

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 4, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 *et seq.*

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(307)(i)(D) and (c)(320)(i)(B) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(307) \* \* \*

(i) \* \* \*

(D) South Coast Air Quality Management District.

(1) Rule 1137 adopted on February 1, 2002.

\* \* \* \* \*

(320) \* \* \*

(i) \* \* \*

(B) South Coast Air Quality Management District.

(1) Rule 109 adopted on May 5, 1989 and amended on May 2, 2003; and, Rule 1131 adopted on September 15, 2000 and amended on June 6, 2003.

\* \* \* \* \*

[FR Doc. 04-1037 Filed 1-21-04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 02-6; FCC 03-288]

#### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects errors in the dates section and the supplementary information section of a **Federal Register** document regarding the Commission modification of its rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. The summary was published in the **Federal Register** on December 24, 2003.

**DATES:** Effective January 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lipp, Attorney, (202) 418-7400 or Regina Brown, Attorney, (202) 418-7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

**SUPPLEMENTARY INFORMATION:** This summary contains corrections to the dates section and the supplementary information section of a **Federal Register** summary, 68 FR 74492 (December 24, 2003). The full text of the Commission's Report and Order and Order on Reconsideration in WC Docket No. 02-6, FCC 03-288 released on December 24, 2003 is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

In rule FR Doc. 03-31683 published December 24, 2003 (68 FR 74492) make the following corrections.

1. On page 74492, in the third column, in the **DATES** section, remove "February 23, 2004" and add "January 23, 2004" in its place. Also in the **DATES** section, remove "§ 54.609(A)(3)(ii)" and add "§ 54.609(d)(2)" in its place.

2. On page 74502, in the first column, in paragraph 69, fourth line, remove "§ 54.609(A)(3)(ii)" and add "§ 54.609(d)(2)" in its place.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket OST-2003-15245]

RIN 2105-AD36

#### Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Revision of Substance Abuse Professional Credential Requirement

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is adding drug and alcohol abuse counselors certified by the National Board for Certified Counselors, Inc. and Affiliates (NBCC), specifically NBCC's Master Addictions Counselor (MAC), to those eligible to be substance abuse professionals (SAPs) under subpart O of 49 CFR part 40.

**DATES:** This rule is effective January 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jim L. Swart, Drug and Alcohol Policy Advisor at (202) 366-3784 (voice), (202) 366-3897 (fax), or at [jim.swart@ost.dot.gov](mailto:jim.swart@ost.dot.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Omnibus Transportation Employee Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation (DOT) established the role of the "substance abuse professional" (SAP). The Department's regulation—49 CFR part 40—requires an employer to provide a covered employee, who engages in conduct prohibited by DOT agency drug and alcohol regulations, a listing of qualified SAPs. In addition, the regulation requires the employee to be evaluated by a SAP and to demonstrate successful compliance with the SAP's evaluation recommendations for education and/or treatment prior to being considered for returning to any DOT safety-sensitive position.

The Department considers the SAP to be the "Gatekeeper" for the return-to-duty process. The SAP represents the major decision point an employer may have in choosing whether or not to place an employee back to safety-sensitive duties following a DOT regulation violation. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees who have engaged in prohibited drug and alcohol related conduct. The job a SAP accomplishes as "Gatekeeper" provides vital help to the employee, the employer, and to the traveling public.

In order to be permitted to act as a SAP in the DOT drug and alcohol testing program, in addition to meeting basic knowledge, training and examination, and continuing education requirements, a person must have one of the following credentials:

- (1) Licensed physician;
- (2) Licensed or certified social worker;
- (3) Licensed or certified psychologist;
- (4) Licensed or certified employee assistance professional; or
- (5) Drug and alcohol counselor certified by the National Association of Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

Part 40, at § 40.283, details how a certification organization wishing to obtain recognition for its members as SAPs can submit to the Department a written petition requesting a review of that petition. The Department stipulates that the organization must first obtain National Commission for Certifying Agencies (NCCA) accreditation through the National Organization for Competency Assurance (NOCA) and meet the requirements of appendix E to part 40. The petition must fully show proof of the organization's meeting these review prerequisites.

The National Board for Certified Counselors, Inc. and Affiliates, 3 Terrace Way, Suite D, Greensboro, NC 27403-3660, petitioned the DOT for inclusion of its MAC as one of the SAP credentials. Upon receipt of the petition, the DOT began a thorough review of the NBCC proposal, to include substantive information documentation and demonstration of the 12 items in appendix E to part 40. In addition, the Department obtained corroboration from appropriate sources that the information provided by NBCC was valid.

Relative to the criteria established by the Department for certifying organizations, the NBCC MAC credential was accredited by the NCCA certification and accreditation process and that accreditation is currently in good standing. The Department used its collaborative relationship with NOCA to ensure that the focus of the NBCC's MAC examination was on substance abuse, and we used that relationship to further ensure that NCCA's accreditation standards were met. In addition to meeting the NCCA accreditation standards, NBCC had to meet the part 40 requirements at appendix E. The NBCC MAC credential process met or exceeded all DOT requirements.

The results of our evaluation supports the conclusion that NBCC has rigorous standards in place and their MAC credential warrants inclusion as an appropriate SAP credential in the Department's drug and alcohol testing regulation. Their program requirements and certification process meet the rigorous requirements of NCCA accreditation. Their standards also satisfy the Department's equally rigorous requirements at appendix E to 49 CFR part 40. Therefore, after careful review of NBCC's petition, supporting documentation, and certification procedures, NBCC's certified MACs will be recognized as eligible to be SAPs.

#### Regulatory Analyses and Notices

This rule is not a significant rule for purposes of Executive Order 12866 or