104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to increase the maximum secondary retrospective deferred premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Because this inflation adjustment is required by statute, no other alternatives were considered. See also the discussion in the Regulatory Flexibility Certification for this rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule. A backfit analysis is not required for this final rule because this amendment is mandated by the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

■ 2. In § 140.11, paragraph (a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $300,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $95,800,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland, this 24th day of July, 2003.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Acting Executive Director for Operations.

[FR Doc. 03–20144 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

RIN 3316–AA19

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

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule amends TVA's 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 rule generally updates 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, 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 are revised for clarity. The rules for nonnavigable houseboats are clarified, and a provision governing sanitation for nonnavigable houseboats is added. In addition, new subparts incorporate into rules the ''Shoreline Management Policy'' (SMP) that was adopted by the TVA Board of Directors on April 21, 1999, and became effective on November 1, 1999.

DATES: This rule is effective September 8, 2003, except for paragraphs (b), (c), and (d) of § 1304.2, which contain information collection requirements that

have not yet been approved by OMB. TVA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Tennessee Valley Authority, Post Office Box 1589, 17 Ridgeway Road, Norris, Tennessee 37828.

FOR FURTHER INFORMATION CONTACT: Robert L. Curtis at the above address. Mr. Curtis also may be contacted by telephone ((865) 632–1552) or by e-mail (*rlcurtis@tva.gov*).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

These regulations are promulgated 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 for 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. In the September 20, 2000, issue of the **Federal Register** (65 FR 56,821), TVA published a proposed rulemaking to further amend the section 26a 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. TVA also proposed to add new sections providing for the handling of requests for waivers and variances, and to revise for clarity the sections governing the application process and the handling of appeals.

In addition, TVA proposed to add new subparts C and D regarding residential-related use of TVA-controlled residential access shoreland and TVA flowage easement shoreland in order to incorporate into rules the SMP policy that was adopted by TVA's Board of Directors on April 21, 1999, and became effective on November 1, 1999. A detailed analysis of the proposed rulemaking is contained in the preamble to the proposed rule.

III. Discussion of Public Comments

In response to the September 20, 2000, **Federal Register** notice of proposed rulemaking, TVA received eleven letters and e-mail messages commenting on the proposed rule. Some commenters applauded aspects of the proposed regulations that they considered to be environmentally beneficial. Some urged TVA to take additional actions that they said would be even more protective of the environment. Others criticized parts of the proposed rule as overly restrictive. The following discussion addresses the major points raised by the commenters.

One commenter objected to the 50-foot-deep shoreline management zone (SMZ) described in proposed § 1304.203 as a taking of private property without due process of law. This is not the case, however, because § 1304.203 clearly applies only to land already owned by TVA. This commenter also objected to the size limitation for enclosed storage space (32 square feet) and to the prohibitions against enclosing or placing a roof on the second story of certain facilities that are contained in proposed § 1304.204. Enclosed storage space on a dock or a pier is approved solely for the storage of equipment used in boating and water recreation, such as skis, life vests, fishing equipment, etc. TVA's experience is that 32 square feet is sufficient for this storage need. Other equipment not directly related to boating or water recreation should be stored elsewhere. Second story structures and roofs create a visual obstruction and are not a necessary component of a dock or pier having the primary purpose of allowing water access. The commenter also questioned the proposed channel excavation rule (§ 1304.207). Channel excavation can adversely affect shoreline aquatic habitats and animal communities, and can create problems in placement and stabilization of the spoil material. TVA's policy is to minimize dredging and channel excavation, especially in shallow water areas. The provisions addressing depth of excavation, channel slope, and spoil placement are necessary to minimize siltation, adverse water quality impacts, and the need for frequent dredged channel maintenance.

The previous commenter also disagreed with the prohibition against the use of broken concrete for retaining walls. The commenter stated that he intended to build a wall by neatly stacking broken concrete sections of uniform four-inch thickness salvaged from floors and sidewalks. This is not the type of broken concrete typically proposed for retaining walls, and TVA did not intend to prohibit the use of such concrete. Rather, TVA intended to prohibit the use of the irregular and crumbling concrete pieces that it has found to be unsightly and often ineffective for construction of retaining walls. To make clear that TVA would consider proposals to erect retaining walls from the type of concrete mentioned by the commenter, a parenthetical phrase has been added to § 1304.208(c)(2).

