

- b. Revising paragraphs (e) and (f).  
The revisions read as follows:

**§ 1204.1403 Available airport facilities.**

\* \* \* \* \*

(e) *NASA owned but non-NASA operated airfields.* (1) Shuttle Landing Facility (SLF) may be made available on an individual emergency basis to a user with prior permission from the airfield operator.

(2) Moffett Federal Airfield (MFA) may be made available on an individual emergency basis to a user with prior permission from the airfield operator.

(3) No facilities or services other than those described in this section are available except on an individual prior permission or emergency basis to any user.

(f) *Status of facilities.* Changes to the status of the KSC, WFF, and MFA facilities will be published in appropriate current FAA or Department of Defense (DOD) aeronautical publications.

**§ 1204.1404 [Amended]**

- 4. Amend § 1204.1404 by removing and reserving paragraphs (a)(1) and (3).

- 5. Amend § 1204.1405 by revising paragraph (c) to read as follows:

**§ 1204.1405 Approving authority.**

\* \* \* \* \*

(c) *Moffett Federal Airfield.* Chief, Airfield Management Office, Ames Research Center, NASA.

**Nanette Smith,**

*Team Lead, NASA Directives and Regulations.*

[FR Doc. 2021-19508 Filed 9-9-21; 8:45 am]

**BILLING CODE 7510-13-P**

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**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1304**

**RIN 3316-AA24**

**Floating Cabins**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Final rule.

**SUMMARY:** The Tennessee Valley Authority (TVA) is publishing a final rule to amend its regulations that govern floating cabins located on the Tennessee River System. The unrestrained mooring of floating cabins on the Tennessee River System, if left unaddressed, would pose unacceptable risks to navigation, safety, the environment, and public lands. These amendments provide health, safety, and environmental standards as well as establish permitting standards with regard to rebuilding, modifying, or combining floating cabins.

**DATES:** This final rule is effective October 12, 2021.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Legal Authority**

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831-831ee, Title V of the Independent Offices Appropriations Act of 1955, 31 U.S.C. 9701, and OMB Circular No. A-25. Under Section 26a of the TVA Act, no obstructions affecting navigation, flood control, or public lands or reservations shall be constructed, operated, or maintained across, along, or in the Tennessee River System without TVA's approval. Nonnavigable structures, such as floating cabins, are obstructions that require TVA's approval. In addition, Section 9b of the TVA Act provides that TVA may require floating cabins to be maintained by the owner to reasonable health, safety, and environmental standards. Section 9b also authorizes TVA to levy fees on floating cabin owners as necessary and reasonable to ensure compliance.

**Background**

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purposes of navigation, flood control, and power production. Consistent with its mission, TVA also uses the system to improve water quality and water supply and to provide a wide range of public benefits, including recreation and natural resource stewardship.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act. "Obstruction" is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins. TVA also owns, as agent for the United States, much of the shoreland and

inundated land along and under its reservoir system.

Since 1971, pursuant to Section 26a, TVA has prohibited the mooring on the Tennessee River System of new floating cabins (formerly nonnavigable houseboats) that are designed and used primarily for human habitation or occupation and not for transportation on the water. In particular, TVA amended its regulations in 1971 to prohibit the mooring or anchoring of new nonnavigable houseboats except those in existence before November 21, 1971. Criteria were established then to identify when a houseboat was considered "navigable" and the conditions under which existing nonnavigable houseboats would be allowed to remain. These criteria were characteristics that TVA determined were indicative of real watercraft; *i.e.*, boats or vessels that are designed and used primarily to traverse water. In 1978, TVA reiterated the prohibited mooring of nonnavigable houseboats on the Tennessee River System except for those in existence on or before February 15, 1978.

Despite over 40 years of Section 26a regulations related to floating cabins, the number of floating cabins on the Tennessee River System continued to increase. In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. Public reaction to this situation varied widely.

Many members of the general public urged TVA to require the removal of all floating cabins since TVA's reservoirs are public resources and owners of floating cabins are occupying public areas. Owners of floating cabins generally supported additional reasonable regulation of their structures but argued against policies requiring their removal because of the investments they have made in the structures. Other commenters had concerns about discharges of blackwater (sewage) and graywater (showers, sinks, etc.) from floating cabins and shock and electrocution risks associated with the electrical connections to floating cabins. Commenting agencies consistently supported better regulation of floating cabins. The final EIS and associated

documents can be found at <https://www.tva.com/floatingcabins>.

After considering the comments it received during the EIS process and its analyses of impacts, TVA identified as its preferred policy one that establishes standards to ensure safer mooring, electrical connections, and protection of water quality. Under the preferred policy, the mooring of new floating cabins would be prohibited on the Tennessee River System. The preferred policy would have required all existing floating cabins, including nonnavigable houseboats, to be removed from the Tennessee River System by January 1, 2036, and be subject to a regulatory program in the interim. On May 5, 2016, the TVA Board of Directors (Board) adopted the preferred policy, but the Board extended the removal date to May 5, 2046.

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act). Title IV Section 5003 related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins that were located on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is maintained to reasonable health, safety, and environmental standards as required by the Board and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) For a period of 15 years if it was granted a permit by TVA before the WIIN Act's enactment, or (2) for a period of five years if it was not granted a permit by TVA before the WIIN Act's enactment. It further stipulates that TVA may establish regulations to prevent the construction of new floating cabins. These regulations were planned in two phases.

### Phase I Floating Cabins Amendments

TVA published Phase I rule amendments for floating cabins that became effective on October 1, 2018 (83 FR 44467). These amendments clarified the types of structures that TVA will regulate as a floating cabin and prohibited new floating cabins from mooring on the Tennessee River System after December 16, 2016. TVA estimates that approximately 2,250 floating cabins were moored on the Tennessee River System on December 16, 2016. These initial rule amendments also incorporated a requirement for owners to register their floating cabins and

identified locations where floating cabins may moor.

### Phase II Floating Cabin Amendments

This final rule includes health, safety, environmental, and permitting standards that will apply to all floating cabins. A diverse stakeholder group composed of 18 members provided input to TVA on the development and drafting of these standards. The group represented varied interests and perspectives. Members included representatives from floating cabin owners, lake user interests, fishing interests, marina owners, local power distributors, state and federal regulatory agencies, the insurance industry, and the general public. The full group met five times from August 2017 to June 2019 at various locations, including locations near Norris and Fontana Reservoirs where floating cabins are prevalent. Teleconferences were also held among three subgroups to develop and discuss recommendations in specific subject matter areas. An industry professional in marine electricity presented to the group and helped answer questions regarding electricity at marinas and in water. TVA tested and displayed ground fault protection devices for the group to observe and discuss.

Each of the three subgroups made recommendations for a subset of standards. Recommendations were presented to the full stakeholder group for wastewater, electrical, flotation, mooring, fees, permitting standards, and compliance. TVA reviewed and evaluated the recommendations and responded to each recommendation. TVA refined the recommendations and developed them into proposed rule amendments for publication for public review and comment. A draft of the rule amendments was reviewed with the stakeholder group in June 2019, and TVA made some modifications after that discussion. TVA published the proposed rule amendments for a 90-day public comment period on December 10, 2019 (84 FR 67386).

### Final Rule

The final rule for floating cabins applies to all existing floating cabins, including those formerly referred to as nonnavigable houseboats originally permitted on or before February 15, 1978. All floating cabins and attached structures must be registered and obtain a new permit from TVA.

