

or land mobile radio services would be more suitable for conducting television signal intensity tests. A contractor who provides service in support of or who works for only broadcasters or satellite providers would be less independent than a contractor who provides services to neither or to both. In no event, however, should a tester receive compensation that is dependent upon the outcome of the particular test in question. We note in relation to these matters that the satellite provider and the local broadcast station may propose specific candidates to the ARRL for its consideration of their qualifications as well as independence. We recognize, however, that there can be circumstances, particularly in the smaller markets, in which the choice of qualified testers may be limited, and the parties, as well as ARRL, should show reasonable flexibility in applying the criteria. Finally, we expect that a tester that is initially agreed upon or determined by the ARRL to be qualified will conduct the test for which he or she has been designated without later objection by either party. That same tester could then be designated to conduct additional tests without further requalification unless a party raises a specific objection to his or her qualifications or practices.

15. *Event Sequence for On-Site Tests.* In the *First Report and Order*, we described the statutory provisions for waivers and testing with respect to the eligibility of satellite service subscribers to receive distant signals. Essentially, if the ILLR predicts that a subscriber is "served," the subscriber may submit a request for a waiver through the satellite carrier to the network station. If the network station grants the waiver, the subscriber is eligible to receive the distant station via satellite. The statute further provides that if the waiver is denied, the subscriber may submit a request for a test to the satellite carrier. The SHVIA's scheme contemplates that a waiver would be sought from a broadcaster, and a test requested if the waiver is denied, with the broadcaster paying for the test if the test demonstrates that the subscriber does not receive an adequate over-the-air signal. This provides the broadcaster the opportunity to weigh the likelihood of an adequate signal against whether it wishes to incur the testing fee in the absence of an acceptable signal.

16. EchoStar requests that in the interest of efficiency we find it permissible for satellite providers to cause field intensity measurements to be made prior to the formalities of waiver request and possible denial anticipated in SHVIA. Specifically, EchoStar would

have a field strength test occur during the same appointment with a potential subscriber as the antenna installation. Opponents argue, however, that EchoStar's proposal does not follow the three-event sequence for the procedure established in the SHVIA involving a waiver request, waiver denial, and then a request for an on-site test. NAB/MSTV further objects that EchoStar is proposing a "secret" test conducted by persons with "a direct financial stake in the outcome." In reply, EchoStar explains that it is not proposing a secret test and that it proposes to use only an independent qualified tester, indeed, one that is examined and designated by the ARRL. Reiterating its concern for efficiency, EchoStar requests that we not preclude satellite service providers from conducting the test at an earlier stage in the process, "before or as soon as the consumer is predicted to be ineligible."

17. While the procedure advocated by EchoStar may be more expeditious than the one established in the *First Report and Order*, and may provide the protections intended by the statute, it is not the procedure contemplated by the statute. The statute delineates a specific sequence of events preceding testing: waiver request, waiver denial, the subscriber's request for an on-site test, selection of a qualified tester by the satellite carrier and the network station, and then the on-site test, which the broadcaster must pay for if it establishes that the subscriber does not receive an adequate over-the-air signal. As EchoStar's proposed procedure does not follow this temporal sequence specified in the statute, the Commission denies its request.

18. We believe that EchoStar has raised a valid public interest concern with the efficiency of the process used to determine SHVIA eligibility. In this regard, we note that the Commission's call center has received numerous complaints from subscribers stating that their requests for on-site signal tests have been ignored or delayed continuously by both satellite carriers and broadcast stations. The statute demonstrates a concern for prompt resolution of reception controversies, as indicated in the thirty-day time limit for on-site testing. We note that the distant signal copyright protection provisions expire on December 31, 2004, and Congress is currently considering the extension of this provision of the SHVIA. Congress thus has the opportunity to adopt EchoStar's or any other modifications to these procedures when it enacts legislation to extend those provisions. In the interim, we are continuing to monitor the situation closely and expect that the satellite

providers and local network affiliates will coordinate their efforts to implement the SHVIA provisions as Congress intended.