Some commenters suggested that the rule should contain an external appeals process providing that disputes about permitting of water-use facilities would ultimately be resolved by some entity other than TVA. These comments are inconsistent with section 26a of the TVA Act, which makes TVA responsible for determinations regarding the construction, operation, and maintenance of obstructions in the Tennessee River and its tributaries.

Some commenters stated that a permit should not expire simply because construction is not initiated within 18 months after a permit is issued (§ 1304.9). TVA does not agree. Eighteen months is a more than reasonable amount of time after the issuance of a permit to initiate construction. Conditions may change over time such that different permit terms would be appropriate. Adjacent landowners who wish to apply for water-use facility permits should not have their options limited by the existence of approved permits for facilities that may never be built.

Some commenters suggested a need for the rule to more clearly indicate the circumstances under which TVA would approve new owners' applications to continue using a permitted facility or conducting a permitted activity. It also was suggested that the rule should make clear that a new owner who had applied for a permit could continue using an existing facility pending TVA's decision on the new owner's application. TVA agrees with these suggestions and has changed the rule accordingly. Consistent with these changes, TVA also has revised § 1304.10 to refer to ''facilities'' and ''activities'' rather than structures.

A number of commenters objected to the proposed applicability section for TVA-owned residential access shoreland (§ 1304.201). These commenters stated that TVA is seeking

to eliminate deeded rights to construct a water-use facility on TVA land. This is not correct. TVA is not seeking to eliminate any deeded rights. Rather, TVA is specifically defining the categories of TVA-owned land where private, residential water-use facilities will be considered. TVA-owned land subject to deed provisions for ingress and egress is one such general category. Thus, the rule recognizes that deeded rights of ingress and egress may imply a right to build a water-use facility in some cases (but not where the applicable real estate documents specifically exclude the erection of structures), and it generally allows water-use facilities in such cases. It must be recognized, however, that the exercise of such rights is subject to TVA approval under section 26a of the TVA Act if a proposed facility would be an obstruction in the Tennessee River system, and TVA may deny or require modifications to any permit application.

Some commenters suggested that § 1304.211 should be revised to make it more clear that certain pre-existing lawns could continue to be mowed even though such activities were previously conducted without a permit. TVA agrees, and the section has been revised to provide the requested clarification.

A comment objected to the requirement to apply for and obtain a permit before engaging in vegetation management on TVA-owned land. The final rule retains this requirement as a reasonable means for TVA to monitor vegetation management activities by private parties on TVA-owned land. There also were objections to a number of other rule provisions implementing TVA's SMP for vegetation management. TVA believes the SMP vegetation management provisions were well considered after substantial public input and comment received in connection with the SMP environmental impact statement (EIS), and that no information developed during this rulemaking provides any basis for changing those provisions. Specifically, TVA does not agree with the suggestion that an unreasonable fire hazard risk is created by requiring the forest floor to remain undisturbed.

In response to a commenter's question as to how certain plants may be eradicated if herbicides are not allowed, both the proposed and final rules allow for the use of herbicides in accordance with an approved plan. TVA has not identified the pesticides considered to be ''restricted use'' because the classification of pesticides as restricted use is the responsibility of other regulatory authorities.

There was an objection to TVA's considering the potential effect of a proposed dock on boater access into a cove. This, however, is the kind of navigation issue specifically committed to TVA's discretion under section 26a of the TVA Act.

It was argued in one comment that the requirement to obtain a permit in order to locate a septic tank on TVA flowage easement property was unfair because it would require existing septic system owners to relocate, and it was suggested that a grandfather clause should be included for existing owners. The final rule has been revised to delete septic tank permitting requirements and specifications. Except in the case of approved, nonnavigable houseboats, toilets and sinks are not allowed on water-use facilities. TVA will continue to address matters related to septic tanks on flowage easements on a case-by-case basis in accordance with the terms of particular flowage easements. TVA intends to use its land management authority to prohibit septic tanks and drainfields on TVA land below the maximum shoreline contour.

In response to comments that the rule does not discuss the permitting fee and that there should not be a permitting fee, TVA refers to the TVA administrative cost recovery regulations, which are separately codified at 18 CFR part 1310 (2003). TVA establishes standard charges that are approximately equal to TVA's actual average administrative costs for the category of action.