The final rule allows floating cabin owners additional time to register with TVA, until December 9, 2021. To obtain a Section 26a permit, owners of floating cabins will have until October 1, 2024,

to comply with the standards in TVA's regulations and submit a complete permit application that certifies compliance and includes the payment of a permit application fee. TVA will not require floating cabin owners to pay the initial permit application fee if they possess a permit in their name issued before December 16, 2016, and the structure is compliant with the terms of the permit, constructed in accordance with the permit (same dimensions, attached structures such as docks, and utility connections), and moored at the permitted location. A change in ownership application fee, currently \$250, will be charged each time an existing floating cabin owner requests a transfer of the permit to a new owner. Permits will only be transferrable if the structure is in full compliance with the existing permit; requests not compliant with the previous permit will be subject to the standard permit application fee, and modifications not compliant with the rules will be denied.

The permit application submission date of October 1, 2024, will give owners nearly four years from the publication of the final standards to bring structures into compliance. TVA encourages floating cabin owners to bring floating cabins into compliance and apply for a permit without delay. Upon submission of the application, owners of floating cabins may remain in place until TVA acts on the application. If TVA approves the application, TVA will issue a Section 26a permit to the owner. If TVA denies the application, the owner must either correct all deficiencies and submit a new application or remove the structure in accordance with Section 9b of the TVA Act and 18 CFR 1304.406.

### Removal

Under the final rule, TVA will have the authority to require owners to remove their floating cabins if TVA determines a floating cabin is not in compliance with its permit, does not apply for a permit by October 1, 2024, or does not pay the compliance fee if levied by TVA. The requirement to remove a floating cabin will be in accordance with Section 9b of the TVA Act and 18 CFR 1304.406. All structures not removed by the applicable deadline may be removed by TVA at the owner's expense.

### Flotation

Unencased flotation (*i.e.*, Styrofoam) breaks apart over time, can harm wildlife, and becomes litter in reservoirs or along shorelines. Currently, all docks, floating cabins, and other water-use structures and facilities permitted by

TVA are subject to 18 CFR 1304.400, which establishes flotation requirements to protect the environment from harmful flotation materials, such as Styrofoam and the contents of metal drums, which were common flotation devices in the past. TVA's current regulations prohibit unencased flotation unless it was previously allowed by TVA, was installed prior to September 8, 2003, and is still serviceable in TVA's judgment. TVA's current rules prohibit the installation of unencased flotation to repair or replace existing flotation that is no longer serviceable. This final rule requires the removal and replacement of all unencased flotation no later than December 31, 2031. If TVA determines that the existing unencased flotation is no longer serviceable prior to December 31, 2031, owners will have 24 months from notification from TVA to remove and replace it. These changes will apply to all Section 26a permits, including those authorizing floating cabins.

#### Mooring

Some floating cabins are moored by running cables across the water to attach to a tree or other anchor on the shoreline. This potentially obstructs navigation and recreation, poses a potential hazard to public safety, and can detract from the scenic integrity of the areas where floating cabins are located. Current regulations require floating cabins to 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 land rights owned by the United States alongside and adjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses; and (5) maintain, protect, and enhance the quality of the human environment.

These regulations will continue to apply to floating cabins. Two additional requirements will be added: (1) Floating cabin owners must ensure visibility of all mooring cables and (2) floating cabin owners must comply with 18 CFR 1304.205(c), which prohibits attachment to trees on TVA property. The method of mooring should be modified, if necessary, to eliminate navigation and safety hazards. If modification of the mooring method is not practical or feasible, TVA's permit will require the hazard to be marked to aid in visibility and to help avoid property damage and personal injury. Permit applicants must indicate how the structure is moored,

and TVA will determine if that method is allowable. Any determinations on proper mooring and hazard marking will be made during the permit review process.

TVA's current regulations specify locations where floating cabins must be located. These include areas where the floating cabin was moored as of December 16, 2016, and the owner has sufficient land ownership or land rights as specified in the regulations; locations where the owner had written permission from TVA prior to December 16, 2016; or within the harbor limits of a commercial marina. To prevent sprawl and to better contain the impacts of floating cabins, the final rule prohibits relocation of permitted floating cabins to a different reservoir. TVA will consider applications to relocate existing floating cabins to any commercial marina on their respective reservoir that is willing to accept them. Any relocation, except within the harbor limits of the same marina, will require advance approval from TVA in the form of a new permit and concurrence from the receiving marina operator.

#### Electrical

Floating cabins can also pose a threat to public safety due to unsafe electrical systems. TVA is aware that floating cabins are currently obtaining electricity from the shore via underwater cables, through onboard portable generators, and by other methods. TVA is not aware of any local, state, or federal entity that currently monitors the construction of floating cabins and enforces building codes. However, after the WIIN Act, these agencies may consider floating cabins to be more like houses rather than vessels, and agencies may determine to regulate and inspect those within their jurisdiction. If an agency chooses to regulate, floating cabins will be required to comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment. If a floating cabin is documented to be in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency, TVA will have the authority to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements.

In addition to and at a minimum, TVA will require all floating cabin owners to install ground fault protection and to use properly listed underwater cables. At two-year intervals, TVA will require floating cabin owners to provide

certification that the floating cabin meets these requirements. TVA's electrical requirements are based on the 2017 National Electric Code (NEC). Ground fault protection requirements for floating buildings can be found in Section 553; requirements for marinas can be found in Section 555. Ground fault is defined in Section 100. NEC requires underwater cables for floating buildings to be extra hard usage portable power cables listed for wet locations and sunlight resistance. NEC table 400.4 provides a listing of flexible cable types and designations with these ratings.

#### Wastewater

Floating cabins use various methods to manage their wastewater (both blackwater and graywater). Some have holding tanks for blackwater and use pump-out facilities to dispose of it through land-based systems. TVA has received complaints of some floating cabins discharging blackwater and/or graywater directly to the reservoir. Graywater originates from sinks, showers, dishwashers, and washing machines and is often discharged by floating cabins directly to the reservoir. Blackwater and graywater discharges can contribute to water quality deterioration. Discharges are regulated by state environmental agencies and the EPA.

The final rule requires floating cabin owners to comply with discharge requirements set by local, state, or federal agencies and incorporates requirements of Section 401 of the Clean Water Act (CWA). If TVA is notified by a federal, state, or local agency that an owner of a floating cabin is not compliant with applicable discharge requirements and has failed to correct that deficiency after notification, TVA will have the authority to revoke the floating cabin's Section 26a permit and require the structure to be removed from the Tennessee River System. This should help induce more compliant behavior and complement federal, state, or local agency efforts.

TVA will require a Section 26a permit for all floating cabins, and all TVA permits must comply with the CWA. Section 401 of the CWA prohibits federal agencies from issuing a permit to conduct an activity, including the construction or operation of facilities, which may result in any discharge into navigable waters of the United States unless the applicable state agency has certified that the structure or activity will comply with applicable water quality standards or the certification has been waived. Floating cabin owners must request certification from the relevant certifying agency when

applying for a Section 26a permit, and the certifying agency will determine whether to grant, grant with conditions, deny, or waive the certification. Some certifying agencies may determine to review and make one determination that applies to all floating cabins within its jurisdiction or may review each request for floating cabin permits individually. The respective certifying agencies will make this determination.

