

Acquire easement off ends of runway 4/22  
 Mark runway 4/22 for non-precision  
 approaches  
 Expand commuter apron  
 Environmental assessment for runway 17/35  
 extension  
 Extend taxiway "M"  
 Extend runway 17/35  
 Airfield fencing  
 Upgrade tower communications  
 Land acquisition

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Non-scheduled large certified route air carriers filing RSPA form T-100.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person, may upon request, inspect the application, notice and other documents germane to the application in person at the Valdosta-Lowndes County Airport Authority.

Issued in College Park, Georgia on September 3, 2003.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 03-23184 Filed 9-10-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-5880]

#### Hours of Service of Drivers: Exemption Application From Hulcher Services, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Denial of application for exemption.

**SUMMARY:** The FMCSA denies the petition of Hulcher Services, Inc. (Hulcher) for an exemption from the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs). Hulcher argues that an exemption would ensure its ability to respond to railroad accidents and help restore service. The FMCSA disagrees. We deny the exemption because Hulcher did not explain how granting the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety achieved by complying with FMCSR driving time limitations.

**DATES:** The denial of this petition is effective on September 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary M. Moehring, Driver and Carrier

Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, (202) 366-4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Waivers and Exemptions*

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107). Section 4007 of TEA-21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's authority to grant exemptions from the FMCSRs. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. On December 8, 1998, the Federal Highway Administration (FHWA) published an interim final rule implementing section 4007 of TEA-21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process them.

##### *Notice of Application*

On July 30, 1999 FHWA published a Notice of application from Hulcher requesting an exemption from 49 CFR 395.3 which provides requirements concerning the maximum driving time for drivers of commercial motor vehicles (CMVs) (64 FR 41483). Hulcher further requested that if this exemption was not possible, the agency permit its drivers a 24-hour restart period for the 70 hour rule after 24 consecutive hours off-duty, irrespective of the number of days used to accumulate the previous 70-hours on-duty. In that same Notice, FHWA announced its intent to deny the application for exemption and requested comments.

Hulcher provides assistance in restoring rail service after train accidents. The company responds to emergencies, makes necessary repairs to tracks and switches and lifts locomotives and rail cars back onto the tracks. Its equipment is maintained and staged strategically throughout the United States in order to respond quickly and efficiently to railroad emergencies. The company states that its average movement of equipment and personnel is less than 200 miles.

##### *Preliminary Determination To Deny the Exemption*

In the Notice of preliminary determination to deny the exemption,

FHWA stated its intent to deny because there was no scientific or safety-performance data to support it. In particular, FHWA noted:

(1) Hulcher had failed to explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the hours-of-service (HOS) regulations.

(2) Hulcher failed to describe the impacts it could experience if the exemption was not granted, such as the inability to test new safety management control systems.

(3) Hulcher failed to describe any emergencies that the company has been unable to respond to because of compliance with the hours-of-service regulations.

(4) Hulcher did not explain why the current emergency relief exemption is insufficient for the incidents to which they typically respond.

(5) Hulcher did not provide specific terms or conditions that the agency could evaluate beforehand to ensure that an acceptable level of safety would be achieved, nor did it provide a means to monitor the drivers' safety performance. FHWA stated that Hulcher's safety recognition program was not an acceptable alternative to complying with well-defined terms and conditions that the agency could evaluate during the period of the exemption.

(6) With regard to the request for the 24-hour restart period, FHWA noted that it was unaware of any data that would support granting such an exemption.

#### Discussion of Comments

The FMCSA received five comments to the notice to propose to deny Hulcher's application for exemption. Three comments supported the intent to deny, one was opposed, and one generally favored a relaxation of the HOS rules.

Hulcher, in its response to the intent to deny, stated:

(1) It had not encountered instances in which the HOS prevented it from responding to an emergency, but was being proactive in addressing what it viewed as a potential problem of being delayed in route;

(2) It has an exceptionally strong and comprehensive company safety culture, including daily safety meetings, as well as safety meetings before and after returning from an incident. Hulcher further stated that it would never consider allowing one of its employees to operate a CMV without adequate rest;

(3) FMCSA's failure to grant the exemption may result in emergency

response personnel concentrating on HOS regulations and paperwork, thereby diverting attention from the main objective of the incident response;

(4) Operation of CMVs is subordinate to its primary business, and most movements are 200 miles or less;

(5) States routinely issue special emergency permits for the movement of Hulcher's oversize or overweight loads, and by issuance of these permits, States have declared the move an emergency;

(6) It wants to receive the same consideration in the FMCSRs as Oil Field Operations, Ground Water Well Drilling Operations, Agricultural Operations, and Construction Materials, and Equipment.

