

Dated: October 17, 1996.

Stanley L. Laskowski,

*Acting Regional Administrator, Region III.*

40 CFR part 52, subpart XX of chapter I, title 40, is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

#### **Subpart XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(35) to read as follows:

#### **§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(35) Revisions to the West Virginia implementation plan for sulfur dioxide (SO<sub>2</sub>) in New Manchester Grant-Magisterial District, Hancock County submitted on February 17, 1995, as amended on May 3, 1996 by West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from Mr. David C. Callaghan, Director, West Virginia Division of Environmental Protection transmitting a SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO<sub>2</sub> nonattainment area.

(B) Letter of May 3, 1996 from Mr. Laidley Eli McCoy, Ph.D., Director, West Virginia Division of Environmental Protection transmitting an amendment to the February 17, 1995 SIP revision submittal for the New Manchester-Grant Magisterial District, Hancock County SO<sub>2</sub> nonattainment area.

(C) Implementation plan document (as amended, May 3, 1996), entitled "Revision to the West Virginia State Implementation Plan to Achieve and Maintain the National Ambient Air Quality Standards for Sulfur Dioxide in the New Manchester-Grant Magisterial District".

(D) Consent order entered into by and between the State of West Virginia and the Quaker State Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(E) Consent order entered into by and between the State of West Virginia and the Weirton Steel Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(ii) Additional material.

(A) Remainder of West Virginia's February 17, 1995 submittal, as amended on May 3, 1996.

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#### **40 CFR Part 300**

[FRL-5654-1]

#### **National Oil and Hazardous Substances Contingency Plan; National Priorities List Update**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Partial Deletion of the Lakewood Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 10 announces the deletion of a portion of the Lakewood Site, located in Lakewood, Pierce County, Washington from the National Priorities List (NPL). The portion of the site to be deleted is the soil unit and includes all contaminated soil/sludge related to the site. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** November 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ann Williamson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, ECL-113, Seattle, WA 98101; (206) 553-2739.

**SUPPLEMENTARY INFORMATION:** The site to be partially deleted from the NPL is the Lakewood Site located in Lakewood, Pierce County, Washington.

This partial deletion pertains only to the soil unit and includes all contaminated soil/sludge on the Plaza Cleaners property. The soil unit is confined to an area on the Plaza Cleaners property. The Lakewood Site, including the plume of contaminated ground water, is predominantly residential to the north of the Burlington Northern Railroad tracks and commercial/light industrial along Pacific Highway Southwest. Lakewood Water District's two production wells are located within a fenced area immediately across Interstate 5. Residential property lies to the east and McChord Air Force Base to the southeast of the wells.

A plume of contaminated ground water, resulting from former disposal practices at Plaza Cleaners, continues to require treatment via air stripping at the

Lakewood Water District production wells. Therefore, the ground-water unit will remain on the NPL and is not the subject of this partial deletion.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published September 27, 1996 (61 FR 50788). The closing date for comments on the Notice of Intent to Delete was October 26, 1996. EPA did not receive any comments on the proposed partial deletion and has not prepared a Responsiveness Summary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site, or portion of a site, deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

#### **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.

Dated: November 14, 1996.

Chuck Clarke,

*Regional Administrator, U.S. Environmental Protection Agency, Region 10.*

For the reasons set out in the preamble, 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 by removing the entry for Lakewood Site, Lakewood County, Washington, and adding in its place an entry for Lakewood, Lakewood/Pierce County, Washington, to read as follows:

Table 1.—General Superfund Section

State	Site name	City/county	Notes
*****			
WA	Lakewood	Lakewood/ Pierce	P
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P=Sites with partial deletion(s).

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 95

[PP Docket No. 93-253; FCC 96-447]

#### Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This *Tenth Report and Order* modifies the competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses as proposed by the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making*. In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding. Specifically, the rule amendments include eliminating the bidding credits available to women- and minority-owned IVDS applicants and extending bidding credits to small businesses based upon a revised two-tiered small business definition, i.e., providing varying bidding credit amounts to small businesses of different sizes. The *Tenth Report and Order* also clarifies the attribution rules for affiliates of IVDS applicants, and amends the competitive bidding rules to increase the amount of the upfront payments required to participate in the IVDS auction. The intended effect of this action is to establish the competitive bidding rules for the upcoming auction of IVDS licenses.

