

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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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	¹ 100.00
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

¹ 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.]