A comment objected to the requirement to number structures. TVA has decided to delete this requirement.

A comment stated that the entire section related to flowage easement property should be deleted because it is an improper attempt to assert TVA authority over property it does not own. TVA disagrees. TVA's authority over flowage easement property is derived both from section 26a of the TVA Act and from the language of the various documents establishing TVA's flowage easement rights. TVA recognizes, however, that its rights as a property owner are in some circumstances broader than its authority over flowage easement property. This distinction is the basis for having separate rule sections governing these two types of property.

Two groups with an expressed interest in protecting the Norris Reservoir watershed provided comments to the effect that the proposed rule should be revised to provide for better enforcement of houseboat sewage rules and other environmental regulations. TVA appreciates these comments and expresses its general agreement with many of the groups' stated aims. Some of the requested actions, however, may exceed TVA's authority and the scope of this rule. TVA is not the primary environmental regulator on TVA reservoirs. TVA has, however, included a number of provisions directly addressing many of the concerns raised by the commenters (*e.g.*, §§ 1304.401, 1304.402, and 1304.403). TVA also has undertaken a number of other activities in addition to this rulemaking (such as the Clean Marina Initiative and the development of cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements) to address environmental issues such as those raised by the commenters.

A commenter writing on behalf of the Melton Hill Lake Association raised several specific issues. First, the commenter described the vegetation management provisions as a method for TVA to deny dock permits when there are no other reasons to deny one. TVA disagrees. The vegetation management provisions, which only apply to TVA-owned land, reflect TVA's best judgment as to how the vegetation on reservoir-related TVA land should be managed. They are designed to accommodate the construction of water-use facilities on TVA-owned residential access shoreline. There may, of course, be specific cases where the presence of wetlands, threatened or endangered plants, or other vegetation-related sensitive resources might provide a basis for denying a permit or requiring mitigation measures or adoption of other vegetation management requirements.

Second, the commenter generally praised the provisions related to shoreline stabilization, wastewater outfalls, and septic systems. With respect to shoreline stabilization, however, it was suggested that appropriate techniques for particular reservoirs should be independently evaluated to account for specific circumstances. TVA agrees and intends to consider specific requests for approval of shoreline stabilization activities on a case-by-case basis. The commenter requested additional action with respect to livestock animals being allowed in the water. TVA appreciates the commenter's concern, but this issue is beyond the scope of this rule.

Third, the commenter described TVA's discussion of the Regulatory Flexibility Act in the preamble to the proposed rule as legalese, misleading, and not reflective of actual economic

impacts. TVA does not agree with these characterizations. A regulatory flexibility analysis is required only when there will be a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). These words are taken directly from the Regulatory Flexibility Act. The statute defines ''small entity'' as a ''small business,'' ''small organization'' (further defined as a ''not-for-profit enterprise''), or a ''small governmental jurisdiction.'' Most applications for water-use facilities are submitted by residential landowners for personal use. Since residential landowners are not businesses, not-for-profit enterprises, or small governmental jurisdictions, there are relatively few ''small entities'' affected by today's rule. Moreover, nothing in today's rule significantly adds to the cost of applying for and constructing any regulated facility. Accordingly, this rule will not have a significant impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

One commenter submitted comments focused on alleged errors in sections of the Melton Hill Land Management Plan (MHLMP) governing use of TVA land on Melton Hill Reservoir. Specifically, the commenter objected to certain subcategories of TVA-owned residential access shoreland in the MHLMP, stating that TVA failed to consider the impacts on the value of adjacent private property, and requesting that today's rule be revised to make clear that applications for water-use facilities will be considered on all TVA-owned residential access shoreland. TVA does not agree that it should manage its property in such a way as to enhance the value of adjacent private property at the expense of protecting sensitive ecological resources on the TVA property. Moreover, the MHLMP was adopted after a public process that included, among other things, full opportunity for public comment on the environmental assessment (EA) that was prepared in connection with the plan.

