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[FR Doc. E9–17842 Filed 7–24–09; 8:45 am]

**BILLING CODE 7710-FW-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA–HQ–SFUND–2009–0501; FRL–8934–2]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Notice of Deletion of the Southern California Edison, Visalia Pole Yard Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region IX, is publishing a Direct Final Notice of Deletion for the Southern California Edison (SCE), Visalia Pole Yard Superfund Site (Site) located in northeastern Visalia, Tulare County, California, 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 an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of California, through the Department of Toxic Substance Control (DTSC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. If adverse comment(s) are received, EPA will publish a timely withdrawal of the Direct Final Deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2009–0501 by one of the following methods:

• <http://www.regulations.gov>. Follow online instructions for submitting comments.

• *E-mail:* [lane.jackie@epa.gov](mailto:lane.jackie@epa.gov).  
• *Fax:* (415) 947-3528.  
• *Mail:* Jackie Lane, Community Involvement Coordinator, U.S. EPA Region IX (SFD 6-3), 75 Hawthorne Street, San Francisco, California 94105.

• *Phone:* (415) 972-3236.  
• *Hand delivery:* U.S. EPA Region IX (SFD 6-3), 75 Hawthorne Street, San Francisco, California 94105. Deliveries are only accepted during regular office days and hours of operation (Monday through Friday, 8 a.m. to 5 p.m.). Special arrangements will need to be made with EPA staff for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-2009-0501 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 that EPA will not know your identity or contact information unless it is provided 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 publicly available docket on the Internet. EPA recommends that all submittals include your name and other contact information (*i.e.*, e-mail and/or physical address and phone number). Please note that electronic file submittals should be free of any physical defects and computer viruses and avoid the use of special characters and any form of encryption. If technical difficulties prevent EPA from reading your comment and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information is not publicly available (*e.g.*, CBI or other information restricted by disclosure statute). Certain other materials, such as copyrighted materials, will be publicly available only in hard copy. All other publicly available docket materials are available

either electronically <http://www.regulations.gov> or hard copy at the Site Information repositories below:

U.S. EPA Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105-3901, (415) 536-2000.

Tulare County Public Library, 200 West Oak Street, Visalia, CA 93291, (818) 952-0603.

#### FOR FURTHER INFORMATION CONTACT:

Charnjit Bhullar, Remedial Project Manager, U.S. EPA Region IX (SFD 7-3), 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3960.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

##### I. Introduction

EPA Region IX is publishing this Direct Final Notice of Deletion of the Southern California Edison, Visalia Pole Yard Superfund Site (EPA ID No. CAD980816466), hereinafter VPY or Site, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if conditions at a deleted site or new information warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the 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 to Delete 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 the procedures that EPA is using for this action; Section IV discusses how the Southern California Edison, Visalia Pole Yard Superfund Site meets the NPL deletion criteria; and Section V discusses EPA's action to delete the Site from the NPL.

##### 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:

- (1) Responsible parties or other parties have implemented all appropriate response actions required;
- (2) All appropriate response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- (3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, 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. Deletion Procedures

The following procedures were followed for deletion of this Site:

- (1) The EPA consulted with the State of California's Department of Toxic Substances Control (DTSC) prior to developing this Direct Final Notice of Deletion and Notice of Intent to Delete being co-published in the "Proposed Rules" section of the **Federal Register**.

(2) EPA provided DTSC 30 working days for its review and comment of this Notice and the Notice of Intent to Delete and, following its review, DTSC concurs with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this Direct Final Notice of Deletion, a notice of availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Visalia Times-Delta. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA has placed copies of supporting documents for the proposed site deletion in the Deletion Docket and made these documents 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 deletion action, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and it will not take effect; otherwise, EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments it has already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion 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 site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

#### IV. Basis for Site Deletion

The following information provides EPA's basis for deleting the Site from the NPL:

##### *Site Background and History*

The VPY Site is located at 432 North Ben Maddox Way in northeastern Visalia, Tulare County, California. The Site is bounded on the north by East Goshen Avenue, and on the west by North Ben Maddox Way. Visalia is located approximately midway between Fresno and Bakersfield in the Central Valley of California and is a growing metropolitan area with a population of approximately 110,000. Agriculture is the dominant industry in the region and walnuts, olives, and citrus are the primary crops.

