

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Street at the above address or on (202) 267-9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopsis of the currently approved public information collection activity, which will be submitted to OMB for review and renewal: 2120-0007, Flight Engineers and Flight Navigators. This information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. The information is also to determine training course acceptability for those schools training flight engineers or navigators. The respondents are an approximate 2700 people applying for flight engineer or flight navigator certificates, and approximately 25 flight engineer schools.

Issued in Washington, DC, on July 23, 1999.

**Patricia W. Carter,**

*Acting Manager, Standards and Information Division, APF-100.*

[FR Doc. 99-19623 Filed 7-29-99; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Lawrence County, Ohio and Greenup County, Kentucky

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for transportation improvements proposed in Lawrence County, Ohio and Greenup County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Scott McGuire, Field Operations Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280-6852.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to replace the Ironton-Russell Bridge (93C) across

the Ohio River and connecting the two communities of Ironton, Ohio and Russell, Kentucky.

The purpose of the transportation improvement is to replace the structurally deficient and functionally obsolete bridge with a facility that meets current design standards while providing safe and efficient travel opportunity. Actions under consideration include (1) replacement of the existing facility on the existing alignment, (2) replacement on an adjacent location and (3) taking no action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. On August 19, 1999 the preliminary corridors under consideration will be presented to the public and, in the year 2000, a public meeting will be held to obtain input on a preferred alignment. A Public Hearing will be held and may also take place in the year 2000. Public notice will be given of the exact time and place of the meetings and the hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action or the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 26, 1999.

**Scott A. McGuire,**

*Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.*

[FR Doc. 99-19581 Filed 7-29-99; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-99-5880]

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

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of application for exemption and intent to deny exemption; request for comments.

**SUMMARY:** The FHWA is announcing its preliminary determination to deny the application of Hulcher Services, Inc. (Hulcher) for an exemption from the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs). Hulcher requested an exemption because it believes the current requirements interfere with the efficiency and effectiveness of the company's core business, emergency and disaster response to railroad accidents. The FHWA intends to deny the exemption because Hulcher did not 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 regulations. Also, Hulcher did not describe the impacts (e.g., inability to test innovative safety management control systems, etc.) it could experience if the exemption is not granted by the FHWA. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

**DATES:** Comments must be received on or before August 30, 1999.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. FHWA-99-5880, the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

## SUPPLEMENTARY INFORMATION:

**Electronic Access**

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

**Background**

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Public Law 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 (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the exemption.

The TEA-21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level

that would be achieved by complying with the regulation.

On December 8, 1998, the 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 persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions.

**Hulcher's Application for an Exemption**

Hulcher applied for an exemption from 49 CFR 395.3, which provides requirements concerning the maximum driving time for drivers of commercial motor vehicles (CMVs). A copy of the application is in the docket identified at the beginning of this notice. Generally, under the current regulations drivers may not drive more than 10 hours following eight consecutive hours off duty, or for any period after being on duty (this includes all driving time, and all time spent working, but not driving) for 15 hours following eight consecutive hours off duty. In addition, drivers may not drive after being on duty 60 hours in any seven consecutive days if the employing motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the employing motor carrier operates CMVs every day of the week (70-hour rule). Hulcher requested an exemption to all these requirements. If such an exemption is not possible, the company asked that the FHWA consider allowing its drivers a 24-hour restart for the 70-hour rule—after 24 consecutive hours off-duty, the driver would be allowed to drive a CMV irrespective of the number of days used to accumulate the previous 70-hours on-duty.

Hulcher is a business that provides assistance in restoring rail service after train accidents, including hazardous materials incidents. 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 claims that its average movement of equipment and personnel is less than 200 miles. Hulcher states:

The company's dilemma concerns, the interpretation by the company, of the requirement of [49 CFR 395.3]. The company's heavy equipment operators, and laborers, who are CDL qualified, and who would occasionally operate a CMV, maintain