The previous commenter also suggested that five specific aspects of the MHLMP are invalid because they implement ''concepts'' that should not be implemented until this rulemaking is complete. TVA does not understand this comment. Except for shoreline categorization of TVA-owned property (which is addressed above, in no way depends on this rulemaking, and is exempt from rulemaking requirements because it deals with management of public property), the concepts to which the commenter objects are not part of the MHLMP. Three of the concepts mentioned by the commenter (grandfathering, design limitations, and the implementation of a shoreline management zone) were subject to public notice and comment as part of the SMP EIS. Moreover, these matters involve management of TVA property and/or changes in TVA internal policies and guidance regarding processing of permit applications, and thus are not dependent on this rulemaking. The fifth ''concept'' mentioned by the commenter, the ''appeals process,'' has not yet been implemented. TVA has continued to use the appeals process in the existing regulation pending finalization of this rule.

One commenter objected that requiring dock permits to be requested by a landowner does not facilitate fair and equitable real estate transactions. TVA believes this requirement is a necessary and appropriate means for TVA to avoid entanglement in disputes among landowners. Any landowner who wants to know whether a dock could be permitted at a particular location may obtain a determination by applying for a permit. This commenter suggested a number of policies TVA should impose on itself in connection with the management of TVA land. These matters exceed the scope of this rulemaking. The commenter also objected to the use of November 1, 1999, as the effective grandfather date for preexisting shoreline uses and structures. This is the effective date of the policy changes approved by the TVA Board as part of the publicly reviewed SMP. As discussed above, many of these policy changes related to management of TVA property and/or existing TVA management guidelines and practices which were not previously addressed in TVA's rules (size limitations, vegetation management, etc.), and which are not required to be codified in rules. The implementation of these changes consistent with the effective date of the SMP is appropriate. Among other things, this rule incorporates such policies, guidelines, and practices into TVA's section 26a rules for the first time.

A group of university environmental science graduate students submitted comments in several categories. The student group commented that the proposed amendments were inadequate because they did not provide for the phasing out of previously permitted nonnavigable houseboats. The final rule adds new provisions governing sanitation, and it requires nonnavigable houseboats to be maintained in a good state of repair. These requirements are adequate to address nonnavigable houseboats.

The student group raised numerous issues and questions related to shoreline stabilization plans. The comments contain many helpful suggestions, but they are generally beyond the scope of this rule, which, for the most part, only describes the types of stabilization that may be allowed. TVA will consider applications for shoreline stabilization permits on a case-by-case basis.

The student group requested an explanation regarding the area of site disturbance to be indicated on the location map submitted with a permit application. The area of physical disturbance to land and water by the facility footprint is the area that must be indicated on the location map. TVA agrees that other information mentioned in the comment would be relevant in some circumstances. Accordingly, TVA has added a sentence to § 1304.2(c) providing that TVA may request additional information where necessary for adequate review of a particular application.

The student group submitted extensive comments about the use of pesticides on TVA-owned land along the reservoirs. The comments are in four general categories. First, it was argued that pesticide use should only be approved on a case-by-case basis. TVA agrees. This is why § 1304.203(l) provides that herbicides shall not be applied on TVA land except as specifically approved by TVA in a vegetative management plan. Second, the student group argued that restricted use pesticides should never be allowed. TVA does not agree. There may be some situations where a restricted use pesticide would be appropriate. TVA believes the requirement for case-by-case TVA approval, together with the requirements that any application of restricted use pesticides on TVA-owned shoreland be conducted by a State certified applicator, and that all herbicides and pesticides be applied in accordance with all applicable label requirements, provide reasonable protection. Third, the students stated that TVA should require pesticides to be applied in accordance with all label requirements. TVA agrees, and the rule so provides. Fourth, the students also proposed a formal notification program to inform water intake operators and others of pesticide application. TVA generally does not expect the application of pesticides on TVA lands to be of such extent or frequency as to warrant the creation of the formal notice system contemplated in the comment. TVA retains the right, however, to require appropriate notification

procedures when approving individual vegetative management plans.

The student group recommended that all grandfathered metal drum flotation devices be required to be replaced within a reasonable period of time. TVA agrees that metal drums are undesirable as flotation devices. That is why TVA prohibits them unless they were properly installed before the date on which TVA first issued the prohibition. As noted in the comment, any flotation devices (including grandfathered metal drums) must be replaced if TVA determines them to no longer be serviceable. Any drum that appears likely to cause an environmental problem would be considered unserviceable. TVA considers this to be adequate protection. It would be unnecessarily restrictive to require removal of previously approved flotation that continues to be serviceable.