TVA will not grant a Section 26a permit for a floating cabin or other obstruction unless a required water quality certification has been provided or waived by the respective certifying agency. The final rule allows a reasonable period of time, not to exceed one year, for the certifying agency to take action. If a certifying agency has not acted within a reasonable period of time and the certification requirement is waived, TVA may then proceed with processing the Section 26a application. This will apply to all Section 26a permit applications, including floating cabins.

#### **Maintenance, Alterations, and Rebuilds**

Floating cabins that fall into disrepair can threaten public safety, create a boating hazard, and create litter in reservoirs and along shorelines. Therefore, normal repair and maintenance of floating cabins is encouraged and may be undertaken without TVA's permission. By way of example, maintenance activities include painting; changing the internal walls within the existing enclosed space; replacing shingles, siding, electrical wiring, or plumbing; or adding new encased flotation that complies with the regulations. Maintenance activities do not include any activity that would modify any external walls or the dimensions (length, width, and height) of the floating cabin, including its enclosed or open spaces.

Any alteration to the dimensions or approved plans for a floating cabin will be deemed a structural modification and, if approvable, would require a new permit from TVA. Except for the following three exceptions, which must be approved in writing in advance by TVA, alterations will be prohibited. First, an alteration may be allowed if it is deemed necessary by TVA to comply with health, safety, and environmental standards. Second, TVA may allow changes in the roof pitch or allow open portions of the monolithic frame to be covered but no part of the floating cabin may exceed a total height of 14 feet above the lowest floor level of the floating cabin. Third, TVA may approve enclosure of open space on the monolithic frame of an existing floating cabin if the enclosure will not result in

expansion to the dimensions (length, width, and height) of the monolithic frame; in which case, at least 24 contiguous square feet of open space with a minimum width of four feet must be retained on the monolithic frame for unrestricted boarding and a reduction in the footprint of attached structures may be required.

Floating cabins may be rebuilt to the exact same dimensions (length, width, and height), including both enclosed and open spaces, as previously approved by TVA. Owners will be required to apply to TVA 60 days in advance of proposed rebuilding and must receive prior written approval from TVA before beginning construction. TVA may require a new permit for the proposed rebuilding. Construction of the rebuilt floating cabin must be completed within 18 months of TVA's written approval to proceed.

#### **Combined Floating Cabins**

To encourage reduction of the number and footprint of floating cabins on the Tennessee River System, TVA is proposing a program that, with a permit obtained in advance, may allow owners to permanently remove multiple existing floating cabins and replace them with a combined floating cabin that meets certain size requirements. Owners must provide evidence that all existing floating cabins to be removed existed on the Tennessee River System as of December 16, 2016, and must remove the existing floating cabins before construction on the combined floating cabin may begin. The permits for the removed floating cabins will be rendered invalid upon their removal. All combined floating cabins must locate within the harbor limits of a commercial marina and have the marina owner's permission. The combined floating cabin must be located on the same reservoir as any of the existing floating cabins that are to be removed in exchange. The maximum size allowable for the new structure would be the lesser of 1,000 square feet or the combined size of the monolithic frames of the removed floating cabins. Any amount of the combined size exceeding 1,000 square feet would be forfeited and could not be transferred to another party or another project. At least 24 contiguous square feet with a minimum width of four feet must remain open to allow for unrestricted boarding of the combined floating cabin. The maximum roof height is 14 feet above the lowest floor level. Attached structures, such as decks, may not be incorporated into the monolithic frame of the combined floating cabin.

#### **Attached Structures**

With written approval from TVA, floating cabins may be accompanied by floating attached structures, such as decks, platforms, or Jet Ski ports. All attached structures must be permitted to the floating cabin owner, and the owner must provide evidence of approval from the marina operator. The square footage of attached structures may not be incorporated into the monolithic frame of the floating cabin. Attached structures may not exceed 14 feet in height from the lowest floor level, may not be enclosed, and must comply with 18 CFR 1304.204(p), which prohibits covered second stories. The total footprint of all attached structures for a single floating cabin cannot exceed 400 square feet or the total footprint of the existing attached structures that were part of the floating cabin as of December 16, 2016, whichever is greater. Floating cabins with attached structures as of this date may remain with written approval from TVA, but requests to rebuild or reconfigure the attached structures' square footage must comply with the requirements above. Requests for certain structural modifications or a combined floating cabin will require the square footage of the attached structures to also be reduced to 400 square feet.

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

In addition to the changes affecting floating cabins and those for flotation and discharges applicable to all Section 26a permits, the final rule provides other minor amendments to the Section 26a regulations. These include changes to the TVA locations where applications should be addressed, clarification regarding the size of residential water-use facilities in pre-existing developments, and other minor edits for clarity and consistency in the regulations.

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

TVA received 62 comments during the public review period, all via email. Comments were received from 59 individuals (three individuals sent comments in two separate emails). One email from the Floating Home Alliance Board of Directors represented the views of many floating cabin owners. The following discussion describes a summary of the comments received, provides TVA's response to the comments, and describes changes, if any, made by TVA to the rule based on the comments. TVA appreciates the perspectives, interests, and concerns expressed by all commenters.

### 1. Comments Related to Other Section 26a Permitted Structures and the Need for Section 26a Regulations

*Comment:* Some commenters stated that TVA's regulations, standards, and inspections should apply consistently to all structures on TVA reservoirs, particularly residential docks. Commenters asserted that TVA is focusing on something that has never been a problem and docks are far more dangerous, particularly with regard to electrical.

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

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

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

TVA studied the impact of floating cabins in its EIS using an extensive amount of existing information and

additional data collection and analysis to support its finding of potential impacts to human health and the environment from floating cabins. These findings were based on existing information, literature on the known effects on resources, comments by agencies and the public about impacts that they experience, internal TVA resource specialists, and professional judgment. The potential adverse impacts from sewage discharges into public waterways and the risk and potential harm to the public safety from poorly maintained electrical wiring are well established and understood. TVA acknowledged that the severity of current impacts is not well-sourced in available information. However, TVA concluded in its EIS that the severity of impacts will increase if the proliferation of floating cabins is not controlled and operating standards are not established. It is appropriate that TVA acts to address such potential impacts before they become severe.

### 2. Comments Related to Total Footprint

*Comment:* Floating cabins are typically made up of multiple sections, the monolithic frame of the main cabin footprint and the floating attached structures, such as decks and walkways. Numerous commenters expressed a desire to combine the total footprint of all components and rebuild to one monolithic frame. The rationale of some commenters was that it is safer to have fewer structures, would make the waterway cleaner from the "mess of lashed together garbage," and is better suited for modern lake activities. Others want to rebuild a floating cabin to a different configuration and change the size of enclosed space while not exceeding the total current footprint. Still others stated that expansions to either the monolithic frame or the attached structures should be allowed.

*TVA Response:* One of TVA's management goals of the floating cabin program is to prevent an increase in total square footage of the structures. Currently, the total footprint inventory of the monolithic frames of existing floating cabins is over 1.7 million square feet; there is an additional 1 million square feet of attached structure inventory. Allowing the size of the monolithic frames and/or enclosed space to increase will result in more living space and increased impacts to water quality, navigation, and privatization of public waters. For those reasons, floating cabin owners will not be allowed to incorporate the footprint of attached structures into the footprint of the monolithic frame. The final rule does provide an opportunity for floating

cabin owners to increase enclosed space on the existing monolithic frame in exchange for a reduction in the footprint of the attached structures. This reduction aligns with the comments about multiple structures pieced together for each floating cabin and the potential risks they pose. TVA also made modifications to the draft rule to clarify that reconfigurations of attached structures could be considered so long as the total footprint did not exceed the specified limits.