The geologic strata underlying the VPY are composed of alluvial-fan deposits from the Kaweah River and its distributaries. The three hydrostratigraphic units beneath the site include: A shallow aquifer (30 to 50 feet bgs; dewatered since the 1980s), a shallow aquitard (50 to 75 feet bgs), an intermediate aquifer (75 to 100 feet bgs), an intermediate aquitard (100 to 125 feet bgs), and a deep aquifer (125 to about 180 feet bgs). Both aquitards generally consist of silty sand and clay materials, whereas the aquifers are composed primarily of fine-grained and coarse-grained sands. When saturated, the shallow aquitard restricts vertical groundwater movement. Aquifer testing of the intermediate hydrostratigraphic unit indicated a transmissivity of approximately 50,000 gallons per day per foot (gpd/ft). Short-term pumping from the deeper aquifer affects hydrostatic water elevation levels in the intermediate aquifer.

From 1925 to 1980, the Southern California Edison Company operated a fabrication yard to produce wooden poles for use in the distribution of electricity throughout the utility's service territory. Western red cedar trees were logged and transported to the yard, debarked, sized, shaped, and chemically preserved to resist attack from fungi and insects. The chemical preservation treatment process consisted of immersion of the wooden poles in heated tanks of preservative fluid. The treatment system consisted of two above-grade dip tanks, one in-ground full treatment tank, a fluid heating system, hot and cold fluid storage tanks, and underground product transfer lines. SCE primarily used creosote to treat its utility poles. However, in 1968, SCE began using pentachlorophenol (PCP), since PCP treated poles looked "cleaner" and were felt to be more suitable for use in an urban environment. A solution of pentachlorophenol and diesel (petroleum hydrocarbons) was substituted as the preservative for the wood preservation process, which contained low levels of dioxin and furan byproduct impurities of the PCP manufacturing process.

During the service life of the VPY, significant volumes of chemical preservatives were released into subsurface soils and groundwater. Groundwater contamination was first discovered in an on-site well in 1966. Hydrogeologic investigations were conducted between 1966 and 1975 to determine the nature and extent of contamination.

The types of chemicals found at the VPY include creosote compounds, PCP,

and its associated impurities including octachlorodibenzo-P-dioxin. The sources of chemical release of creosote and PCP were primarily leakage from piping between the storage tanks and treatment tanks and cracks in the treatment tanks.

In 1989, the VPY was added to the Federal Superfund National Priorities List (NPL) (54 FR 13296) by the United States Environmental Protection Agency (USEPA).

Cleanup activities were first initiated in 1975, with the installation of extraction wells to remove contaminated groundwater and discharge to publicly owned treatment works (POTW). This action was followed by construction of the slurry wall in 1976–77, to prevent further downgradient migration of Wood Treating Chemicals (WTCs) in groundwater. In 1981, all treating facilities were demolished and approximately 2,300 cubic yards of contaminated soil were removed and disposed of into an off-site Class 1 disposal facility. Additionally, an on-site water treatment plant (WTP) consisting of filtration and adsorption system was built in 1985 and was successful in removing the chemicals of concern (COC) from the treated groundwater. The WTP was modified with additional filtration and gravity separation in 1987, which optimized plant performance by minimizing hazardous waste generation. The WTP pumped, treated, and discharged an average of 0.36 million gallons per day between 1985 and 1997. In 1997 the construction and operation of the Visalia Steam Remediation Project (VSRP) began and the volume of water treated increased to approximately 0.5 million gallons per day. The treated effluent was now discharged to Mill Creek under a National Pollutant Discharge Elimination System (NPDES) permit.

Currently there are no specific redevelopment plans for the Site. The City of Visalia has purchased all of the surrounding property formerly owned by SCE and has indicated an interest in purchasing the subject property (Site) after it is deleted from the NPL. It is understood the City would expand their current General Services operations to include the Site.

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

In 1987, SCE and the State signed an agreement requiring the utility to perform a study to determine the nature and extent of site contamination and to recommend alternatives for final cleanup action.

The Remedial Investigation (RI) (Geraghty & Miller, 1992a) found a distribution of wood treating chemicals (WTCs) in both the vadose zone and saturated zone at the VPY. Additionally, at that time, a non-aqueous phase diesel hydrocarbon plume covered a horizontal area approximately 2.1 acres in size and extended vertically to approximately 125 feet below ground surface (bgs).