The student group also requested consideration of a number of issues related to the access corridors allowed by the rules. TVA believes that matters related to access corridors were carefully and adequately considered during the SMP EIS. This rule, which implements the SMP provisions regarding access, reflects TVA's best judgment as to how TVA can best protect shoreline and aquatic resources while at the same time allowing reasonable access to the water.

In addition to the comments received in response to the September 20, 2000, **Federal Register** notice, TVA also received comments from a number of government agencies in response to the EA TVA prepared for the portions of the rule not covered by TVA's SMP EIS. The major points raised by these comments are discussed below.

The Wildlife Resources Division of the Georgia Department of Natural Resources offered several positive comments. The Department also recommended that the variance provisions be modified to define the ''minor'' variations that could be approved, and to reserve the approval of variances to the TVA Board or the Vice President, Resource Stewardship. It also suggested that variance applications should be required to contain documentation on the affected biotic communities, adequate mitigation to offset any environmental costs of the variance, and why development options short of a variance would not achieve the applicant's goal. TVA appreciates these comments and recommendations. TVA does not consider it feasible, however, to define in advance all of the minor variations that might be appropriate in specific circumstances. With respect to approval authority, the Vice President, Resource Stewardship, will monitor whether delegated authority is improvidently exercised. Regarding variance applications, TVA has decided not to change the proposed rule to specify the documentation that should be included with such applications. Rather, TVA will require information to support variance requests on a case-by-case basis depending upon the particular circumstances. The documentation suggested by the Department, among other things, is the type of information that will be required.

The Alabama Historical Commission, the Tennessee Historical Commission, and the Virginia Department of Historic Resources commented that the draft EA did not mention historic properties or TVA's responsibilities under the National Historic Preservation Act of 1966. TVA is careful to fulfill its responsibilities with respect to historic properties and cultural resources as it processes applications for water-use facility permits. Sections 1304.2(c)(1)(v) and 1304.2(c)(2)(vi) address this requirement.

The Kentucky Natural Resources and Environmental Protection Cabinet pointed out that any bank stabilization or stream disturbance requires a § 401 water quality certification by the Division of Water and a § 404 dredge or fill permit from the U.S. Army Corps of Engineers. TVA concurs, and this is referenced in § 1304.2(c) of the rule.

The U.S. Department of Interior, Fish and Wildlife Service (F&WS) raised issues over TVA's policy regarding development within floodplains and its policy on flood control storage capacity. Specifically the F&WS expressed concerns about the destruction of habitat associated with fills and dredging to offset loss of flood storage capacity caused by fills. These issues were discussed in a meeting between TVA and F&WS representatives in April 2001. TVA has reviewed very few of these actions in recent years. These included two fills for access to islands on Douglas Reservoir, removal of material to compensate for a retaining wall and backfill on Fort Loudoun Reservoir, and a project to offset fill from a Hamilton County school on Chickamauga Reservoir. Based on the small number of these requests received, it does not appear that these actions have had a cumulative adverse effect on shallow-water aquatic habitat in the past. For future proposals, TVA would ensure through its review process that the actions do not adversely affect shallow-water aquatic habitat or unique or unusual aquatic habitats. Removal of material from the flood control storage zone will not take place in shallow-water aquatic habitat or other unique or unusual aquatic habitat, unless there is mitigation to avoid, minimize, rectify, reduce, or compensate for the ecological values affected.

Because the proposed regulations deal with activities in floodplains, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation recommended consultation with the Federal Emergency Management Agency (FEMA). As a Federal agency, TVA complies with the requirements of Executive Order (E.O.) 11988 in conducting activities and programs affecting land use, including planning, regulating, and licensing (including 26a permitting activities). Section 3(a) of E.O. 11988 States:

> The regulations and procedures established under section 2(d) of this Order shall, at a minimum, require the construction of federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program (NFIP). They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

TVA applies this standard not only to its own facilities, but also to facilities permitted by TVA. Therefore, by fulfilling the requirements of E.O. 11988, TVA complies with the NFIP. Thus, further consultation with FEMA is not necessary.

