

# Rules and Regulations

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1989-0008; FRL-8761-2]

### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final Notice of Partial Deletion of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 3 is publishing a direct final Notice of Partial Deletion of former Wetland Areas B and C of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site (Site), located in Henrico County, near the city of Richmond, Virginia, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C. The remaining areas and media of the Site will remain

on the NPL and are not being considered for deletion as part of this action.

**DATES:** This direct final partial deletion is effective March 30, 2009 unless EPA receives adverse comments by February 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1989-0008, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.
- *E-mail:* Larry C. Johnson, Community Involvement Coordinator at [Johnson.larryc@epa.gov](mailto:Johnson.larryc@epa.gov) or Andy Palestini, Remedial Project Manager at [Palestini.and@epa.gov](mailto:Palestini.and@epa.gov).
- *Fax:* 1-215-814-3002.
- *Mail:* Larry C. Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* Larry C. Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID no. EPA-HQ-SFUND-1989-0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region 3 Library, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, (215) 814-5000, Monday through Friday 8 a.m. to 12 p.m.; Henrico County Municipal Reference and Law Library, Parham Road at Hungary Spring Road, Richmond, Virginia 23273.

**FOR FURTHER INFORMATION CONTACT:** Andy Palestini, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS23, 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215-814-3233.

## SUPPLEMENTARY INFORMATION:

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- II. NPL Deletion Criteria
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### I. Introduction

EPA Region 3 is publishing this direct final Notice of Partial Deletion for the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site (Site), from the National Priorities List (NPL). This partial deletion pertains to the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C. The NPL constitutes Appendix B of 40 CFR part 300, which

is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), that EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55,466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions. Whenever there is a significant release from a site deleted or partially deleted from the NPL, the site shall be restored to the NPL.

Because EPA considers this action to be noncontroversial and routine, this action will be effective March 30, 2009 unless EPA receives adverse comments by February 26, 2009. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses former Wetland Areas B and C of the Site and demonstrates how the deletion criteria are met. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e),

sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Partial Deletion Procedures

The following procedures apply to the deletion of the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C of the Site:

- (1) EPA has consulted with the Commonwealth of Virginia prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

- (2) EPA has provided the Commonwealth 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the Commonwealth, through the Virginia Department of Environmental Quality (VDEQ), has concurred on the partial deletion of the Site from the NPL.

- (3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the *Richmond Times Dispatch*. The newspaper notice

announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

- (4) The EPA has placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

- (5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a portion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

## IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the soil and sediment at former Wetland Areas B and C and the ground water at former Wetland Area C of the Rentokil, Inc. Superfund Site from the NPL:

### *Site Background and History*

The Rentokil, Inc. Superfund Site (Site) is a former wood treating facility that operated under the name of Virginia Wood Preservers and that ceased operating in January 1990. The Site is located at 3000 Peyton Street at the intersection of Peyton Street and Ackley Avenue in Henrico County, near Richmond, Virginia. The Site includes the former wood treatment process area, the wood drying areas, Wetland Area A, and the two former wetland areas (Wetland Areas B and C). None of the wetland areas were used in the wood treating process; these areas became contaminated by runoff from the Site. Wetland Area A, the area immediately north of the former process area, is located within the flood plain of an unnamed tributary to North Run. Wetland Area A was remediated and revegetated to remain a wetland. Former

Wetland Area B, the area at the southeast corner of the Site, and former Wetland Area C, the area immediately south of the Site which is across Peyton Street, were connected by two culverts under Peyton Avenue. Surface runoff discharged from the Site through a ditch to former Wetland B, where it was retained and discharged to former Wetland C when flow was high. A ditch along the north side of Peyton Avenue also collected runoff from the Site. This runoff flowed through the west culvert to former Wetland Area C. A ditch parallel to the south side of Peyton Avenue carried runoff from former Wetland Area C to the east and ultimately to a 24-inch culvert under Ackley Avenue. Because the invert of the 24-inch culvert was about two feet above the flow line of the south ditch and the normal elevation of former Wetland Area C, Site-related runoff waters were retained within former Wetland Area C.

Wood treating operations at the Site were initiated in 1957 and continued under several different owners/operators. In 1974, Rentokil, Inc. purchased the stock of TaCo, one of the previous owners. Both TaCo and the Virginia Wood Preserving Corporation (the owner prior to 1974) were subsequently merged into Rentokil. Rentokil later changed its name to Rentokil SupaTimber, Inc. and, in September 1989, changed its name to Virginia Properties, Inc. (VPI), a wholly owned subsidiary of Rentokil, Inc.