### 3. Comments Opposing a Reduction of Attached Structures Footprint to 250 Square Feet

*Comment:* TVA's draft rule proposed that floating cabin owners would be required to reduce attached structures to 250 square feet when requesting certain structural modifications or utilizing the combination program. Although many comments were received about the negative effects of multiple attached structures accompanying floating cabins, some commenters opposed this proposal. The commenters' rationale was generally that additional enclosed space on the monolithic frame would not result in an expansion of water space used and, therefore, would not require a reduction of the attached structures. Others argued that 250 square feet of open space was too little to utilize recreationally. Some felt the reduction was a penalty for making improvements and adding living space to the floating cabin.

*TVA Response:* TVA agrees that floating cabins should be maintained in a good state of repair; however, enlarging enclosed space is not a necessary improvement for enjoyment of existing floating cabins. TVA will not require a reduction in the attached structures that existed as of December 16, 2016, unless the owner requests to make certain modifications to their floating cabin; namely, increasing the enclosed space on the monolithic frame or utilizing the combination program. To counter the impacts of the larger living space and to address concerns of multiple, potentially difficult to manage attached structures, TVA considers this reduction a reasonable compromise. In response to the comments on the draft rule, TVA has increased the maximum footprint for attached structures to 400 square feet.

### 4. Comments Requesting the Ability To Add Additional Attached Structures

*Comment:* Multiple commenters expressed a desire to add additional attached structures to existing floating cabins. Jet Ski ports were the most commonly mentioned type of attached

structure. Some commenters stated these additions were minor in size and impacts.

*TVA Response:* The final rule allows for the addition of attached structures up to a total footprint of 400 square feet. TVA calculates footprint as the rectangular or square area of the attached structure (length times width at the structures widest and longest points). The footprint of each attached structure will be added together to determine the total footprint. Floating cabins accompanied by attached structures of a greater footprint that existed as of December 16, 2016, may remain. Attached structures could be modified to add additional items, such as Jet Ski ports, or different configurations as long as the total footprint remains the same. All items that consume water surface area will be calculated in the total footprint. While the individual impacts from adding additional structures to any individual floating cabin may be minor, the cumulative impacts of these additions could result in a significant increase in square footage of occupied surface area on the reservoirs. One of TVA's goals is to prevent floating cabins from taking up additional square footage on the water.

#### 5. Comments Related to the Combination Program

*Comment:* Multiple commenters requested that TVA increase the maximum size of a combined floating cabin; some suggested 1,800 square feet, one suggested 2,000 square feet, and one suggested no size limitation.

*TVA Response:* TVA's goal with the combination program is to reduce the number and footprint of floating cabins on the Tennessee River System, especially those in a state of disrepair. Analysis of TVA's inventory data revealed that a significant majority of floating cabins are smaller than 1,000 square feet. The 1,000-square-foot maximum provides floating cabin owners adequate incentive to utilize the program while staying in line with TVA's goals for the floating cabin program. This size is also consistent with TVA's residential dock footprint standards.

#### 6. Comments Related to Mooring Requirements

*Comment:* Multiple commenters stated that mooring compliance should be the responsibility of the marina owner, not the floating cabin owner. Others opposed TVA's restriction against securing mooring lines to trees on TVA property.

*TVA Response:* Multiple mooring systems are utilized across TVA reservoirs that are dependent on topography, reservoir level fluctuations, and level of effort to manage. TVA will permit the mooring obstructions accordingly. For example, in marinas where the floating cabins are moored independently to the bottom of the reservoir and the floating cabin owner is responsible for the purchase and installation of that mooring system, TVA will consider permitting the mooring infrastructure to the floating cabin owner. In other cases where the marina operator installs a mooring grid and each floating cabin anchors to the grid, the components of the mooring system will be permitted to each responsible party (*i.e.*, mooring grid is the responsibility of the marina owner, individual anchors are the responsibility of the floating cabin owner). TVA will continue to prohibit the anchoring of all cables, chains, and poles (for both floating cabins and other water-use facilities) to trees on TVA property. Anchoring to trees on private property will require permission from the private property owner.

#### 7. Comments Related to Wastewater

*Comment:* Some commenters requested strict enforcement of wastewater discharge regulations. Others agreed that wastewater restrictions should align with local or state requirements. One commenter stated it was impractical to request the collection and/or purification of graywater and believed effects from graywater discharge were a non-issue.

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

require removal of the floating cabin in compliance with the WIIN Act.

#### 8. Comments Related to Electrical Requirements

*Comment:* Some commenters requested clarification on the electrical inspection requirements. Others asked for more details on the equipment necessary to comply with the rule.

*TVA Response:* In response to the comments, TVA has clarified its intent regarding electrical inspections and clarified the inspection interval. While specific requirements and equipment are subject to National Electric Code standards, TVA will provide examples of equipment and installation options on its website at [www.tva.com/floatingcabins](http://www.tva.com/floatingcabins).

#### 9. Comments Related to Flotation

*Comment:* Most comments related to flotation were complimentary of TVA's proposal to eliminate all unencased flotation by 2031. A few commenters requested that TVA make this a requirement earlier than 2031.

*TVA Response:* TVA has prohibited the use of new unencased flotation since 2003. Because this requirement applies to all obstructions (including, but not limited to, residential docks and marina facilities), the final rule includes the proposed deadline. In the event that TVA deems existing flotation is no longer serviceable, it must be replaced within 24 months of notification from TVA.

#### 10. Comments Related to Manufactured Houseboats and Other Structures

*Comment:* Some commenters expressed concerns with manufactured houseboats being considered floating cabins. They felt that since vessels are already regulated, additional regulation as floating cabins was unnecessary. Others commented on the floating docks and other attached structures associated with some navigable houseboats. Some commenters expressed their desire for only these "mooring docks" to be considered floating cabins while arguing that the houseboats moored to the docks should not be regulated as floating cabins, but instead as vessels.

*TVA Response:* The determination of a structure as a floating cabin is in TVA's sole discretion and its judgment will be guided by criteria defined in previous rule amendments. It is not TVA's intent to regulate vessels. With regard to docks and other water-use facilities not associated with floating cabins, those structures are regulated under TVA's Section 26a jurisdiction and approval is subject to the applicable regulations. In general, individually-

owned “mooring docks” or other water-use facilities in marina harbor limits associated with a vessel will not be permitted and will not be considered a floating cabin.

#### 11. Comments Related to the WIIN Act Effective Date

*Comment:* Some commenters requested that TVA use a later date than December 16, 2016, for the date on which floating cabins and attached structures are considered existing and allowed to remain on the reservoirs if they comply with TVA’s regulations. The main reason stated in support of this request is that many floating cabin owners were not aware of the new regulations before this date.

*TVA Response:* TVA has formally engaged the public and floating cabin community related to its review of these structures since April 30, 2014, when it published the Notice of Intent to assess impacts of floating cabins and invited public comments on scoping. TVA’s Draft EIS was published in June 2015, which included proposed standards for regulation. Various opportunities for public engagement and education have been offered, including the Board’s public listening sessions. December 16, 2016, is the date selected by Congress when it passed the WIIN Act. Pursuant to the WIIN Act, TVA published this “cutoff date” in the prior Section 26a rule amendments.