The Virginia Department of Environmental Quality suggested that pump-out stations be required at commercial marinas. Section 1304.403 establishes design and operating requirements for new pump-out stations, but TVA has decided not to require all commercial marinas to have pump-out stations. TVA also has decided not to require retrofitting of existing pump-out facilities. Generally, with respect to matters related to water pollution, TVA defers to other regulatory agencies having appropriate authority to promulgate and enforce clean water regulations. In addition to these rules, however, TVA has implemented a Clean Marina Initiative program to encourage good sanitation management at commercial marinas, and TVA has developed cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements. TVA will continue to consider ways to improve marina sanitation.

IV. Other Changes from the Proposed Rule

In addition to the changes made in response to public comments, the final rule contains several minor clarifications. Also, TVA has decided not to implement two proposed changes to the existing rules governing hearings and appeals. The current rules provide for hearings to be held in certain situations. TVA proposed to change the rule to provide that a hearing would be held when requested by the applicant or any party of record. The final rule continues existing practice under the current rule except that it also provides for hearings to be held when directed by the TVA Investigator (§ 1304.4(c)). The current and proposed rules provide for appeals to the TVA Board of Directors by the applicant and by any party of record. Current rules provide that hearing notices indicate the manner in which an interested person may become a party of record. TVA proposed to change the rule to allow interested persons to become parties of record with right of formal appeal even if no hearing is held. The final rule continues existing practice under the current rule (§ 1304.4(b)). TVA's experience with the section 26a application process since publication of the proposed rule has demonstrated that continuing existing practices in these two respects is the best way for TVA to balance competing interests while continuing to efficiently process applications and appeals.

V. Administrative Requirements

A. Unfunded Mandates Reform Act and Executive Orders: E.O. 12866, Regulatory Planning and Review; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; and E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

The rule contains no Federal mandates for State, local, or tribal governments or for the private sector. It is not a significant regulatory action. It will not have an annual effect on the economy of $100 million or more, and it will not result in expenditures of $100 million in any one year by State, local, and tribal governments or the private sector. The rule will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. Unified development and regulation of the Tennessee River system through an approval process for obstructions in or along the river system, and management of United States-owned land entrusted to TVA are Federal functions for which TVA is responsible under the TVA Act. The rule 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 system. The rule does not concern an environmental health risk or safety risk that may disproportionately affect children, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the TVA Board certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The TVA Board has approved the following certification:

> [T]he Board of Directors has determined and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The rule will not significantly add to the costs of any small entity that chooses to use TVA land or construct a new obstruction in the Tennessee River system. Existing obstructions that are permitted under current regulations will not have to be modified to conform to new standards. Any economic impact that will occur will not affect a substantial number of small entities because most applications to construct an obstruction in the Tennessee River system are submitted by residential applicants who do not meet the definition of a small entity.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, TVA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

D. Executive Order 12988—Civil Justice Reform

The rule does not have a retroactive effect prior to the effective date. It does, however, incorporate into rules TVA's SMP (primarily the standards contained in subparts C and D) that have been in effect as internal TVA policy guidance since November 1, 1999. A number of the rule's grandfather provisions are based on the November 1, 1999, date. These situations are clearly identified in the rule. The rule preempts State and local law only to the extent any such law might purport to authorize activities on TVA land or along or in the Tennessee River system that are inconsistent with the rule. The rule's administrative appeal provisions must be exhausted before any action for judicial review of a TVA permitting action may be brought against TVA. (This assumes that such actions are subject to judicial review; nothing herein should be construed as an admission by TVA that its permit decisions under section 26a of the TVA Act or its decisions regarding use of TVA land are judicially reviewable.)

E. Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

TVA expects that most applications to construct obstructions in or along the Tennessee River system or engage in other activities requiring a permit under this rule would be made in connection with land along TVA reservoirs that is owned by TVA or is subject to a TVA flowage easement. TVA's substantial landrights in these situations effectively reduce the likelihood of any takings implications because, even apart from this rule and section 26a of the TVA Act, TVA would have the right to restrict or prohibit the requested activity. In addition, the EIS for TVA's SMP considered the effect on property values along and near the shoreline of TVA reservoirs of the SMP standards incorporated into this rule, and it was determined that property values would be higher under such standards than under any of the other alternatives considered in the EIS.

F. Environmental Review

TVA prepared a detailed draft 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 this rule has been released, and a record of decision has been issued. This rulemaking reflects the involvement of the interested public during the environmental review process. An EA was prepared and a finding of no significant impact was issued for those aspects of the rule not addressed in the residential shoreline development EIS. The September 20, 2000, **Federal Register** notice mentioned that the EA was being prepared, and copies of the draft EA were mailed to interested members of the public and to Federal and State agencies in the seven-State TVA Watershed for comment.