The land immediately surrounding the Site is mostly open space/woodlands. Nearby development is comprised of light industrial, commercial, and low density residential. A private developer has purchased former Wetland Area B in preparation of placing new commercial/office buildings in this area. The surrounding area is served by public water supply.

EPA proposed that the Site be listed on the NPL in January 1987. The Site was placed on the NPL in March 1989. Pursuant to CERCLA, Rentokil, Inc. and EPA signed an Administrative Order by Consent in December 1987 to conduct a Remedial Investigation/Feasibility Study (RI/FS) to identify the types, quantities, and locations of contaminants and to develop ways of addressing Site contamination. The two phases of field work for the RI were conducted from May to August 1989 and from June to July 1991. In March 1992, VPI and EPA entered into an Administrative Order by Consent for Removal Action (Order). The purpose of the Order was to design and construct sediment control structures to prevent

additional migration of contaminated sediment from the Site into North Run Creek. These structures were completed by June 22, 1992.

EPA issued a Record of Decision (ROD) for the Site on June 22, 1993. The ROD addressed all aspects of Site cleanup: Existing structures, "hot spots", ground water, surface water, soil, sediment, mitigation for the loss of wetlands, and institutional controls, as described more completely below. A Consent Decree, whereby VPI agreed to implement the requirements of the ROD, was signed by VPI in 1994.

#### *Remedial Investigation and Feasibility Study (RI/FS)*

Analytical results of the sampling performed for the RI indicate that the surface soil, subsurface soil, ground water, and sediments posed unacceptable risks to human health and the environment, mainly through exposure to the following Site-related contaminants: Arsenic, chromium, copper, pentachlorophenol, and polynuclear aromatic hydrocarbons (from using creosote).

#### *Record of Decision Findings*

The major components of the remedy selected in the ROD include: Demolition, decontamination, and off-site disposal of the existing structures; excavation, treatment (if necessary) and off-site disposal of the on-site pond sediments; excavation and on-site disposal of the contaminated soil and sediment in Wetland Areas A, B, and C; construction of an impermeable cap; excavation, low temperature thermal desorption treatment, and on-site disposal of the "hot spots", the soil in the CCA Disposal Area, the Fill Area, and the source material within 25 feet of the concrete drip pad, the on-site pond, and the former blowdown sump; construction of a slurry wall; construction of a dewatering system within the cap/slurry wall containment system; institutional controls; mitigation for the loss or damage to the wetland areas; and, long-term ground water monitoring.

Although Remedial Action Objectives were not specifically identified in the ROD, the following objectives can be inferred from the major components of the remedy: Reduce risks to human health by preventing direct contact with, and ingestion of, contaminants in the site soil, wetland sediments, and pond sediments, and by preventing potential ingestion of contaminated ground water; reduce risks to the environment by preventing direct contact with, and ingestion of, contaminants in the wetland sediments;

minimize the migration of contaminants from site soil and wetland sediments that could result in surface water concentrations in excess of Ambient Water Quality Criteria; eliminate or minimize the threat posed to human health and the environment by preventing exposure to the contaminants in the ground water; and contain contaminated ground water to protect human health and the environment.

EPA amended the ROD on August 27, 1996, with the concurrence of VDEQ to delete the requirement for treatment of the "hot spots" at the Site because ground water modeling indicated that treating the "hot spots" had no effect on the levels of contaminants in the ground water.

#### *Response Actions*

Remedial construction of former Wetland Area B started in June 1998 with the clearing and grubbing of the existing vegetation. All of the clearing and grubbing materials were chipped in a tub grinder and were disposed of at the Old Dominion (BFI) landfill in Richmond, Virginia. Excavation of the top 24 inches of contaminated soil occurred in July 1998, immediately followed by backfilling the excavated area with clean soil. The remedial construction was completed in August 1998 when the area was seeded with an approved seed mix. A total of 3,339 cubic yards of contaminated soil was excavated and placed under the cap constructed in the area of the former rail spur.

Remedial construction of former Wetland Area C also started in June 1998 with the clearing and grubbing of the existing vegetation. All of the clearing and grubbing materials were chipped in a tub grinder and were disposed of at the Old Dominion (BFI) landfill in Richmond, Virginia. Excavation of the top 24 inches of contaminated soil occurred in August 1998, immediately followed by backfilling the excavated area with clean soil. The remedial construction was completed in October 1998 when the area was seeded with an approved seed mix. A total of 5,380 cubic yards of contaminated soil was excavated and placed under the cap constructed in the area of the former rail spur.