#### 12. Comments Related to Fees

*Comment:* Commenters had questions and requested clarification about the fees TVA will charge. One commenter stated that TVA is collecting an excessive amount of money for registration, transfer, alteration, combination, relocation, and yearly fees with no transparency or accountability.

*TVA Response:* TVA has standard permit application fees that apply to all Section 26a requests, including floating cabins. Currently, the standard permit application fee for a minor activity, which includes most floating cabins, is \$500. Modifications to an existing obstruction require a new permit, and the application fee is \$500. The application fee for a change in ownership with no associated modifications is \$250. Requests for major construction activities are assessed a \$1,000 application fee and are full cost recovery. There is no fee for registration of a floating cabin.

Section 26a permit application fees are governed by TVA’s Administrative Cost Recovery regulations (18 CFR part 1310) and are assessed per application, regardless of the number of items requested in a single application (there

is not an additional fee for each item requested). While TVA was granted the authority by the WIIN Act to levy a compliance fee for floating cabins, TVA will not establish that charge at this time.

#### 13. Comments in Support of the Final Rule

*Comment:* Numerous commenters expressed general support for the final rule amendments. Many expressed appreciation for TVA’s collaborative approach at managing the Floating Cabin Program and drafting reasonable regulations. Others commented that TVA’s documentation, inventory, registration, and inspection of floating cabins is an appropriate way to ensure owners are held accountable for properly maintaining their structures. Others emphasized that TVA should regularly and fairly enforce the regulations.

*TVA Response:* TVA acknowledges these comments and agrees with the need to have reasonable standards and rules, have consistent enforcement of regulations, and avoid overly burdensome requirements. TVA appreciates the input and feedback received from the stakeholder group.

### III. Administrative Requirements

*A. Unfunded Mandates Reform Act, National Environmental Policy Act, and Various Executive Orders Including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act; and E.O. 13771, Reducing Regulation and Controlling Regulatory Costs*

In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. The final EIS and associated documents can be found at

<https://www.tva.com/floatingcabins>. One of the alternatives evaluated by TVA in the EIS was to approve and issue permits for the mooring of existing floating cabins that meet new minimum standards and to prohibit new floating cabins. TVA previously published a final rule that clarified the types of structures that TVA will regulate as a floating cabin and prohibited new floating cabins from mooring on the Tennessee River System. This final rule establishes minimum health, safety, environmental, and permitting standards that existing floating cabins will be required to meet. TVA’s analysis of this alternative in the EIS determined that prohibiting new floating cabins and applying new standards would result in minor beneficial impacts to many resource areas (e.g., water quality, recreation, cultural resources), but that the alternative may result in significant economic effects to some floating cabin owners or marina operators, depending on the extent to which their floating cabin would need to be updated to meet the new standards.

This final rule is a “significant regulatory action” under the criteria set forth in section 3(f) of Executive Order 12866, “Regulatory Planning and Review.” 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review by the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”). TVA has determined it will not have an economically significant annual effect of \$100 million or more or result in expenditures of \$100 million in any one year by state, local, or tribal governments or by the private sector. TVA estimates there are approximately 2,200 floating cabins on the Tennessee River System. TVA’s estimate on compliance costs include the following ranges for each Floating Cabin provision: (1) Wastewater: \$4,000–\$8,000; (2) flotation: \$10,000–\$15,000; (3) mooring: \$3,000–\$5,000; (4) electrical: \$250–\$5,000. Most of the costs described are one-time investments, and not every floating cabin will require modifications in each area as many are already in compliance with one or more of the new provisions. As a result, this final rule will not exceed \$100 million in annual impact.

This final rule contains no federal mandates for state, local, or tribal government or for the private sector. The rule will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or

Indian tribes. Nor will the rule have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low income or minority populations.

Unified development and regulation of the Tennessee River System through an approval process for obstructions across, along, or in the river system and management of United States-owned land entrusted to TVA are federal functions for which TVA is responsible under the TVA Act, as amended. In general, the final rule updates or clarifies TVA's regulations relating to the standards that floating cabins will be required to meet in order to remain on the Tennessee River System. The final rule will establish a charge for individuals or entities that request certain services from TVA relating to use of its property, reservoirs, and permitting for a floating cabin. Absent a request for these services for a Section 26a permit, no entity or individual would be forced to pay a charge. None of the charges would be applied retroactively. The final rule also amends TVA's regulations to clarify a date certain by which all unencased flotation must be removed from TVA's reservoirs. The proposal also amends TVA's regulations to establish a time period after which TVA will deem a state's water quality certification decision to be waived and proceed with processing of Section 26a permit applications. TVA will continue to appropriately review specific requests in accordance with applicable laws, regulations, and Executive Orders.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA's Chief Executive Officer has certified that this proposal will not have a significant economic impact on a substantial number of small entities. The statute defines "small entity" as a "small business," "small organization" (further defined as a "not-for-profit enterprise"), or a "small governmental jurisdiction." Most floating cabins are owned by individuals and not businesses, not-for-profit enterprises, or small governmental jurisdictions, and therefore relatively few "small entities" will be affected by TVA's proposal. Even if the final rule tangentially impacts marinas that accommodate floating cabins, this represents only

29% of marinas on TVA reservoirs. Accordingly, this rule will not have a significant impact on a substantial number of small entities; no regulatory flexibility analysis is required; and TVA's Chief Executive Officer has made the requisite certification.

#### C. Paperwork Reduction Act Title of Information Collection

Section 26a Permit Application.

OMB Approval Number: 3316-0060.

This rule contains information collection requirements for registration and permitting of floating cabins, which were approved by the Office of Management and Budget (OMB) on June 18, 2019.

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

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

For the reasons set out in the preamble, the Tennessee Valley Authority amends 18 CFR part 1304 of the Code of Federal Regulations as follows:

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

■ 1. The authority citation for 18 CFR Part 1304 continues to read as follows:

**Authority:** 16 U.S.C. 831-831ee.

■ 2. Amend § 1304.2 by:

- a. Revising paragraphs (a) and (b);
- b. Revising the first sentence of paragraph (c)(1) introductory text;
- c. Revising paragraph (c)(1)(i);
- d. Revising paragraph (c)(1)(ii)(A);
- e. Revising the first sentence of paragraph (c)(2)(i) introductory text;
- f. Revising paragraph (c)(2)(ii)(A); and
- g. Revising paragraph (d).

The additions and revisions read as follows:

##### § 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. If the facility is an existing floating cabin, it must meet the requirements of subpart B. 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 ownership and/or 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 Tennessee Valley Authority, at the appropriate Regional Watershed Office location as listed on the application and on TVA's website. To contact an office, call 1-800-882-5263 or email [plc@tva.gov](mailto:plc@tva.gov). Applications are available on TVA's website.

(c) \* \* \*

(1) \* \* \* By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, gazebos, and floating cabins.

\* \* \*

(i) Completed application form. One copy of the application shall be prepared and submitted. Application forms are available on TVA's website. The application shall include a project description which indicates what is to be built, removed, or modified, and the sequence of the work. Applications for floating cabins shall include written evidence that the floating cabin was located or moored on the Tennessee River System as of December 16, 2016, and detailed descriptions of mooring method, how electrical service is provided, and how wastewater is managed. An application to relocate a floating cabin to a marina shall include



evidence of approval from the accepting marina operator.

(ii) \* \* \*

(A) Be prepared electronically or on paper suitable for reproduction (no larger than 11 by 17 inches).

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \* Application forms are available on TVA's website. \* \* \*

(ii) \* \* \*

(A) Be prepared electronically or on paper suitable for reproduction (no larger than 11 by 17 inches).