**EFFECTIVE DATE:** December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Howard Griboff or Christina Eads Clearwater, Wireless Telecommunications Bureau, (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Tenth Report and Order* in PP Docket No. 93-253; FCC 96-447, adopted November 15, 1996 and released November 21, 1996. The complete text of the *Tenth Report and Order* is available for

inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Title: In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding

Tenth Report and Order

#### I. Introduction and Executive Summary

1. In this *Tenth Report and Order*, the Commission modifies its competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses.<sup>1</sup> Specifically, the Commission amends certain provisions concerning the treatment of small businesses, businesses owned by members of minority groups and women, and rural telephone companies (collectively, "designated entities"), in order to address the legal requirements of the Supreme Court's decisions in *Adarand Constructors, Inc. v. Peña* (*Adarand*)<sup>2</sup> and *United States v. Virginia (VMI)*.<sup>3</sup> The Commission also increases the upfront payment amounts for bidding on IVDS licenses in order to encourage sincere bidding. By implementing these modifications, the Commission reiterates that it is committed to fulfilling its statutory obligation to ensure that designated entities are afforded opportunities to participate in the provision of spectrum-based services.<sup>4</sup>

2. As it explained in the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (FNPRM),<sup>5</sup> the Commission was prompted to reexamine its race- and gender-based IVDS auction rules by the

<sup>1</sup> IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service. IVDS licensees may provide information, products, or services to individual subscribers located within a service area and subscribers may provide responses. 47 CFR Section 95.803(a).

<sup>2</sup> \_\_\_\_\_ U.S. \_\_\_\_\_, 115 S. Ct. 2097, 132 L.Ed.2d 158 (1995).

<sup>3</sup> \_\_\_\_\_ U.S. \_\_\_\_\_, 116 S. Ct. 2264, 135 L.Ed.2d 735 (1996).

<sup>4</sup> 47 U.S.C. Section 309(j)(4)(D).

<sup>5</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PP Docket No. 93-253, FCC 96-330, 61 FR 49103 (September 18, 1996). In response to the FNPRM, comments were filed by (1) ITV, Inc. and IVDS Affiliates, LLC (ITV/IAC); (2) Interactive America Corporation, Inc. (IAC); (3) Loli, Inc., Trans Pacific Interactive, Wireless Interactive Return Path, L.L.C., and IVDS On-Line Partnership (collectively, "IVDS Licensees"); and (4) Progressive Communications, Inc. (Progressive). Reply comments were filed by IAC.

Supreme Court's decisions in *Adarand* and *VMI*. The Commission initially adopted these race- and gender-based rules in the *Fourth Report and Order* in this docket in order to fulfill its mandate under Section 309(j) of the Communications Act of 1934, as amended ("Communications Act"), to provide opportunities for businesses owned by members of minority groups and women to participate in the provision of spectrum-based services.<sup>6</sup> After the Commission adopted these rules, however, the Supreme Court held in *Adarand* that any federal program that makes distinctions on the basis of race must satisfy the strict scrutiny standard of judicial review.<sup>7</sup> More recently, the Supreme Court held in *VMI* that a state program that makes distinctions on the basis of gender must be supported by an "exceedingly persuasive justification" in order to withstand constitutional scrutiny.<sup>8</sup> Based on the analysis of *VMI* in conjunction with *Adarand*, the Commission concludes that any gender-based preference maintained in the IVDS auction rules must meet the VMI intermediate scrutiny standard of judicial review.

3. Based upon review of the comments submitted in response to the FNPRM, the Commission also concludes that the present record is insufficient to support either the race-based IVDS auction rules under the strict scrutiny standard or the gender-based rules under the "exceedingly persuasive justification" standard of intermediate scrutiny. The Commission has considered the need to award the remaining IVDS licenses expeditiously and to promote the rapid deployment of new services to the public without judicial delays,<sup>9</sup> as well as the statutory objective of disseminating licenses among a wide variety of applicants, including designated entities.<sup>10</sup> Bearing these factors in mind, the Commission concluded that in order to avoid uncertainty and delay that would likely result from legal challenges to the special provisions for minority- and women-owned businesses in its current

<sup>6</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, PP Docket No. 93-253, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330, 2336-40 (1994) (*Fourth Report and Order*).

<sup>7</sup> *Adarand*, 115 S. Ct. at 2113. *Adarand* explicitly overruled the intermediate scrutiny standard for racial classifications set by the Supreme Court in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 564-65 (1990), which was the standard of review at the time the IVDS rules were adopted. See *Fourth Report and Order*, 9 FCC Rcd at 2338 n.73.

<sup>8</sup> *VMI*, 116 S. Ct. at 2274-76.

<sup>9</sup> 47 U.S.C. Section 309(j)(3)(A).

<sup>10</sup> *Id.* Section 309(j)(3)(B).