Ms. Rachelle Biggs stated a general observation that the current system of HOS regulation is unduly complex and the regulations should be changed to provide for an 80-hour/8-day maximum on-duty period and a total restart after 24 hours off-duty. The comment did not specifically identify whether Hulcher should be granted or denied its petition.

The Brotherhood of Maintenance of Way Employees (BMWE) supported the intent to deny on the basis that Hulcher is routinely contracted by railroads in the case of a derailment or other railroad accident, and that these situations do not meet the definition of emergency in 49 CFR 390.5. In addition, BMWE stated its concern that the exemption request would be used most frequently, not in responding to an emergency, but rather, subsequent to the employees' cessation of work as laborers and heavy equipment operators. BWME saw the exemption as a means to get more hours of on-duty time rather than a legitimate exemption which permitted workers to get to the site of an emergency. BMWE submits that an exemption from the HOS regulations for employees who have often worked under extreme physical and environmental conditions without sufficient rest is contrary to public safety.

The International Brotherhood of Teamsters (IBT), while supporting the intent to deny, stated its belief that the agency does not have the statutory authority to grant exemptions from HOS regulations.

The Advocates for Highway and Auto Safety (AHAS) also supported the denial, stating that Hulcher had failed to demonstrate that its company's services required elimination of the maximum driving and on-duty hours, or of the minimum off-duty period following the exhaustion of available driving and total duty hours at the end of a seven- or eight-day driver tour of duty. The AHAS also noted its objection to the agency's issuance of notices requesting public

comment on exemption applications that include an indication of the agency's predetermination on the merits.

#### FMCSA Decision

The FMCSA has carefully reviewed Hulcher's application for an exemption from the HOS regulations and the comments on the request for the exemption, and has decided to deny the application. As stated in the proposal to deny the application, Hulcher has not demonstrated how it will meet the standard of an exemption, and achieve a level of safety equal to, or greater than, the level of safety that would be achieved by complying with the HOS regulations.

The fact that Hulcher has a safety program that it believes exceeds the industry norm is, in itself, an insufficient reason to grant an exemption. The fact that States grant permits for oversize or overweight loads, and may, in some cases, designate these permits as emergency permits, does not constitute an emergency as defined in 49 CFR parts 390.5 and 393.23. In fact, the issuance of oversize and overweight permits is a routine matter for most State highway and transportation departments.

Hulcher has not demonstrated that the current emergency relief provisions of 49 CFR 393.23 are inadequate to meet incidents to which they typically respond. In fact, Hulcher indicates that it has not had any difficulty to date, but is concerned about potential problems that might occur in the future. In the absence of any defined need, it would be inappropriate to grant the request.

Specific statutory exemptions granted to several industries by Congress in section 345 of the National Highway Designation Act of 1995 (Pub. L. 104-59) (109 Stat. 568, 613) are not relevant to Hulcher's request for an exemption under 49 CFR 381.310.

With regard to the comments of the AHAS on the agency's issuance of notices that include preliminary determinations, the FMCSA has discontinued that practice.

Finally, the FMCSA notes that on April 28, 2003, it published new hours-of-service (HOS) regulations for commercial motor vehicle drivers (68 FR 22456). The compliance date for the new regulations is January 4, 2004. Under the new regulations, drivers of CMVs will be allowed to restart the 60- or 70-hour "clock" after taking 34 or more consecutive hours off-duty. This provision may provide some of the flexibility Hulcher sought in its application.

Issued on: September 8, 2003.

**Pamela M. Pelcovits,**

*Office Director, Policy, Plans, and Regulation.*

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BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

#### RAILROAD FREIGHT INDEX

Year	Index	Deflator percent
1991 .....	409.50	100.00
1992 .....	411.80	99.45
1993 .....	415.50	98.55
1994 .....	418.80	97.70
1995 .....	418.17	97.85
1996 .....	417.46	98.02
1997 .....	419.67	97.50
1998 .....	424.54	96.38
1999 .....	423.01	96.72
2000 .....	428.64	95.45
2001 .....	436.48	93.73
2002 .....	445.03	91.92

<sup>1</sup> Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201, 8 I.C.C. 2d 625 (1992)*, raised the revenue classification level for Class I railroads from \$50 million to \$250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from \$10 million (1978 dollars) to \$20 million (1991 dollars).

**EFFECTIVE DATE:** January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Scott Decker (202)-565-1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]