(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 copy of the request for 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 the applicant's proposed activity will be conducted in a manner that will comply with 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. No section 26a permit will be granted until required certification has been obtained or has been waived. If a certifying agency has not acted within a reasonable period of time, not to exceed one year, of an applicant's request for certification from the respective agency and certification is waived, TVA will proceed with processing of the section 26a permit application.

■ 3. Amend § 1304.10 by:

- a. Revising paragraph (b)(2) and
- b. Adding paragraph (c).

The addition and revision read as follows:

**§ 1304.10 Change in ownership of approved facilities or activities**

\* \* \* \* \*

(b) \* \* \*

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

(c) Change in ownership of a floating cabin is addressed in § 1304.102.

■ 4. Revise § 1304.100 to read as follows:

**§ 1304.100 Scope and intent.**

This subpart prescribes requirements for floating cabins on the Tennessee River System. Floating cabins as applied to this subpart include existing nonnavigable houseboats approved by TVA and other existing structures, whose design and use is primarily for human habitation or occupation and not for navigation or transportation on the water. Floating cabins that were not located or moored on the Tennessee River System as of December 16, 2016, shall be deemed new floating cabins. New floating cabins are prohibited and subject to the removal provisions of this part and Section 9b of the TVA Act. No new floating cabins shall be moored, anchored, or installed on the Tennessee River System. Floating cabins that were located or moored in the Tennessee River System as of December 16, 2016, shall be deemed existing floating cabins. Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part and obtain a permit from TVA issued after October 12, 2021. All permits for nonnavigable houseboats or floating cabins that were not located on the Tennessee River System as of December 16, 2016, are terminated. Unless otherwise noted, the term floating cabin refers to the primary structure on the monolithic frame as well as all attached structures.

■ 5. Revise § 1304.101 to read as follows:

**§ 1304.101 Floating cabins.**

(a)(1) Floating cabins include nonnavigable houseboats approved by TVA as of December 16, 2016, and other floating structures moored on the Tennessee River System as of this date and determined by TVA in its sole discretion to be designed and used primarily for human habitation or occupation and not designed and used primarily for navigation or transportation on the water as of December 16, 2016. If, at any time, the floating cabin is modified such that it no longer meets the criteria to be deemed a floating cabin, the approval for that existing floating cabin will be terminated. TVA's judgment will be guided by, but not limited to, the following factors:

(i) Whether the structure is usually kept at a fixed mooring point;

(ii) Whether the structure is actually used on a regular basis for transportation or navigation;

(iii) Whether the structure has a permanent or continuous connection to the shore for electrical, plumbing, water, or other utility service;

(iv) Whether the structure has the performance characteristics of a vessel typically used for navigation or transportation on water;

(v) Whether the structure can be readily removed from the water;

(vi) Whether the structure is used for intermittent or extended human-habitation or occupancy;

(vii) Whether the structure clearly has a means of propulsion, and appropriate power/size ratio;

(viii) Whether the structure is safe to navigate or use for transportation purposes.

(2) That a structure could occasionally move from place to place, or that it qualifies under another federal or state regulatory program as a vessel or boat, are factors that TVA also will consider but would not be determinative. Floating cabins are not recreational vessels to which § 1304.409 applies.

(b) Owners of floating cabins are required to register the floating cabin with TVA by January 10, 2022. Floating cabin owners shall include the following information with their registration: Clear and current photographs of the structure; a drawing or drawings showing in reasonable detail the size and shape of the floating cabin (length, width, and height) and attached structures, such as decks or slips (length, width, and height); and a completed and signed TVA registration form. The completed TVA registration form shall include the mailing and contact information of the owner(s); the TVA permit or TVA-issued numbers (when applicable); the mooring location of the floating cabin; how the floating cabin is moored; how electrical service is provided; how wastewater and sewage are managed; and an owner's signature.

(c) All floating cabins shall comply with the rules contained in this part and make application for a section 26a permit by October 1, 2024.

(d) Existing floating cabins may remain on the Tennessee River System provided they stay in compliance with the rules contained in this part and pay any necessary and reasonable fees levied by TVA to ensure compliance with TVA's regulations, in accordance with section 9b of the TVA Act.

(e) Existing floating cabins must be moored at one of the following locations:

(1) To the bank of the reservoir at locations where the owner of the floating cabin is the owner or lessee (or the licensee of such owner or lessee) of the proposed mooring location provided the floating cabin was moored at such location as of December 16, 2016;

(2) At locations described by § 1304.201(a)(1), (2), and (3) provided the floating cabin was moored at such location as of December 16, 2016;

(3) To the bank of the reservoir at locations where the owner of the floating cabin obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location as of December 16, 2016; or

(4) Within the designated and approved harbor limits of a commercial marina that complies with § 1304.404. As provided in § 1304.404, TVA may adjust harbor limits and require relocation of an existing floating cabin within the harbor limits.

(f) Applications for mooring of a floating cabin 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.

(g) A floating cabin moored at a location approved pursuant to this subpart shall not be relocated and moored at a different location without a permit from TVA, except for movement to a new location within the designated harbor limits of the same commercial marina. Existing floating cabins may only relocate to the harbor limits of a commercial marina that complies with § 1304.404 on the same reservoir where the floating cabin was moored as of December 16, 2016. Relocation of a floating cabin to another TVA reservoir is prohibited.

(h)(1) Existing floating cabins shall be maintained in a good state of repair and may be maintained without additional approval from TVA. By way of example, these activities may include painting, changing the internal walls within the existing enclosed space, replacing the shingles, siding, electrical wiring, or plumbing, or adding new flotation in compliance with § 1304.400. Repair and maintenance activities shall not modify the dimensions (length, width, and height) of the floating cabin, any external walls, or the enclosed or open space.

(2) Any alterations to the dimensions or approved plans for an existing floating cabin shall be deemed a structural modification and shall require prior written approval from TVA. All expansions in length, width, or height

are prohibited, except under the following circumstances if approved in writing in advance by TVA:

(i) TVA may allow alterations necessary to comply with health, safety, and environmental standards;

(ii) TVA may allow changes in roof pitch or allow open portions of the monolithic frame to be covered, but no part of the floating cabin may exceed a total height of 14 feet above the lowest floor level; or

(iii) TVA may allow enclosure of existing open space on the monolithic frame of the existing floating cabin if the enclosure will not result in expansion to the dimensions (length, width, and height) of the monolithic frame, subject to § 1304.101(i). At least 24 contiguous square feet of open space with a minimum width of four feet shall be maintained on the monolithic frame for unrestricted boarding.

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

(4) TVA may allow the exchange of multiple existing floating cabins removed from the Tennessee River System for a single combined floating cabin under the following conditions:

(i) Prior written approval from TVA shall be obtained before taking any actions. Evidence shall be provided to TVA that all existing floating cabins to be exchanged were located on the Tennessee River System as of December 16, 2016.

(ii) Plans for removal of the existing floating cabin(s) shall be approved in writing by TVA before removal occurs, and the floating cabin(s) shall be removed at the owner's expense before construction of the new combined floating cabin may begin. Approvals of the existing floating cabins to be

exchanged will be terminated.

Construction on the new combined floating cabin must be completed within 18 months.

(iii) The combined floating cabin shall be moored within the harbor limits of a commercial marina that complies with § 1304.404. The owner shall provide evidence of approval from the marina operator to locate within the marina. The combined floating cabin must be located on the same reservoir as any of the existing floating cabins to be exchanged.

