where shoreline development existed prior to November 1, 1999); and

(2) The proposed shoreline alterations are 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 the standards of this subpart C, TVA will consider 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 November 1, 1999.

Subpart D—Activities on TVA Flowage Easement Shoreland

§ 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 of this part, which shall apply as follows:

- (a) All of § 1304.212 shall apply.
- (b) Sections 1304.200, 1304.203, 1304.207, and 1304.209 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 1304.204 shall apply except that the “50 feet” trigger of paragraph (i) of that section shall not apply. TVA may impose appropriate requirements to ensure accommodation of neighboring landowners.
- (f) Section 1304.205 shall apply except that the facilities described in paragraph (a) are not limited to locations within an access corridor.
- (g) Section 1304.206 shall apply except for paragraph (b)(3).
- (h) Section 1304.208 shall apply except that TVA approval shall not be required to conduct the activities described in paragraph (a).
- (i) Section 1304.210 shall apply except for paragraph (d).
- (j) Section 1304.211 shall apply except to the extent that it would restrict mowing or other vegetation management.
- (k) 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 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, poles, electrical panels, and wiring shall be installed:

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

(2) In compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request).

(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.

(c) TVA’s issuance of a permit does not mean that TVA has determined the facilities are safe for any purpose or that TVA has any duty to make such a determination.

§ 1304.302 Vegetation management on flowage easement shoreland.

Removal, modification, or establishment of vegetation on privately-owned shoreland subject to a TVA flowage easement 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.

§ 1304.303 Channel excavation.

(a) Channel excavation of privately-owned reservoir 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 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 Flotation devices and material, all floating structures.**

(a) All flotation for docks, boat mooring buoys, and other water-use structures and facilities, shall be of materials commercially manufactured for marine use. Flotation materials shall be fabricated so as not to become water-logged, 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 fully 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 September 8, 2003) in compliance with previous rules 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 September 8, 2003, 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 specifically designed for marine applications (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.

§ 1304.401 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, including the FWPCA and regulations issued thereunder, and, where applicable, statutes and regulations governing "no discharge" zones.

§ 1304.402 Wastewater outfalls.

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.

§ 1304.403 Marina sewage pump-out stations and holding tanks.

All pump-out facilities constructed after September 8, 2003 shall meet the following minimum design and operating requirements:

(a) Spill-proof connection with ship-board 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 severed;

(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;

(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; and

(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 reservoir.

§ 1304.404 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, carrying capacity of the reservoir area in the vicinity of the marina, and on the basis of the environmental effects associated with the use of the harbor. Mooring buoys, slips, breakwaters, and permanent anchoring are prohibited beyond the lakeward extent of harbor limits. TVA may, at its discretion, reconfigure harbor limits based on changes in circumstances, including but not limited to, changes in the ownership of the land base supporting the marina.

§ 1304.405 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 September 8, 2003 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 paragraphs (a) and (b) of this section 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) *Floating fuel handling facilities.* TVA will not approve the installation of any floating fuel handling facility or fuel storage tank.

(f) *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.

§1304.406 Removal of unauthorized, unsafe, and derelict structures or facilities.

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 this part and 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 may 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.

§ 1304.407 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 Executive 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 shall 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 shall 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.

§ 1304.408 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

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activity that varies from the requirements of this part in minor aspects.

§ 1304.409 Indefinite or temporary moorage of recreational vessels.

(a) Recreational vessels' moorage at unpermitted locations along the water's edge of any TVA reservoir 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 reservoir.

(d) Permanent or extended moorage of a recreational vessel along the shoreline of any TVA reservoir without approval under section 26a of the TVA Act is prohibited.

§ 1304.410 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 established for commercial navigation.

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

(c) 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.

§ 1304.411 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).

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(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.

§ 1304.412 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 that 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.

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, subdivision covenant, or recorded plat as available for use by designated 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 owner's dock, pier, boathouse, or boatwells.

Full summer pool means the targeted elevation to which TVA plans to fill each reservoir during its annual operating cycle. Applicants are encouraged to consult the appropriate TVA Watershed Team or the TVA website to obtain the full summer pool elevation for the reservoir in question at the time the application is submitted.

Land-based structure means any structure constructed on ground entirely above the full summer pool elevation of a TVA reservoir but below the maximum shoreline contours of that reservoir.

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.

Owner or landowner ordinarily means all of the owners of a parcel of land. Except as otherwise specifically provided in this part, 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 not be considered, by virtue of such fractional interest or interests only, to be an owner and as such eligible to seek approval to conduct the activity without the consent of the other co-owners. In cases where the applicant owns water access rights across adjoin-

ing private property that borders TVA-owned shoreland, TVA may exercise its discretion to consider such person an owner, taking into account the availability of the shoreline to accommodate similarly situated owners and such other factors as TVA deems to be appropriate. In subdivisions where TVA had an established practice prior to September 8, 2003 of permitting individual or common water-use facilities on or at jointly-owned lots without the consent of all co-owners, TVA may exercise its discretion to continue such practice, taking into account the availability of the shoreline to accommodate similarly situated owners and other factors as TVA deems to be appropriate; provided, however, that the issuance of a TVA permit conveys no property interests, and the objections of a co-owner may be a basis for revocation of the permit.

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

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

Shoreline Management Zone (SMZ) means a 50-foot-deep vegetated zone designated by TVA on TVA-owned land.

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.

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