WTCs in the vadose zone and were found to be concentrated near points of release from immersion tanks and piping. Horizontal-radial dispersion of WTCs is believed to have occurred in the shallow vadose zones by capillary action of fine grained soils and transported laterally from the source area occurred during times when the vadose zone was saturated. Historical water table elevation levels were about 30 feet bgs and are currently measured at approximately 80 feet bgs. Depression of the regional water table elevation level initially occurred during the state-wide drought of the 1980's, and continues to decline from increased regional groundwater pumping for residential, agricultural, and industrial uses.

The Feasibility Study (FS) (Geraghty & Miller, 1992b) recommended enhanced in-situ biodegradation (EISB) in addition to continuing the pump-and-treat system as the recommended remedial action alternative.

Selected Remedy

The remedial action objectives for the site are:

- Prevent the migration of pole treating chemicals, present in unsaturated soil, to groundwater;
  - Prevent occupational exposure to soil with constituent concentrations exceeding health-based concentrations;
  - Prevent residential and occupational exposure to groundwater with chemical concentrations above remediation goals; and
  - Prevent dermal occupational exposure to groundwater with chemical concentrations above remediation goals.
- The State approved a Remedial Action Plan (RAP) in 1994 and EPA signed a Record of Decision (ROD) on June 10, 1994. The major components of the selected remedy described in the ROD include: In-situ bioremediation, pilot test of steam remediation, property access restrictions, and deed restrictions. The goals of the remedy are to remediate soils to industrial/commercial use levels and to remediate groundwater to drinking water standards. The contaminants of concern for both soil and groundwater are Pentachloropenol (PCP), Benzo(a)Pyrene, and TCDD<sub>eqv</sub>.

Response Actions

In 1997, before implementing the remedy, the Visalia Steam Remediation Project (VSRP), a pilot study approved by DTSC and concurred by EPA, was initiated which used steam injection technique called Dynamic Underground Stripping (DUS) to mobilize chemicals of concern (COCs). The pilot study operated in two phases between May 1997 and June 2000. Phase 1 operations focused on the intermediate aquifer, with injection and extraction wells

screened between 80 and 100 feet bgs. Phase 2 operations began in November 1998 and included steam injection and extraction below the intermediate aquitard, with injection wells screened between 125 and 145 feet bgs. Phase 2 operations continued until the COC removal rate precipitously dropped in June 2000.

Following cessation of the VSRP, an enhanced biological degradation system was installed and operated (SCE, 2001) to augment existing physical processes that were initiated by DUS and to encourage natural biological processes to flourish. This system was in operation from June 2000 until March 2004 and included vadose zone bioventing and saturated zone biosparging coupled with continued groundwater pump-and-treat operation. Construction completion of the enhanced biological degradation system was documented in the 2001 Preliminary Close Out Report (PCOR).

A post-remediation surface soil investigation was conducted at the Site in November 2004. Results for tetrachlorodibenzo-p-dioxin (TCDD) were detected at slightly above Site cleanup standard at four locations. As a result, and following recommendations of the 2005 Five-Year Review, contaminated surface soils between zero and ten feet below grade were removed in July 2006 and remaining soils were verified with confirmatory sampling to be below ROD cleanup standards.

Cleanup Goals

The cleanup goals from the ROD are the following:

	Soil (mg/kg)	Ground water (µg/L)
Petanchlorophenol (PCP) .....	17	1
Benzo(a)Pyrene .....	0.39	0.2
TCDD <sub>eqv</sub> .....	0.001	30

The QA/QC program used throughout the design, construction, and operation of the remediation systems was outlined in a DTSC and EPA approved Quality Assurance Project Plan (QAPP). This program enabled EPA to determine that all analytical results reported were accurate and adequate and ensure satisfactory execution of the remedial action requirements consistent with the ROD.

Duplicate soil and groundwater samples were collected in accordance with the QAPP. Matrix spike, duplicate, and blank samples were analyzed by the laboratory, and the resulting data were provided to DTSC and EPA. The QA/QC

program was also used for the quarterly groundwater monitoring program and cleanup standard attainment demonstration period.

During VSRP operations, the various forms of WTC removal or destruction were documented through continuous monitoring systems and regular volume measurements. These included:

- Non-aqueous Phase Product recovery
- Vapor-phase removal
- Liquid-phase removal

Non-aqueous Phase product was recovered from both dissolved air flotation and oil-water separation methods and transferred to storage tanks where the volume measurements were

escaping the groundwater extraction system.