(iv) The maximum total size of the monolithic frame of the combined floating cabin is 1,000 square feet or the sum of the square footage of the monolithic frames of the existing exchanged floating cabins, whichever is less. At least 24 contiguous square feet with a minimum width of four feet must remain open to allow for unrestricted boarding of the combined floating cabin. Any square footage of the existing exchanged floating cabins that exceeds the maximum allowable total size of the combined floating cabin is not transferrable to other projects or owners.

(v) The maximum height of any part of the combined floating cabin is 14 feet above the lowest floor level.

(vi) Floating attached structures, such as decks or platforms, are subject to § 1304.101(i).

(i) With written approval from TVA, floating cabins may be accompanied by floating attached structures subject to the following:

(1) A single floating cabin may have multiple floating attached structures. The footprint of each attached structure will be measured as a rectangular or square area. The total footprint of all attached structures for a single floating cabin cannot exceed 400 square feet or the total footprint of the existing attached structures that were part of the floating cabin as of December 16, 2016, whichever is greater.

(2) The footprint of the attached structures shall not be incorporated into the footprint of the monolithic frame of the floating cabin.

(3) Attached structures shall not exceed 14 feet in height from the lowest floor level, shall not be enclosed, and shall comply with § 1304.204(p).

(4) All attached structures must be permitted to the floating cabin owner. The owner shall provide evidence of approval from the marina operator for the attached structures.

(5) Existing attached structures that were part of the floating cabin as of December 16, 2016, may remain with written approval from TVA. Any requests to rebuild or reconfigure attached structures must comply with

§ 1304.101(i)(1) through (4). Attached structures associated with a request for a structural modification as described in § 1304.101(h)(2)(iii) or a combined floating cabin as described in § 1304.101(h)(4) shall not exceed a total footprint of 400 square feet.

(j) Any floating cabin not in compliance with this part is subject to the applicable removal provisions of § 1304.406 and section 9b of the TVA Act.

■ 6. Revise § 1304.102 to read as follows:

**§ 1304.102 Numbering of floating cabins and change in ownership.**

(a) All approved floating cabins and attached structures shall display a number assigned by TVA. The owner of the floating cabin shall paint or attach a facsimile of the number on a readily visible part of the outside of the facilities in letters at least three inches high. If TVA provided a placard or tag, it must be displayed on a readily visible part of the outside of the floating cabin.

(b) When there is a change in ownership of the floating cabin, the new owner shall notify TVA within 60 days. Upon application to TVA by the new owner, the new owner may continue to use the existing floating cabin or carry out permitted activities pending TVA's decision on reissuance of the permit. TVA shall reissue the permit upon determining the floating cabin is in good repair, is the same configuration and dimensions (length, width, and height) of both the floating cabin and the enclosed and open space as previously permitted, moored in the same location or in the harbor limits of the same commercial marina, and complies with the conditions of the previous approval and the requirements of this subpart.

■ 7. Add § 1304.103 to read as follows:

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

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

agency in accordance with the agency's requirements.

(b) *Flotation.* Floating cabins shall comply with the requirements for flotation devices and material contained in § 1304.400.

(c) *Mooring.* All floating cabins 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 land rights owned by the United States alongside and adjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses;

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

(6) Ensure visibility of all mooring cables; and

(7) Comply with § 1304.205(c).

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

(e) *Electrical certifications.* Floating cabin owners shall provide, in a form acceptable to TVA, certification of compliance with the electrical standards of paragraphs (e)(1) and (2) of this section with their initial permit application, no later than October 1, 2024, and by October 1 of every even-numbered year thereafter. The certification must be signed by a licensed electrical engineer, a state-certified electrical inspector, or a person certified by the International Association of Electrical Inspectors, the International Code Council, or an equivalent organization.

(1) All floating cabins must meet the following minimum requirements for ground fault protection:

(i) The feeder(s) from electrical service on the shore to the floating cabin shall have ground fault protection not exceeding 100 milliamps.

(ii) If the floating cabin has a transformer, the transformer shall have ground fault protection not exceeding

100 milliamps at the first overcurrent protection device on the secondary side of the transformer. The conductors from the transformer enclosure to the overcurrent protection device shall not exceed ten feet and shall be installed in a raceway.

(iii) If the floating cabin is located in a marina and the feeder supplying the floating cabin is part of the marina's electrical system, the feeder shall have ground fault protection not exceeding 100 milliamps.

(iv) If another source of electrical power is utilized on a floating cabin, such as but not limited to a generator, photovoltaic cell, or wind turbine, the source of electrical power shall have ground fault protection not exceeding 100 milliamps at the first overcurrent protection device for each source. For permanently installed sources, the conductors from the source to the first overcurrent protection device shall not exceed ten feet and shall be installed in a raceway.

(v) The floating cabin owner may determine the devices that are utilized to achieve the ground fault protection requirement provided such devices are labeled and listed from a third-party testing laboratory for the purpose of the installation.

(2) If power is supplied to the floating cabin by an underwater cable, the portable power cable shall, at a minimum, meet the requirements of National Fire Protection Association 70 Article 555.13 (A)(2) and (B)(4) of the 2017 National Electrical Code. For new portable power cables installed after October 12, 2021, the cables shall meet the requirements of the most recent version of the National Electric Code.

■ 8. Amend § 1304.204 by revising paragraphs (a) and (i) to read as follows:

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

\* \* \* \* \*

(a) Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of 1,000 square feet, unless the proposed water-use facility will be located in an area of preexisting development. For the purpose of this regulation, "preexisting development" means either: The water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least one water-use facility in the subdivision prior to November 1, 1999; or if there is no subdivision, where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. Water-use facilities located in an area of preexisting development shall

not exceed a total footprint area of 1,800 square feet.

\* \* \* \* \*

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

\* \* \* \* \*

■ 9. Amend § 1304.211 by revising paragraph (d)(2) to read as follows:

**§ 1304.211 Change in ownership of grandfathered structures or alterations.**

\* \* \* \* \*

(d) \* \* \*

(2) Obtain TVA approval for any repairs that would alter the size of the facility, create a structural modification, for any new construction, or for removal of trees or other vegetation (except for mowing of lawns established prior to November 1, 1999).

■ 10. Amend § 1304.212 by revising paragraph (a)(1) to read as follows:

**§ 1304.212 Waivers.**

(a) \* \* \*

(1) The property is within a preexisting development as defined in § 1304.204(a); and

\* \* \* \* \*

■ 11. Amend § 1304.302 by revising the first sentence to read as follows:

**§ 1304.302 Vegetation management on flowage easement shoreland.**

Removal, modification, or establishment of vegetation on privately-owned shoreland subject to a TVA flowage easement generally does not require approval by TVA. \* \* \*

■ 12. Revise § 1304.400(a) to read as follows.

**§ 1304.400 Flotation devices and material, all floating structures.**

(a)(1) By December 31, 2031, all unencased (i.e., Styrofoam) flotation shall have been removed and replaced with flotation consistent with this subpart. Structures continuing to use unencased flotation after December 31, 2031, will be subject to removal under § 1304.406. Use or reuse of unencased flotation for repairs, replacement, or new construction is prohibited. Existing unencased flotation (secured in place prior to September 8, 2003) may continue to be used until December 31, 2031, so long as it remains attached and in good condition in TVA’s judgement. If, in TVA’s judgement, the flotation is no longer serviceable, it shall be replaced with approved flotation within 24 months upon notification from TVA.

