

outbound calls). Ultratec, Inc., Sprint-Nextel, Hamilton Relay, Inc., *Third Annual Report on Captioned Telephone Service and Petition to Make Captioned Telephone Waivers Permanent*, CG Docket No. 03-123 (June 28, 2006) (*Captioned Telephone Waiver Petition*). The rule requiring CAs to be competent in interpreting typewritten ASL is intended to ensure that CAs can accurately understand and interpret the message the TRS user has typed when the user uses the syntax, grammar, and language unique to ASL. The oral-to-type test is intended to ensure that a CA can meet the 60 words per minute typing speed required by the rules. The rule requiring the handling of sequential calls is intended to ensure that a CA does not disconnect the TRS user after a call if the user desires to make additional calls. See 47 CFR 64.604(a)(1) and (3) of the Commission's rules. The report noted that these waivers expire August 1, 2006, and included a request that the Commission either make these waivers permanent for captioned telephone service provided with the aid of voice recognition technology, or clarify that the "standards for which these waivers have been granted do not apply to captioned telephone relay services that use voice recognition technologies to convey messages." *Captioned Telephone Waiver Petition* at 2.

#### Discussion

The Commission clarifies that these three requirements do not apply to captioned telephone services where the user does not type the outbound message, the CA generates text for the user principally using voice recognition technologies (instead of typing), and the communications assistant does not play a role in setting up a call. First, the Commission recognizes that if a captioned telephone user does not type in making a call, there is never the opportunity for the CA to have to interpret typewritten ASL. Similarly, the Commission recognizes that oral-to-type tests are not relevant to captioned telephone service involving voice recognition technologies, and therefore that oral-to-text tests may appropriately be used as a substitute to assess the proficiency of captioned telephone CAs. Finally, the Commission recognizes that if the captioned telephone user initiates a call by directly dialing the called party, so that the CA does not play a role in setting up the call, the sequential call rule has no application. To the extent these mandatory minimum standards do not apply to the provision of captioned telephone service, as clarified herein, providers need not file

annual reports addressing these requirements.

#### Congressional Review Act

The Commission will not send a copy of the Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

#### Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141 and 0.361, the Order is hereby *adopted*.

Federal Communications Commission.

**Monica S. Desai,**

*Chief, Consumer and Governmental Affairs Bureau.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-1583; MB Docket No. 05-45; RM-11147; RM-11246]

### Radio Broadcasting Service; Atwood, Kansas; Burlington and Flagler, Colorado; McCook and Ogallala, Nebraska

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of KNAB, Inc., allots Channel 292C0 at Atwood, Kansas, as the community's first local aural transmission service (RM-11246). To accommodate the allotment, we also substitute Channel 294C1 for Channel 293C1 at Ogallala, Nebraska, and the modify Station KMCX-FM's license accordingly. We deny the petition filed by Border Alliance of Broadcasters proposing the allotment of Channel 280C0 at Atwood, Kansas, and the proposed changes required to accommodate the proposal (RM-11147). Channel 292C0 can be allotted to Atwood in compliance with the Commission's minimum distance separation requirement with a site restriction of 14.8 kilometers (9.2 miles) southeast to avoid a short-spacing to the licensed site of Station KQNK-FM, Channel 294A, Norton, Kansas. The reference coordinates for Channel 292C0 at Atwood are 39-43-51 North Latitude and 100-53-58 West Longitude. Additionally, Channel 294C1 can be

substituted at Ogallala at Station KMCX-FM's currently authorized site. The reference coordinates for Channel 294C1 at Ogallala are 41-08-02 North Latitude and 101-41-42 West Longitude.

**DATES:** Effective September 18, 2006. A filing window for Channel 292C0 at Atwood, Kansas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order. Because the allotment requires the substitution of Channel 294C1 for Channel 293C1 at Ogallala, Nebraska, any requisite conditions for the channel change will be stipulated in said order.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-45, adopted August 2, 2006, and released August 4, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. 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

Radio, Radio broadcasting.

■ As stated 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.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Atwood, Channel 292C0.

■ 3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 293C1 and by adding Channel 294C1 at Ogallala.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket OST-2006-24112]

RIN 2105-AD57

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is adding state-licensed or certified marriage and family therapists to the list of credentialed professionals eligible to serve as substance abuse professionals under subpart O of 49 CFR part 40. The Department is also making a series of technical amendments to its drug and alcohol testing procedural rule. The purpose of the technical amendments is to clarify certain provisions of the rule as well as address omissions and typographical errors which have been called to our attention since the publication of the final rule in December 2000.

**DATES:** This rule is effective September 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or [bohdan.baczara@dot.gov](mailto:bohdan.baczara@dot.gov) (e-mail).

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose

The Omnibus Transportation Employee Testing Act of 1991 required that an opportunity for treatment be made available to employees required by the regulations to undergo workplace drug and alcohol testing (*i.e.*, 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” of safety for the return-to-duty process. The SAP represents the major decision point an employer may have in choosing whether to return an employee 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 provides vital help to the employee, the employer and to the traveling public. To be permitted to act as a SAP in the DOT drug and alcohol testing program, a SAP must meet basic knowledge, training and examination and continuing education requirements. In addition, 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); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addiction Counselor (NBCC).

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [PL 109-59]. That law required, among many things, that the Secretary conduct a rulemaking that would make state-certified or licensed marriage and family therapists (MFTs) eligible to become SAPs. The Department has been in discussions with the American Association of Marriage and Family Therapists (AAMFT) and notes the significant strides MFTs have made in obtaining state licensure or certification recognition, as well as, their significant

education requirements. Based on the SAFETEA-LU Legislation and discussions with the AAMFT, the Department issued a notice of proposed rulemaking (NPRM) on March 10, 2006 [71 FR 12331], asking for comments and suggestions for adding state-licensed and certified MFTs as a credential eligible for becoming a SAP.

Over the years, the Department met several times with the AAMFT but had not considered MFTs to be an acceptable professional credential for SAPs for one reason—MFTs were not licensed or certified to practice in all 50 States. Currently, except Montana and West Virginia, all states provide licensure or certification for MFTs. Because of the SAFETEA-LU legislation, the Department proposed in the NPRM not to wait until MFTs are licensed or certified to practice in all 50 states as we have for other professions (*i.e.*, physicians, social workers, and psychologists). Therefore, MFTs in states that provide them licensure or certification will become eligible. As soon as Montana and West Virginia offer licensure or certification, MFTs in those states will also become eligible to become SAPs.

There were 14 commentors to the NPRM, which included individuals, labor organizations, third-party administrators and associations. This final rule responds to their comments.

In addition, this rule makes technical amendments to clarify a certain provision of the rule and addresses typographical errors and omissions which have been called to our attention since the publication of the Department’s final rule in 2000. There was no NPRM with respect to these amendments.

##### Discussion of Significant Comments to the Docket

*Comment:* Five commentors supported the Department’s decision to include being a state-licensed or certified MFT as an acceptable credential to become a SAP, citing the general need for more SAPs. One commentor, however, found it unfair that the licensed or certified MFTs were not required to meet the licensing requirements for all 50 States before being included in the list of acceptable credentials. This commentor suggested that the DOT maintain a consistent standard for all licensing boards and not take shortcuts.

*DOT Response:* Because of the legislative requirement to conduct this rulemaking, the expectation that MFTs will meet the licensing requirements for all 50 States in the near future, and the value of including another profession