Groundwater monitoring data from June 2004 through June 2007 were used to verify that all ROD groundwater cleanup standards had been met.

The Remedial Action Completion Report (SCE, 2008) documented that the post-remediation groundwater monitoring and soil removal actions performed met the ROD cleanup standards for soil and groundwater.

The Final Close Out Report (FCOR) was signed on May 19, 2009.

#### *Operation and Maintenance*

A "Covenant to Restrict Use of Property, Environmental Restriction", between Southern California Edison and the Department of Toxic Substances Control (DTSC), was recorded in Tulare County, California on May 23, 2007. This Covenant satisfies the ROD requirement for property access restrictions and a deed restriction. The Covenant outlines use restrictions (as well as Site operation and maintenance (O&M) activities). As remedial action objectives are based on industrial cleanup standards, prohibited Site uses include: Residences, human hospitals, schools, and day care centers for children. Prohibited activities include: Soil disturbance greater than ten feet bgs, and the installation of water wells for any purpose. The Covenant requires the Site owner to conduct an annual inspection of the property and prepare an Annual Inspection Report, describing how all of the site restrictions are being complied with. The Annual Report must certify that the property is being used in a manner consistent with the Covenant, and must be submitted to DTSC by June 15th of each year.

#### *Five-Year Review*

A statutory Five-Year Review was completed in September 2005 (DTSC/USEPA, 2005), pursuant to EPA's *Comprehensive Five-Year Review Guidance* (OSWER No. 9355.7-03B-P, June 2001). The Five-Year Review concluded that remedial actions taken at the Site were protective of human health and the environment in the short term, and institutional controls were needed in order to ensure long term human health protectiveness. A "Covenant to Restrict Use of Property, Environmental Restriction", between SCE and DTSC, was recorded in Tulare County, California on May 23, 2007.

The Five-Year Review also recommended an evaluation of contaminated surface soil; soils which were later removed and any remaining soils were verified with confirmatory sampling to be below the cleanup

standards prescribed in the ROD. The next Five-Year Review will be completed by September 2010.

#### *Community Relations Activities*

Community involvement activities included the development of a Community Relations Plan (CRP), prior to initiation of the RI/FS activities. The CRP included development of a community profile and a list of key local contacts. The community profile indicated the surrounding area was mainly businesses which had little interest in the site cleanup activities. Notification of the issuance of the Draft ROD was made and copies of the Draft ROD were made publicly available at the local public library, DTSC and USEPA Region IX Superfund Records Center. A Public Notice was also placed in the local newspaper. A Public Meeting was held in Visalia, California on October 13, 1993, to provide information on the proposed cleanup. There were no members of the public in attendance at the meeting. A meeting was also held with members of the Visalia City Council, to apprise them of the proposed site cleanup activities. The Council members were supportive of the proposed cleanup actions and deletion of this site from the NPL.

Notification to the public of the initiation and completion of the 2005 Five-Year Review was made through a Public Notice in the Visalia Times-Delta newspaper. A copy of the completed Five-Year Review was placed in the Tulare County Library, USEPA Region IX Superfund Records Center.

Public participation activities for this Site have been satisfied as required in CERCLA 113(k) and Section 117. All documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

#### *Determination That the Site Meets the Criteria for Deletion From the NCP*

This site meets all the site completion requirements specified in OSWER Directive 9320.2-09-A-P, Close Out Procedures for National Priorities List Sites. Specifically, that the following actions specified in the ROD have been implemented: (1) SCE applied an aggressive steam remediation technology to remove COCs in Site soils and groundwater beneath the site; (2) a post-remediation soil investigation verified meeting soil cleanup standards prescribed in the ROD; (3) groundwater has been monitored on a site-wide basis, and the monitoring results from June 2004 through June 2007 show that

cleanup standards specified in the ROD have been met, and; (4) a Land Use Covenant between DTSC and SCE has been recorded with Tulare County that restricts site uses and activities.

The NCP specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence from the State of California, DTSC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site repositories.

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

The EPA, with concurrence of the State of California, DTSC, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the 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 September 25, 2009 unless EPA receives adverse comments by August 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 deletion before its effective date of deletion, and it will not take effect; otherwise, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to 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: July 15, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ 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 to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing “Southern California Edison Co. (Visalia) Visalia, CA.”