(2) All flotation for docks, boat mooring buoys, floating cabins and attached structures, 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 crack, peel, fragment, become water-logged, 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. Use of plastic, metal, or other previously used drums or containers for encasement or flotation purposes is prohibited, except as provided in paragraph (c) of this section for certain metal drums already in use. For any flotation devices or material, repair or replacement is required when it no longer performs its designated function or it exhibits any of the conditions prohibited by this subpart.

\* \* \* \* \*

■ 13. Revise the first sentence of § 1304.406 to read as follows.

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

If, at any time, any dock, wharf, boathouse (fixed or floating), floating cabin, outfall, aerial cable or other fixed or floating structure or facility (including any navigable boat or vessel that has become deteriorated or 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 TVA’s approval or plans approved by TVA, or is not maintained or operated so as to remain in accordance with this part and such approval or 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 approval or 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 and control of TVA. \* \* \*

■ 14. Amend § 1304.412 by:

- a. Adding in alphabetical order the definition of “Attached structure”;
- b. Revising the definition of “Backlot”;
- c. Adding in alphabetical order the definition of “Combined floating cabin”;
- d. Revising the definitions for “Community outlot”, “Enclosed structure”, “Existing floating cabin”;

- e. Adding in alphabetical order the definition of “Floating cabin,”
- f. Revising the definition of “Footprint”;
- g. Adding in alphabetical order the definition of “Monolithic frame”;
- h. Revising the definitions of “New floating cabin,” and “Rebuilding”; and
- i. Adding in alphabetical order the definition of “Structural Modification”.

The additions and revisions read as follows:

**§ 1304.412 Definitions.**

\* \* \* \* \*

*Attached structure* means a floating deck, walkway, platform, slip, Jet Ski port, or other floating structure that supports the use of a floating cabin and can be detached from the floating cabin. Attached structures are not considered part of the monolithic frame of a floating cabin.

\* \* \* \* \*

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

\* \* \* \* \*

*Combined floating cabin* means a single floating cabin that replaces two or more existing floating cabins.

\* \* \* \* \*

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

\* \* \* \* \*

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

*Existing floating cabin* means a floating cabin that was located or moored on the Tennessee River System as of December 16, 2016.

*Floating cabin* means a nonnavigable houseboat approved by TVA as of December 16, 2016, and other floating structures moored on the Tennessee River System and determined by TVA in its sole discretion to be designed and used primarily for human habitation or occupation and not designed and used primarily for navigation or transportation on the water.

\* \* \* \* \*

*Footprint* means the total water surface area of either a square or rectangular shape occupied by a floating

cabin or adjoining property owner's dock, pier, boathouse, or boatwells.

\* \* \* \* \*

*Monolithic frame* means the supporting floor structure of a floating cabin that is constructed as one rigid component. It specifically excludes any attached structures, such as decks and platforms, regardless of when they were connected or how they are connected (e.g., pins, hinges, bolts, ropes).

*New floating cabin* means a floating cabin that was not located or moored on the Tennessee River System as of December 16, 2016.

\* \* \* \* \*

*Rebuilding* means replacement of all or a significant portion of an approved obstruction to the same configuration, total footprint, and dimensions (length, width, and height of the obstruction or enclosed or open space) as the approved plans, standards, and conditions of the section 26a permit.

\* \* \* \* \*

*Structural modification* means any alteration to the dimensions (length, width, and height of the obstruction or enclosed or open space), footprint, or approved plans of a structure.

\* \* \* \* \*

**Allen A. Clare,**

*Vice President, River and Resources Stewardship.*

[FR Doc. 2021-19098 Filed 9-9-21; 8:45 am]

**BILLING CODE 8120-08-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[TD 9953]

RIN 1545-BQ09

#### Recapture of Excess Employment Tax Credits Under the American Relief Plan Act of 2021

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document sets forth temporary regulations under sections 3131, 3132, and 3134 of the Internal Revenue Code (Code), added by sections 9641 and 9651 of the American Rescue Plan Act of 2021. These temporary regulations authorize the assessment of any erroneous refund of the tax credits paid under sections 3131, 3132 (including any increases in those credits under section 3133), and 3134 of the Code. The text of these temporary regulations also serves as the text of the

proposed regulations (REG-109077-21) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

#### **DATES:**

*Effective date:* These temporary regulations are effective on September 10, 2021.

*Applicability date:* For date of applicability, see §§ 31.3131-1T, 31.3132-1T, and 31.3134-1T of these temporary regulations.

#### **FOR FURTHER INFORMATION CONTACT:**

Concerning these temporary regulations, NaLee Park at 202-317-6798.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Families First Coronavirus Response Act (Families First Act), Public Law 116-127, 134 Stat. 178 (March 18, 2020), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020), the COVID-related Tax Relief Act of 2020 (Tax Relief Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182 (December 27, 2020), the Taxpayer Certainty and Disaster Relief Tax Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021 (the ARP), Public Law 117-2, 135 Stat. 4 (March 11, 2021), provide relief to taxpayers from economic hardships resulting from the Coronavirus Disease 2019 (COVID-19). As described below, this relief includes employment tax credits for certain wages paid by employers.

##### **I. Paid Sick and Family Leave Credits**

The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), enacted as Divisions E and C of the Families First Act, respectively, generally required employers with fewer than 500 employees to provide paid leave due to certain circumstances related to COVID-19. Sections 7001 and 7003 of the Families First Act generally provided that non-governmental employers subject to the paid leave requirements under EPSLA and EFMLEA were entitled to fully refundable tax credits to cover the wages paid for leave taken for those periods of time during which employees are unable to work or telework for specified reasons related to COVID-19, plus allocable qualified health plan expenses.

Although the requirement to provide employees with paid leave under

EPSLA and EFMLEA expired December 31, 2020, the tax credits for qualified leave wages paid for periods of leave taken beginning on April 1, 2020, and ending on December 31, 2020, were extended by the Tax Relief Act through March 31, 2021, for paid leave that would have satisfied the requirements of EPSLA and EFMLEA.

The ARP added sections 3131 through 3133 of the Code, which extend the refundable tax credits for paid leave to non-governmental employers with fewer than 500 employees, and certain governmental entities<sup>1</sup> without regard to the number of employees, that provide paid sick and family leave for specified reasons related to COVID-19 with respect to periods of leave beginning on April 1, 2021, through September 30, 2021. The paid sick leave credit and the paid family leave credit (collectively, "paid sick and family leave credits") under sections 3131 through 3133 are available to eligible employers that provide employees with paid leave that would have satisfied the requirements of EPSLA and EFMLEA, with certain modifications made pursuant to the ARP.

Under section 3131, a credit is available to eligible employers who pay qualified sick leave wages to an employee for up to 80 hours leave provided during the period beginning April 1, 2021, and ending September 30, 2021, if the employee is unable to work or telework because the employee:

(1) Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis, is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and the employee has been exposed to COVID-19 or the employee's employer has requested the test or diagnosis, or the employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization;

(4) is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a

<sup>1</sup> Section 9641 of the ARP added sections 3131(f)(5) and 3132(f)(5) to the Code, which extend paid sick and family leave credits to certain governmental employers (without regard to the number of employees). However, the credits are not allowed for the government of the United States, or any agency or instrumentality of the United States government, except for an organization described in section 501(c)(1) of the Code and exempt from tax under section 501(a) of the Code.