

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

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

The previous commenter also suggested that five specific aspects of the MHLMP are invalid because they implement "concepts" that should not be implemented until this rulemaking is complete. TVA does not understand this comment. Except for shoreline categorization of TVA-owned property (which is addressed above, in no way depends on this rulemaking, and is exempt from rulemaking requirements because it deals with management of public property), the concepts to which the commenter objects are not part of the MHLMP. Three of the concepts

mentioned by the commenter (grandfathering, design limitations, and the implementation of a shoreline management zone) were subject to public notice and comment as part of the SMP EIS. Moreover, these matters involve management of TVA property and/or changes in TVA internal policies and guidance regarding processing of permit applications, and thus are not dependent on this rulemaking. The fifth "concept" mentioned by the commenter, the "appeals process," has not yet been implemented. TVA has continued to use the appeals process in the existing regulation pending finalization of this rule.

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

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

adequate to address nonnavigable houseboats.

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

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

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