

Approximately 90 of these small TV broadcast television stations are affiliates of the WB or UPN networks and may be affected by our rule change. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected.

46. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The *R&O* imposes no reporting, recordkeeping, or compliance requirements.

47. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

48. As indicated, the *R&O* allows licensees to affiliate with a network entity that maintains two or more networks unless such multiple networks consist of more than one of the "big four" networks (NBC, ABC, CBS and Fox). This eliminates the bar on affiliation with an entity that maintains one of the "big four" networks and the UPN and/or WB networks. All significant alternatives, *i.e.*, retention of the existing rule, modification of the dual network rule altogether, were considered in the Commission's 1998 biennial review of its broadcast ownership rules (MM Docket No. 98-35) and herein. In the Biennial Review proceeding the Commission tentatively determined that elimination of the subject provision would be in the public interest. The Commission considered the results of this top-to-bottom review of the subject rule in its consideration of alternatives to the course proposed herein in the instant proceeding. The instant action provides television

licensees, including those considered to be "small businesses," with increased flexibility with regard to the broadcast networks with which they may affiliate. It also may help small stations that are affiliated with the UPN or WB networks survive and prosper in an increasingly competitive media marketplace. Finally, it gives the four major and two emerging broadcast television networks, none of which are small businesses, more merger flexibility.

49. *Report to Congress.* The Commission will send a copy of this *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

50. Accordingly, pursuant to the authority contained in 47 U.S.C. 154(i) and (j), 303(r), 308, 310 and 403, as amended, 47 CFR part 73 is amended as set forth in "Rule Change."

51. Viacom, Inc.'s, temporary waiver of 47 CFR 73.658(g) of the Commission's Rules, will be extended until the effective date of this rule amendment.

52. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**  
*Deputy, Secretary.*

#### List of Subjects in 47 CFR Part 73

Television.

#### Rule Change

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, and 336.

2. Section 73.658 is amended by revising paragraph (g) to read as follows:

#### § 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

\* \* \* \* \*

(g) *Dual network operation.* A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations *unless* such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were "networks" as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox, and NBC).

\* \* \* \* \*

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BILLING CODE 6712-01-U

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket OST-99-6578]

RIN 2105-AC49

#### Procedures for Transportation Workplace Drug and Alcohol Testing Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Request for comments on final rule.

**SUMMARY:** On December 19, 2000, the Department of Transportation published its final rule on drug and alcohol testing procedures. One provision of this rule requires employers to inquire into the drug and alcohol testing records of applicants for employment. A group of maritime industry organizations requested that the Department provide a comment period on this provision. In response to this request, the Department is opening a comment period for 30 days.

**DATES:** Comments on 40 CFR 40.25 must be received by July 16, 2001.

**ADDRESSES:** Comments should be sent to Docket Clerk, Attn: Docket No. OST-99-6578, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9:00 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically.

Instructions for electronic submission may be found at the following web address: <http://dms.dot.gov/submit/>. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: <http://dms.dot.gov/search/>.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590, 202-366-9306 (voice), 202-366-9313 (fax), or bob.ashby@ost.dot.gov (e-mail).

**SUPPLEMENTARY INFORMATION:** On December 19, 2000 (65 FR 79462), the Department published a final rule revising its drug and alcohol testing procedures (49 CFR Part 40). One provision of this rule, § 40.25, requires employers to make inquiries about the drug and alcohol testing history of applicants for employment in jobs involving the performance of safety-sensitive functions. The employee must provide a written consent to the inquiry before it is made. The purpose of the provision is to ensure that new employers have the opportunity to learn about recent violations (within two years of the application) of the Department's rules. This information is important to allow employers to comply with the obligation to ensure that employees fully complete return-to-duty process requirements. The provision is based on a long-standing provision of the Federal Motor Carrier Safety Administration's drug and alcohol testing rule (49 CFR Part 382).