In the ROD, EPA, with the advice of the U.S. Fish and Wildlife Service, selected wetlands mitigation because of the damage caused to former Wetland Areas B and C. The mitigation consisted of purchasing approximately 6.81 acres of prior converted cropland and reconstructing the land to simulate natural wetland conditions. Mitigation

occurred in the Virginia Wood Preserving portion of the Chickahominy LLC mitigation area located in Charles City County, Virginia, approximately 25 miles east of Richmond, in the Chickahominy River floodplain.

#### *Cleanup Standards*

Arsenic was the primary contaminant of concern in the wetland areas. As such, all soil exceeding the site-specific cleanup level for arsenic of 33 mg/kg was excavated to a depth of 24 inches. Confirmatory sampling was performed during the remedial action to confirm that the soil cleanup level was achieved.

#### *Operation and Maintenance*

The cap at the Site is routinely monitored to make sure the fence is in good condition, to determine when to mow the grass, to check if there are any problems with erosion of the cap surface that needs repair, and to locate any trees which require cutting down.

Rentokil, Inc. takes ground water samples semi-annually to monitor the levels of contaminants. The selected remedy includes withdrawing ground water from within the area enclosed by the cap/slurry wall. However, EPA, with the concurrence of the VDEQ, has agreed to a request by Rentokil, Inc. to place a moratorium on the withdrawal of ground water to determine whether this practice has any effect on the levels or dispersion of the contaminants in the ground water outside of this enclosed area.

Institutional controls in the form of a Deed Notice and Declaration of Restrictive Covenants for Certain property at the Rentokil Superfund Site was recorded in the Clerk's Office of Henrico County on December 1, 2005. Included in the Restrictive Covenant are provisions precluding residential development and ground water use in former Wetland Area B. Even though the ground water at former Wetland Area B is not contaminated, EPA required the restriction on ground water use to prevent the possibility of drawing contamination in that direction. There are no use restrictions for former Wetland Area C.

EPA and the U.S. Fish and Wildlife Service continue to monitor progress at the mitigation site in Charles City County. Two issues were brought up as a result of the latest site visit in September 2007. First, Japanese honeysuckle, should be treated with an herbicide to allow other desirable vegetation to grow. Secondly, the tree tubes used during the initial planting effort should be removed because they are restricting the growth of the tree trunks.

#### *Five-Year Review*

EPA issued the first five-year review report for the Site on September 17, 2003. In the report, EPA stated that a protectiveness determination of the remedy could not be made until a determination is made as to whether the contaminant levels at monitoring well number 2 is due to leakage from the cap/slurry wall containment system. No issues were identified for the implementation of the remedy or the protectiveness at either former Wetland Area B or C.

The second five-year review report was issued on September 22, 2008. In the second five-year review report, EPA determined that the remedy is protective of human health and the environment. All threats at the Site associated with ingestion or dermal contact with contaminated soil and sediments have been addressed through capping of the Site and excavation and consolidation of those areas of contaminated soil and sediments previously located beyond the extent of the cap (including the soil and sediment at former Wetland Areas B and C). The ground water clean-up goals selected for the Site are protective of human health and the environment. In the interim, exposure pathways that could result in unacceptable risks are being controlled. Even though no one currently uses the contaminated ground water, institutional controls have been implemented to prevent exposure to, or ingestion of, contaminated ground water (an institutional control has also been placed on the ground water at former Wetland Area B to prevent drawing the contaminated ground water to that area). Long-term protectiveness of the remedial action will be verified by obtaining ground water samples to fully evaluate migration of the contaminant plume downgradient of the slurry wall. Current data indicated that the plume remains in the area of VPMW-02 and is not expanding.

EPA will need to conduct the next five-year review of the Site by September 2013. Former Wetland Area C will not be subject to future five-year reviews because all response actions are complete and conditions allow for unlimited use and unrestricted exposure.

#### *Community Involvement*

The most recent community involvement activity for this Site was placing the newspaper ad informing the public that EPA was conducting a five-year review of the Site. The ad was placed in the *Richmond Times Dispatch* on August 21, 2008. In the ad, EPA

solicited the general sentiment from the local community on how Site operations affected them and whether anyone had any comments, suggestions, or recommendations regarding the management or operation of the Site. No feedback was received from the community.

Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion will be published in the *Richmond Times Dispatch*. The newspaper notice will announce the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

#### *Determination That the Criteria for Deletion Have Been Met*

The soil and sediments in former Wetland Areas B and C and the ground water at former Wetland Area C are being proposed for deletion because the Responsible Party completed all appropriate response actions required by the ROD. The remedy selected in the ROD for these two areas included excavating the contaminated soil and disposing the material under the cap. All soil exceeding the site-specific cleanup level of 33 mg/kg of arsenic was excavated to a depth of 24 inches, with the extent of excavation determined by confirmatory sampling. The excavated areas were then backfilled with clean soil and seeded. This work was completed during the remedial action, as documented in the Preliminary Close Out Report dated September 2, 1999. Mitigation for the damage to the wetland areas occurred in the Virginia Wood Preserving portion of the Chickahominy LLC mitigation area located in Charles City County, Virginia.

EPA is deleting former Wetland Areas B and C from the NPL as requested by Parham Forest Partners, LLC, the purchaser of the former Wetland Area B parcel of the Site, and VDEQ. EPA Region 3 submitted the direct final Notice of Partial Deletion and the Notice of Intent of Partial Deletion to EPA Headquarters and to the VDEQ for their concurrence.

#### **V. Deletion Action**

The EPA, with concurrence of the Commonwealth of Virginia through the Virginia Department of Environmental Quality, has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. Therefore, EPA is deleting the soil and sediments in former Wetland Areas B and C and the

ground water at former Wetland Area C of the Rentokil, Inc. Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *March 30, 2009*, unless EPA receives adverse comments by *February 26, 2009*. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments

already received. There will be no additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 16, 2008.

**William T. Wisniewski,**  
*Acting Regional Administrator, Region 3.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

#### Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended under “VA” by revising the entry for “Rentokil, Inc.”, (Virginia Wood Preserving Division) to read as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Note (a)
Virginia .....	Rentokil, Inc. (Virginia Wood Preserving Division) .....	Richmond .....	P

(a) \* \* \*

P = Sites with partial deletion(s).

[FR Doc. E9–1704 Filed 1–26–09; 8:45 am]

BILLING CODE 6560–50–P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MB Docket No. 08–255; FCC 09–2]

#### Implementation of Short-Term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** With this document, the Commission implements the Short-term Analog Flash and Emergency Readiness Act, Public Law 110–459, 122 Stat. 5121 (2008). The Analog Nightlight Act requires the Commission to develop and implement a program by January 15, 2009, to “encourage and permit” continued analog TV service for a period of 30 days after the February 17, 2009 DTV transition date, to the extent technically feasible, for the purpose of providing emergency and DTV transition information to viewers who may not obtain the necessary equipment to receive digital broadcasts by the transition deadline. The Act intends to provide short-term assistance to viewers as the nation transitions from analog to digital television service. This document adopts the policies to

implement this Act and the analog nightlight program.

**DATES:** Effective January 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Kim Matthews, *Kim.Matthews@fcc.gov*, or Evan Baranoff, *Evan.Baranoff@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120; or John Gabrysch, *John.Gabrysch@fcc.gov*, of the Media Bureau, Engineering Division, (202) 418–7000.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Report and Order* (Order), FCC 09–2, adopted and released on January 15, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

#### Summary of the Notice of Proposed Rulemaking

##### I. Introduction and Background

1. The Short-term Analog Flash and Emergency Readiness Act (“Analog Nightlight Act” or “Act”), Pub. L. 110–459, 122 Stat. 5121 (2008), requires the Commission to develop and implement a program by January 15, 2009, to “encourage and permit” continued analog TV service for a period of 30 days after the February 17, 2009 DTV transition date, to the extent technically feasible, for the purpose of providing “public safety information” and “DTV transition information” to viewers who may not obtain the necessary equipment to receive digital broadcasts by the transition deadline. This Report and Order (“Order”) adopts the requirements to implement the Act.

2. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals. (See Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4 (2006) (codified at 47 U.S.C. 309(j)(14) and 337(e)).) The Analog Nightlight Act is designed to ensure that those consumers who are not able to receive digital signals after the DTV transition on February 17, 2009 will not be left without access to emergency information. The Act is also intended to help consumers understand the steps they need to take in order to restore their television service. (The analog