a daily record of duty status. These personnel are performing daily activities other than operating a CMV, and not necessarily associated with a CMV. The company's practice has been to record hours worked daily as, on duty not driving, in a driver's daily log. The duties being performed are no different from the duties of a heavy equipment mechanic. A mechanic whose daily job function, and classification, is to maintain the equipment at a company owned location and, on occasion, if CDL qualified, may be needed to operate a CMV. The mechanic would not be required to maintain a drivers daily log record, but would be accountable for seven days prior plus the day he would be operating a CMV. Because of this company's current practice to record a duty status of all hours of every day, available hours of service have been significantly reduced, when needed to respond to an emergency. These personnel may go for days or weeks, without operating a CMV, but may report daily to a company owned facility. These personnel are relieved from duty daily for at least fifteen hours while at these locations. In the event, our operators and laborers have been operating heavy equipment at an emergency scene, they are still showing a daily record of duty status as "on duty not driving." Once the job is finished, and prior to transporting the equipment back to its staged location, all heavy equipment operators, and laborers, who will be operating a CMV, for the return trip, will be housed at a motel or other accommodations in order that they be rested before operating the CMV. Several of these personnel may have exhausted all available hours of service during this job. In order to comply with the requirements of [49 CFR 395.3], they will need to stay off duty up to an additional two days before regaining available hours. These operators and laborers can not possibly be more rested after forty-eight or more hours off duty, and away from home, than after having been off duty for at least twenty-four hours and returning home, and being placed off duty. The company, and its Managers, will not allow a fatigued individual to operate any company owned vehicle, and or equipment.

Hulcher submitted information on its "Safety Recognition Program" which is intended to reward employees who have been successful in preventing both accidents and injuries. One point (each point has a cash value) is earned for each month that an employee works without having a "chargeable" accident or injury. If the employee has a chargeable accident or injury he or she loses points (two points per accident or injury). Bonus points may be earned based on the number of consecutive months or years the employee works without an incident, and based on the performance of the employee's division. The information provided does not show any discernible linkage between the recognition program and compliance with safety regulations or company guidelines.

**Basis for Preliminary Determination to Deny the Exemption**

The FHWA has carefully reviewed Hulcher's application for an exemption to the maximum driving time regulation and its alternate request for the use of a 24-hour restart to the 70-hour rule, and does not believe there is scientific or safety-performance data to support granting either request. Hulcher has 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 regulations. Also, Hulcher did not describe the impacts (e.g., inability to test innovative safety management control systems, etc.) it could experience if the exemption is not granted by the FHWA. Although Hulcher argues that regulatory relief is necessary to respond to disasters and emergencies, there is no discussion of specific disasters or emergencies the company has been unable to respond to because of compliance with the hours-of-service regulations. The FHWA does not believe that an exemption granted under the authority of section 4007 of the TEA-21 is necessary for motor carriers to obtain regulatory relief to respond to legitimate emergencies.

The FMCSRs include an emergency relief exemption (49 CFR 390.23) from almost all of the FMCSRs, including the hours-of-service requirements, for any motor carrier or driver operating a CMV to provide relief during an emergency (as defined<sup>1</sup> in 49 CFR 390.5) subject to certain limitations. For regional emergencies, the emergency relief exemption is effective when an emergency has been declared by the President, the governor of a State, or their authorized representatives having authority to declare emergencies; or certain officials in one of the FHWA's Resource Centers have declared that a regional emergency exists which justifies an exemption from parts 390 through 399. In the case of local

emergencies, the exemption is effective when an emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or certain officials in one of the FHWA's Resource Centers have declared that a local emergency exists which justifies an exemption from parts 390 through 399 of the FMCSRs.

The motor carrier or driver is subject to the requirements of parts 390 through 399 upon termination of direct assistance to the regional or local emergency relief effort. Direct assistance ends when a driver or CMV is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches the driver or CMV to another location to begin operations in commerce. When the driver has been relieved of all duty and responsibilities after providing direct assistance to a regional or local emergency relief effort, the driver may not operate a CMV in commerce until all the requirements of § 395.3 are met and, the driver has had at least 24 consecutive hours off-duty when the driver has operated in excess of the 60- or 70-hour rules.

Hulcher has not explained why the current emergency relief exemption is not sufficient for the incidents to which they typically respond. Also, Hulcher has not provided an explanation of what it considers an emergency or disaster. The FHWA does not believe that the mere fact that a train accident occurs automatically constitutes an emergency necessitating regulatory relief from the hours-of-service rules. The exemption from all of the hours-of-service limits, as requested by Hulcher, provides no specific terms or conditions that could be evaluated by the agency beforehand to ensure that an acceptable level of safety would likely be achieved, nor does it offer a means to monitor the safety performance of Hulcher's drivers. Under these circumstances, it would be inappropriate to consider granting the request.

With regard to Hulcher's alternate request to use a 24-hour restart to the 70-hour rule, the FHWA is not aware of any research that would support such an exemption. The agency proposed allowing a 24-hour restart for all motor carriers in 1992 (57 FR 37504; August 19, 1992). Nearly 68,000 comments were received in response to the 1992 notice of proposed rulemaking. Virtually no substantive information was presented in these comments to support a change in the regulations. Except in very general terms, the FHWA received little discussion of potential impacts on highway safety that could result from increasing the available on-duty hours.