The history of this provision in the Part 40 rulemaking is as follows: In § 40.329 of the Department's December 1999 notice of rulemaking (NPRM) on this subject, the Department proposed allowing medical review officers (MROs) to provide information on employees' drug test results to third-party employers under some circumstances. Most commenters, while agreeing that providing information to third-party employers about violations of drug testing rules has value for safety purposes, found the specifics of the proposal problematical. Some urged the Department to find an alternative. Employing a provision like the Federal Motor Carrier Safety Administration provision mandating pre-employment inquiries about applicants' drug and alcohol testing history was one suggestion mentioned in comments (see 65 FR 79475, December 19, 2000). An agency is entitled to respond to comments on a proposed rule by changing, adding, or deleting provisions. As explained in the

preamble to the final rule, this is the course the Department chose in moving from the NPRM's § 40.329 to the final rule's § 40.25.

Nevertheless, a group of maritime organizations requested that the Department open a comment period for the purpose of commenting on § 40.25. While we believe the Department acted fully in accordance with all applicable rulemaking procedures, we will, in response to this request, open a comment period on the provision for 30 days. We are able to be responsive to this request because we have sufficient time, before the August 1, 2001, effective date of the revised Part 40, to consider comments and make any changes we believe to be appropriate without disrupting the implementation of the rule. We do not believe that a longer period is needed to provide comments on this one particular provision of the rule that we published on December 19, 2001. Interested persons should therefore be able to comment readily within the 30-day period.

The groups that requested the opportunity to comment on this provision of the final rule also requested that the Department suspend the implementation of § 40.25. This provision goes into effect August 1, 2001. It is not necessary to suspend a provision that is not yet in effect.

Please note that this opportunity for comment concerns only § 40.25, and the Department is not accepting comments on other provisions of the rule at this time. For readers' convenience, we are reprinting below the text of § 40.25:

*Section 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?*

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

(1) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(2) Verified positive drug tests;  
(3) Refusals to be tested (including verified adulterated or substituted drug test results);

(4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the

requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

#### Regulatory Analyses and Notices

The Department has previously considered all of 49 CFR Part 40 with respect to rulemaking process requirements (see 65 FR 79516–79518; December 19, 2000). The proposed rule, analyses concerning it, and the comments on it can be found in the Department's docket or on the Department's Dockets Management System (DMS) web site. The address for the Dockets office and the DMS web site are listed under **ADDRESSES** above. This action is simply a response to an industry request for, essentially, the reopening of a comment period; the Department does not propose to take any new action through this document that would be subject to statutory or Executive Order requirements concerning the regulatory process.

Issued this 11th Day of June, 2001, at Washington DC.

**Kenneth C. Edgell,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AE92

#### Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 16 Freshwater Mussels and 1 Freshwater Snail (Anthony's Riversnail) in the Free-Flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, AL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), plan to reintroduce 16 federally listed endangered mussels—Alabama lampmussel (*Lampsilis virescens*), birdwing pearl mussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearl mussel (*Hemistena lata*), Cumberland bean (pearl mussel) (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearl mussel (*Quadrula intermedia*), dromedary pearl mussel (*Dromaea dromas*), finere-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), catspaw (purple cat's paw pearl mussel) (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled blossom (pearl mussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearl mussel) (*Epioblasma turgidula*), winged mapleleaf (mussel) (*Quadrula fragosa*), and yellow blossom (pearl mussel) (*Epioblasma florentina florentina*)—and 1 federally listed endangered aquatic snail, Anthony's riversnail (*Atheurina anthonyi*), into historical habitat in the free-flowing reach of the Tennessee River. The geographic boundaries of the nonessential experimental populations (NEPs) extend from the base of the Wilson Dam (River Mile 259.4 (414.0 kilometers)) to the backwaters of the Pickwick Reservoir (RM 246.0 (393.6 km)) and include the lower 5 RM (8 km) of all tributaries that enter the Wilson Dam tailwaters.

These reintroduced populations will be classified as NEPs under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on the evaluation of species experts, none of these species are currently known to exist in this river reach or its tributaries.

These reintroductions are recovery actions and are part of a series of

reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historical ranges. This rule provides a plan for establishing the NEPs and provides for limited allowable legal taking of the aforementioned mollusks within the defined NEP Area.

**DATES:** The effective date of this rule is July 16, 2001.

**ADDRESSES:** The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at 828/258–3939, Ext. 228; facsimile 828/258–5330; and e-mail richard\_biggins@fws.gov.

#### SUPPLEMENTARY INFORMATION:

#### Background

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as “experimental populations.” Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as “experimental.”

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the