19. Finally, NAB/MSTV has requested that the broadcaster be given 10 days after a test notification to reconsider the waiver denial that led to the test request and to provide an opportunity for interested parties to observe the test. No party has advanced a persuasive reason why a broadcaster cannot make an adequately considered judgment when first presented with a waiver request. The independently determined qualifications of the tester should obviate the need to observe every test. Moreover, such a delayed second-chance procedure would seem, in fact, to provide a broadcaster with incentive to deny all waiver requests when first presented. Accordingly, this request by NAB is denied.

### Ordering Clauses

Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j); Section 1008 of Pub. L. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545; and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), the petitions for reconsideration submitted by EchoStar Satellite Corporation and by the National Association of Broadcasters and Association for Maximum Service Television, Inc. are denied.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 04-15005 Filed 7-6-04; 8:45 am]

BILLING CODE 6712-01-P

---

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 37

[Docket No. OST-1998-3648]

RIN 2105-AC98

### Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

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

**ACTION:** Final rule.

**SUMMARY:** This final rule makes minor changes to the interim final rule published in the **Federal Register** on February 6, 2001 (66 FR 9048). The final rule sets out the ways in which an operator must transmit a copy of the request for accessible service. In addition, the final rule responds to

comments received in response to the interim final rule's request for comment on: (1) Should the Department reconsider its decision to allow extensive use of on-call bus service; (2) should the Department propose requiring acquisition of accessible buses in some situations where on-call service is not permitted; and (3) are there other ways of restoring the balance between the Department's objectives of ensuring accessible buses and service for passengers with disabilities and mitigating the economic impacts on small businesses.

**DATES:** This final rule becomes effective on July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Linda C. Lasley, Office of the Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, (202) 366-4723.

**SUPPLEMENTARY INFORMATION:** The Department's interim final rule made changes to the final rule it published in September 1998 (63 FR 51670). Specifically, the interim final rule removed the provision requiring compensation to passengers who do not receive required service, clarified the information collection requirements, postponed the date for bus companies to submit information on ridership on accessible fixed route service and the acquisition of buses, and designated a different address for regulated parties to submit the required information. The interim final rule also asked for comment on: (1) Should the Department reconsider its decision to allow extensive use of on-call bus service; (2) should the Department propose requiring acquisition of accessible buses in some situations where on-call service is not permitted; and (3) are there other ways of restoring the balance between the Department's objectives of ensuring accessible buses and service for passengers with disabilities and mitigating the economic impacts on small businesses.

**Discussion of Comments**

The Department received five comments on its interim final rule. It received comments from the American Bus Association, the Paralyzed Veterans of America, Coach USA, Inc., the Disability Rights Education and Defense Fund and the Hawaii Disability and Communication Access Board. Generally, all of the comments supported a confirmation number for passengers requesting service. Only the Hawaii Disability and Communication Access Board seemed to disagree with

the confirmation number approach because it advocates restricting the use of 48-hour on-call service. In any event, the DOT agrees with the majority of commenters that a confirmation number would be appropriate in certain situations. Thus, Over-the-Road Bus Companies (OTRB) may respond to a request for service in one of three ways. First, a copy of the Service Request Form can be mailed to the passenger the next business day after the request is received. Second, if the person making the request has email access, the OTRB can provide a confirmation number, which verifies that the Service Request Form has been filled-out electronically and the passenger will receive a paper copy of that request when she or he arrives for the service. Third, for passengers with facsimile machines, the OTRB can fax a copy of the Service Request Form twenty-four hours after receiving the request. If service is denied when the passenger arrives, then a completed form indicating the denial of service must be given to the passenger at that time. If service is denied before the passenger shows up for the requested service, then a completed form indicating the denial of service may be transmitted in one of the three ways outlined above.