The FHWA, therefore, declined to make the proposed changes to the rule and, on February 3, 1993 (58 FR 6937), withdrew the proposal and closed the docket.

On November 5, 1996 (61 FR 57252), the FHWA published an advance notice of proposed rulemaking (ANPRM) on all aspects of the hours-of-service regulations. The agency indicated that it was nearing the completion of several research projects and was seeking the results of other relevant research to consider in revising the hours-of-service regulations. To assist the FHWA in gathering all pertinent data to make informed decisions based upon scientific evidence, the FHWA requested assistance in locating any other relevant information, including research, operational tests, or pilot regulatory programs conducted anywhere in the world, that may be used by the agency in developing a revised regulatory scheme for CMV drivers' hours of service. The agency has reviewed all the research reports submitted by commenters to the rulemaking docket, and scientific information obtained through other sources, and is not aware of any data that would support granting an exemption to use a 24-hour restart. Copies of all known research reports, as well as all comments submitted in response to the ANPRM, are available in FHWA Docket No. FHWA-97-2350.

The FHWA recognizes that Hulcher provides an important service needed to restore rail service after an accident or incident, but does not believe it is necessary to grant either a blanket exemption to the hours-of-service regulations or allow a 24-hour restart to the 70-hour rule. There are no reported instances of the hours-of-service regulations preventing Hulcher from responding to a legitimate emergency or a disaster.

Moreover, the FHWA has considered Hulcher's safety recognition program and does not believe it is relevant to the application. Based on the information submitted by Hulcher, drivers are rewarded for not having "chargeable" accidents or injuries or penalized for having such occurrences. The FHWA does not consider this to be an acceptable alternative to complying with well-defined, enforceable terms and conditions that the agency could attempt to evaluate during the period of the exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption application

<sup>1</sup> Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in: a declaration of an emergency by the President, the governor of a State, or their authorized representatives; or by certain officials in one of the FHWA's resource centers near the location in which the emergency occurs; or by other Federal, State, or local government officials having authority to declare emergencies.

from Hulcher. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may deny the exemption at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Authority:** 49 U.S.C. 31136 and 31315; and 49 CFR 1.48.

Issued on: July 22, 1999.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 99-19463 Filed 7-29-99; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33784]

#### **Penn Virginia Corporation— Continuance in Control Exemption— Kanawha Rail Corp.**

Penn Virginia Corporation (Penn Virginia) has filed a notice of exemption to continue in control of the Kanawha Rail Corp. (Kanawha),<sup>1</sup> upon Kanawha's becoming a Class III railroad.

The transaction is scheduled to be consummated on July 29, 1999, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33783, *Kanawha Rail Corp.—Acquisition and Operation Exemption—Winifrede Railroad Company*, wherein Kanawha seeks to acquire and operate approximately 6.47 miles of rail line together with associated rail properties from the Winifrede Railroad Company.

Penn Virginia indirectly exercises control over the Powell River Railroad Company (PRR). PRR is wholly owned by the Powell River Railroad Corporation (PRCC). PRCC, in turn, is wholly owned by Penn Virginia.

Penn Virginia states that: (i) the rail line to be operated by Kanawha does not connect with the PRR (the only other railroad controlled by Penn Virginia);

(ii) the transaction is not part of a series of anticipated transactions that would connect Kanawha with the PRR; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33784, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99-19560 Filed 7-29-99; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33783]

#### **Kanawha Rail Corp.—Acquisition and Operation Exemption—Winifrede Railroad Company**

Kanawha Rail Corp. (Kanawha),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Winifrede Railroad Company and operate approximately 6.47 miles of rail trackage in Kanawha

County, WV (subject line), together with associated rail properties. The subject line extends from its northern terminus at an interchange with CSX Transportation, Inc., at CSX Station 670+30, south along Fields Creek, in Cabin Creek District, to its southern terminus.

Kanawha reports that it intends to consummate the transaction upon the effective date of the exemption. The earliest the transaction can be consummated is July 29, 1999 (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33784, *Penn Virginia Corporation—Continuance in Control Exemption—Kanawha Rail Corp.*, wherein Penn Virginia Corporation has concurrently filed a verified notice to continue in control of Kanawha upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33783, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

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Decided: July 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99-19559 Filed 7-29-99; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF THE TREASURY

#### **General Counsel Designation No. 241; Appointment of Members to the Legal Division Performance Review Board**

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the Legal Division Performance Review Board:

<sup>1</sup> Kanawha was formerly known as Penn Virginia Resources Marketing Corporation.

<sup>1</sup> Kanawha was formerly known as Penn Virginia Resources Marketing Corporation.