[FR Doc. E9-17562 Filed 7-24-09; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 08-65; FCC 09-38]

### Assessment and Collection of Regulatory Fees for Fiscal Year 2008

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, pursuant to section 9(b)(3) of the Communications Act, we eliminate two international regulatory fee categories from our Schedule of Regulatory Fees—International Public Fixed and International High Frequency (HF) Broadcast Stations.

**DATES:** Effective August 18, 2009, which is 90 days from the date of notification to Congress pursuant to section 9(b)(3) of the Communications Act.

**FOR FURTHER INFORMATION CONTACT:** Daniel Daly, Office of Managing Director at (202) 418-1832.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, MD Docket 08-65, FCC 09-38, adopted on May 11, 2009 and released on May 14, 2009. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th St., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## Summary of the Report and Order

1. In our *FY 2008 Report and Order*,<sup>1</sup> we sought comment on eliminating several categories of services from our schedule of regulatory fees.<sup>2</sup> We received no comments on these proposals. For the reasons set forth below, we eliminate the regulatory fee categories for International Public Fixed Radio<sup>3</sup> and International High Frequency Broadcast Stations.<sup>4</sup>

2. There is only one licensee in the International Public Fixed Radio category. In the *FY 2008 Report and Order* we stated that we did not expect any additional licensees or applications in this fee category, and that this category did not generate any regulatory fee revenue for the Commission in FY 2008.<sup>5</sup> As a result, we proposed in our *FY 2008 Report and Order* to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this regulatory fee category.<sup>6</sup> We received no comments on this issue. We, therefore, eliminate this category from the regulatory fee schedule.

3. There are only 25 licensed stations in the International High Frequency Broadcast Stations category. In FY 2008, two entities made payments in this fee category totaling \$1,720. In the *FY 2008 Report and Order* we observed that most of these licensees are tax-exempt organizations (and exempt from paying regulatory fees), and as a result, we proposed to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission.<sup>7</sup> We did not receive any comments on this issue. We, therefore, eliminate this category from the regulatory fee schedule.

4. Pursuant to section 9(b)(3) of the Act, we eliminate the International Public Fixed Radio and International High Frequency Broadcast Station fee categories from our schedule of

regulatory fees.<sup>8</sup> Section 9(b)(4)(B) of the Act requires us to notify Congress 90 days before the effective date of this rule change.<sup>9</sup> In letters dated May 20, 2009, we provided Congress notification of this Order. These permitted amendments to our fee schedule will become effective on August 18, 2009, which is 90 days after notification to Congress, if there is no Congressional objection.

5. A final regulatory flexibility certification for the changes adopted in the Order herein is contained below. The Commission will send a copy of the Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

## Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>10</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”<sup>11</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>12</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>13</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>14</sup>

7. As required by the RFA,<sup>15</sup> an Initial Regulatory Flexibility Analysis (IRFA)

<sup>8</sup> 47 U.S.C. 159(b)(3).

<sup>9</sup> 47 U.S.C. 159(b)(4)(B).

<sup>10</sup> The RFA, see 5 U.S.C. 601 *et seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>11</sup> 5 U.S.C. 605(b).

<sup>12</sup> 5 U.S.C. 601(6).

<sup>13</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

<sup>14</sup> Small Business Act, 15 U.S.C. 632.

<sup>15</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, Title II, 110 Stat. 857 (1996).

<sup>1</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6389 (2008) (“*FY 2008 Report and Order*”).

<sup>2</sup> In this Order, we adopted only the proposals concerning International Fixed Public Radio and International High Frequency Broadcast Stations raised in paragraphs 55 and 56 in the Further Notice of Proposed Rulemaking in the *FY 2008 Report and Order*. The remaining outstanding matters stemming from the August 8, 2008 Further Notice of Proposed Rulemaking may, however, be decided at a later time in a separate Report and Order. See *FY 2008 Report and Order*.

<sup>3</sup> See 47 CFR Part 23.

<sup>4</sup> See 47 CFR Part 73, Subpart F.

<sup>5</sup> *FY 2008 Report and Order* at paragraph 55.

<sup>6</sup> *FY 2008 Report and Order* at paragraph 55.

<sup>7</sup> *FY 2008 Report and Order* at paragraph 56.