

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[FCC 08–204; MM Docket No. 01–120; RM–10126]

**Radio Broadcasting Services; Lincoln and Sherman, IL****AGENCY:** Federal Communications Commission.**ACTION:** Final rule; denial.**SUMMARY:** This document denies an Application for Review filed by Long Nine, Inc. directed to the *Memorandum Opinion and Order* in this proceeding. With this action, the proceeding is terminated.**DATES:** Effective November 20, 2008.**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau, (202) 418–2177.**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 01–120, adopted September 5, 2008, and released October 31, 2008. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the application for review is denied. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8–27666 Filed 11–19–08; 8:45 am]

**BILLING CODE 6712–01–P****FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 08–2328; MB Docket No. 08–128; RM–11460]

**Television Broadcasting Services; Hendersonville, TN****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** The Commission grants a petition for rulemaking filed by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network, licensee of station WPGD–DT, to substitute DTV channel 33 for post-transition DTV channel 51 at Hendersonville, Tennessee.**DATES:** This final rule is effective December 22, 2008.**FOR FURTHER INFORMATION CONTACT:** David J. Brown, Media Bureau, (202) 418–1600.**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–128, adopted October 14, 2008, and released October 22, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document 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.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).**List of Subjects in 47 CFR Part 73**

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.**§ 73.622 [Amended]**

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Tennessee, is amended by adding DTV channel 33 and removing DTV channel 51 at Hendersonville.

Federal Communications Commission.

**Clay C. Pendarvis,***Associate Chief, Video Division, Media Bureau.*

[FR Doc. E8–27659 Filed 11–19–08; 8:45 am]

**BILLING CODE 6712–01–P****DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 40**

[Docket OST–2003–15245]

**RIN 2105–AD55****Procedures for Transportation Workplace Drug and Alcohol Testing Programs****AGENCY:** Office of the Secretary, DOT.**ACTION:** Final rule.**SUMMARY:** On June 25, 2008, the Department issued a Final Rule amending, among other provisions, paragraph (b) of our section pertaining to urine specimen collections. This amendment required direct observation collections for all return-to-duty and follow-up tests. We sought additional comments to this provision on August 25, 2008. On October 22, 2008, the Department issued a notice responding to those comments. The Department did not change the amendment, and determined that the revised paragraph would go into effect, as scheduled, on November 1, 2008. On November 12, 2008, the United States Court of Appeals for the District of Columbia

Circuit issued a stay of the revised paragraph (b). This document, therefore, returns the language of 49 CFR 40.67(b) that existed prior to the November 1, 2008, effective date pending further order of the Court.

**DATES:** November 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jim L. Swart, Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-3784 (voice), (202) 366-3897 (fax), or [jim.swart@dot.gov](mailto:jim.swart@dot.gov); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, same address, (202) 366-9310 (voice), (202) 366-9313 (fax), or [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department issued a final rule on June 25, 2008 (73 FR 35961), which included, among other things, two provisions (49 CFR 40.67(b) and (i)) concerning the use of direct observation (DO) collections, a very significant tool the Department uses to combat attempts by employees to cheat on their drug tests.

Several petitioners, including the Association of American Railroads (AAR), joined by the American Short Line and Regional Railroad Association; the Transportation Trades Department (TTD) of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); the International Brotherhood of Teamsters; and the Air Transport Association (ATA), joined by the Regional Airline Association (RAA), asked the Department to delay the effective date of these two provisions, seek further comment on them, and reconsider them. In response, the Department issued a notice delaying the effective date of 49 CFR 40.67(b)—the provision for making DO collections mandatory for all return-

to-duty and follow-up tests—until November 1, 2008 (73 FR 50222; August 26, 2008). The Department opened a comment period on that provision, which closed on September 25, 2008. The Department did not delay the effective date of 49 CFR 40.67(i), and that provision went into effect, as scheduled, on August 25, 2008.

The Department fully considered the comments filed in the public docket regarding the amendment to 49 CFR 40.67(b). On October 22, 2008, at 73 FR 62910, the Department issued a notice responding to the comments and stated “the Department remains convinced that conducting all return-to-duty and follow-up tests under DO is the most prudent course from the viewpoint of safety.” (73 FR 62918) The Department decided not to change the amendment and announced that the revised 49 CFR 40.67(b) would go into effect, as scheduled, on November 1, 2008.

On October 24, 2008, several of the petitioners described above again petitioned the Department for further postponement of the final rule regarding 49 CFR 40.67(b). On October 30, 2008, the Department denied the petition. Several of the petitioners also filed a motion for stay with the United States Court of Appeals for the District of Columbia Circuit. On October 31, 2008, the Court issued a temporary administrative stay to allow more time for the court to consider the request for stay. On November 12, 2008, the court issued a further order to stay the effectiveness of section 40.67(b) (*BNSF Railway Company v. Department of Transportation*, D.C. Circuit, September Term 2008, No. 08-1265, November 12, 2008). This stay will remain in effect until the court issues a decision on the merits of petitioners’ challenge to the provisions of 40.67(b).

Therefore, DO collections for return-to-duty and follow-up testing will continue to be an employer option, rather than mandatory. All other

requirements of 49 CFR part 40 that went into effect on August 25, 2008, including the DO provision at 40.67(i) [checking for prosthetic and other devices used to carry “clean” urine and urine substitutes] will remain in effect.

Therefore, the revised section 40.67(b), as issued in the Department’s final rule on June 25, 2008, is removed from the CFR in order to comply with the court’s stay, and the prior version of 49 CFR 40.67(b), which the department reinstates with this document, will remain in effect until further notice.

Issued this 17th day of November, 2008, at Washington, DC.

**Jim L. Swart,**

*Director, Office of Drug and Alcohol Policy Compliance.*

**49 CFR Subtitle A—Authority and Issuance**

■ For reasons discussed in the preamble, the Department of Transportation is amending part 40 of Title 49 Code of Federal Regulations, as follows:

**PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS**

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

**Authority:** 40 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. Section 40.67 is amended by revising paragraph (b) to read as follows:

**§ 40.67 When and how is a directly observed collection conducted?**

\* \* \* \* \*

(b) As an employer, you may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

\* \* \* \* \*

[FR Doc. E8-27617 Filed 11-17-08; 4:15 pm]

**BILLING CODE 4910-9X-P**