G. Paperwork Reduction Act

Paragraphs (b), (c) and (d) of § 1304.2 of this rule contain information collection requirements which have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* TVA provided burden information and requested comments on these requirements in the preamble to the proposed rule. No comments specifically directed toward the information collection requirements were received. One commenter objected to the general requirement to apply for and obtain a permit before conducting vegetation management activities on TVA land. TVA responded to this comment in the Discussion of Public Comments at III above.

The only information collection activity contained in the 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 from l hour to 1.5 hours per application. The time may vary depending upon the nature and complexity of the proposed action. Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

The majority of information provided in a permit application is not confidential. Most information collected describes construction plans and is not of a sensitive or personal nature. However, since these records are maintained by a personal identifier (name of applicant), they are identified as a Privacy Act System of records. A Privacy Act Statement is included on the permit application.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. TVA will publish a document in the **Federal Register** announcing OMB's approval.

List of Subjects in 18 CFR Part 1304

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

■ For the reasons set 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 AND OTHER ALTERATIONS

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 facilities or activities.
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 Docks, piers, and boathouses.
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.
1304.302 Vegetation management on flowage easement shoreland.
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.

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 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 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 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 (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.

§ 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 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 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 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) 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;

(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.

(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, 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 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 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, Guntersville, 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.

(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 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 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 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 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 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 preexisting shoreland uses and structures.

In order to provide for a smooth transition to new standards, grandfathering provisions shall apply as follows to preexisting 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.

§ 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 preexisting 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 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 floatation 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 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 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 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).

(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 adjoining 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.

Dated: July 31, 2003.

Kathryn J. Jackson,

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

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4434]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Suspension of Transit Without Visa Program

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule suspends the visa and/or passport waiver provisions of Department of State regulations, commonly known as the Transit Without Visa (TWOV) and the International-to-International (ITI) programs. By waiving the passport and/or visa requirements, the provisions of Department of State regulations facilitate travel through the United States of aliens who must transit the United States on direct and continuous travel from one country to another. This waiver, however, indirectly allows this category of aliens to bypass the formal nonimmigrant visa process that includes the prescreening of aliens prior to their arrival at a port of entry in the United States. Recent intelligence indicates a possible terrorist threat specific to the TWOV and ITI programs and additional increased threats of activities against the interests and the security of the United States. Therefore the Department of State and the Department of Homeland Security (DHS) have determined to suspend those programs. The rule is necessary in view of the recent intelligence reports.

DATES: This rule is effective August 2, 2003; written comments must be submitted by September 22, 2003.

ADDRESSES: Please submit written comments to the Chief, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520–0106, by FAX to (202) 663–3898, or by e-mail to *visaregs@state.gov*.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520–0106, (202) 663–1202.

SUPPLEMENTARY INFORMATION:

What Are the TWOV and ITI Programs?

Pursuant to section 212(d)(4) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(4)(C), the Secretary of Homeland Security (previously the Secretary's authority under this section was exercised by the Attorney General) and the Secretary of State, acting jointly, may waive the visa and/or passport requirements for aliens proceeding in immediate and continuous transit through the United States. Therefore, aliens from many nations who desire to travel through the United States in transit from one country to another without the need of obtaining a visa may do so under the Transit Without Visa (TWOV) and International to International (ITI) procedures permitted under the provisions of 22 CFR 41.2(i).

Why Is It Necessary To Suspend the TWOV and ITI Programs?

The waiver of passport and/or visa requirements permitted by these programs precludes the prescreening of participating aliens prior to their arrival at a port of entry in the United States. Because these aliens do not have to apply for a visa and be interviewed by a consular officer, there is no opportunity for U.S. authorities to determine prior to their arrival at the U.S. border whether a participating alien's travel is legitimate and whether the alien poses any threat to the United States. In view of the current intelligence of a possible terrorist threat specific to these programs, the Secretaries of State and Homeland Security have determined that the programs immediately be suspended while they evaluate the security risks involved in these programs over the next 60 days. During the 60 day review period, DHS and the Department of State will be reviewing comments and taking other steps to develop plans that