The Paralyzed Veterans of America and the Disability Rights Education and Defense Fund noted that the interim final rule did not make the clarification that only one request has to be made for the entire trip (legs and return included). A clarification, however, was made in the interim final rule with the addition of the following language: "the passenger shall be required to make only one request, which covers all legs of the requested trip \* \* \*". The DOT believes this is a sufficient clarification, and, therefore, that rule language will not be changed in this final rule.

The American Bus Association and Coach USA, Inc. commented that there is no legal justification for reconsidering the 48-hour rule simply because the compensation provision of the rule was judicially invalidated. Without commenting on the legal justification for reconsidering the 48-hour rule, it behooves the agency to allow the 48-hour rule to stand as written, with the exception of the minor changes made today, until compliance, or lack thereof, provides a greater need to reopen the rule. In other words, the Department believes that it will be better able to assess the effectiveness of these rules once it has sufficient data to analyze.

**Regulatory Notices**

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking is not "significant" under Executive Order 12866 or the Department of Transportation's Regulatory Policies and Procedures because there are no costs and this final rule makes only minor changes.

*Executive Order 13132 (Federalism)*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13084*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. In the Department's final rule published on September 28, 1998 (63 FR 51670), the Department analyzed the costs of this rule and the impact on small entities. This final rule makes minor changes regarding the way an OTRB provides notice to a passenger that a request for accessible service has been received. Since the costs of this rulemaking were previously analyzed, and this final rule makes minor changes

that could reduce the paperwork burden on the OTRB industry, I hereby certify that this rule will not have significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

As required by the Paperwork Reduction Act of 1995, the Department submitted an Information Collect Request to the Office of Management and Budget (OMB). We requested comments on our estimates in a Notice and Request for Comments published on February 5, 2002 (67 FR 5353). The Department received approval on the Information Collection Request from OMB and received an information collection number (OMB No. 2100-0019).

#### **List of Subjects in 49 CFR Part 37**

Buildings and facilities, Buses, Civil Rights, Individuals with Disabilities, Mass Transportation, Railroads, Transportation.

■ For the reasons set forth in the preamble, 49 CFR Part 37 is amended as follows:

#### **PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)**

■ 1. The authority for Subpart H, Part 37 continues to read as follows:

**Authority:** 42 U.S.C. 12101-12213; 49 U.S.C. 322.

■ 2. Revise § 37.213 (a)(2) and (b)(2) as follows:

#### **§ 37.213 Information collection requirements.**

(a) \* \* \*

(1) \* \* \*

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall

transmit the form within twenty-four hours of the request for transportation.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger, and whenever the equivalent service is not provided, in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request for equivalent service;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request for equivalent service is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for equivalent service.

\* \* \* \* \*

Issued in Washington, DC, this 22nd day of June, 2004.

**Norman Y. Mineta,**

*Secretary of Transportation.*

[FR Doc. 04-15414 Filed 7-6-04; 8:45 am]

**BILLING CODE 4910-62-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AJ23**

#### **Endangered and Threatened Wildlife and Plants; Removal of Federal Protection Status From Two Manatee Protection Areas in Florida**

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

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take action to withdraw two areas in Florida from those designated as federally established manatee protection areas. We are taking this action under the Endangered Species Act (ESA) of 1973 and the Marine Mammal Protection Act

(MMPA) of 1972. The areas we are withdrawing from designation are manatee refuges, in which watercraft operators are required to operate at slow speeds throughout the year. Specifically, the sites are the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County. Manatee protection will not be diminished under this action because the sites will remain protected under State law.

**DATES:** This rule is effective August 6, 2004.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Dr, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, Jim Valade, or Jeremy Simons (see **ADDRESSES** section), telephone 904/232-2580; or visit our Web site at <http://northflorida.fws.gov>.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531-1544) (32 FR 4001), and is further protected as a depleted stock under the MMPA (16 U.S.C. 1361-1407). The Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (Domning and Hayek 1986), lives in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

#### **Watercraft Collisions**

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations conducted in Florida from 1978 to 2002 indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft. This number may underestimate the actual number of watercraft-related mortalities since many of the mortalities