

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Birmingham International Airport, Birmingham, Alabama**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham International Airport under the provisions of the aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 17, 1999.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 120 North Hangar Drive, Suite B Jackson, MS39208-2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Mr. Loyce Clark, Director of Planning and Development, of the Birmingham Airport Authority at the following address: Birmingham Airport Authority, 5900 Airport Highway, Birmingham, AL 35212.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Birmingham Airport Authority under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Keafur Grimes, Program Manager, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, MS 39208-2306, Phone 601-965-4628. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 6, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Birmingham Airport Authority was

substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 24, 1999.

The following is a brief overview of the application.

*PFC Application No.:* 99-02-C-00-BHM.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:*

August 1, 1999.

*Proposed charge expiration date:*

September 30, 2000.

*Total estimated PFC revenue:*

\$10,736,857.

*Brief description of proposed project(s):* Rehabilitate Runway 5/23, Taxiway/Hold Apron Improvements, Install Hydrant System, and Rehabilitate Airport Drainage Culvert.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Commercial Operators filing FAA Form 1800-31.

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 Birmingham Airport Authority.

Issued in Jackson, Mississippi on May 11, 1999.

**Wayne Atkinson,**

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

[FR Doc. 99-12512 Filed 5-17-99; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Lubbock International Airport, Lubbock, Texas**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 17, 1999.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark N. Earle, Director of Aviation, at the following address: Mr. Mark N. Earle, Director of Aviation, Lubbock International Airport, 5401 North Martin Luther King Blvd., Lubbock, Texas 79401-9710.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610, (817) 222-5614.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 6, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 3, 1999.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* April 1, 2000.

*Proposed charge expiration date:* August 1, 2002.

*Total estimated PFC revenue:*

\$4,527,023.00

*PFC application number:* 99-04-C-00-LBB.

Brief description of proposed projects:

**Projects To Impose and Use PFCs**

Signs and Graphics Improvements, PFC Application, Entrance Road and

Canopy Improvements, Westport Access Road, ADA/Maintenance Elevator, Reconstruct/Repair Runway 17R-35L, Westport Apron and Taxiway Expansion, Taxiway B-1, and ADA Aircraft Access.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 air charter operators who operate aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lubbock International Airport.

Issued in Fort Worth, Texas on May 7, 1999.

**Naomi L. Saunders,**  
Manager, Airports Division.

[FR Doc. 99-12515 Filed 5-17-99; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA DOCKET NO. FHWA-99-5473]

#### Qualification of Drivers; Exemption Application; Vision

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

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

**SUMMARY:** This notice announces the FHWA's preliminary determination to grant the application of James F. Durham for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSR). Granting the exemption will enable Mr. Durham to qualify as a driver of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** Comments must be received on or before June 17, 1999.

**ADDRESSES:** Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room

PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments will be available for examination at the above address between 9 a.m. and 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:** For information about the vision exemption in this notice, Ms. Sandra Zywockarte, Office of Motor Carrier Research and Standards, (202) 366-2987; for information about the legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. 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 can access all comments received by the U.S. DOT Dockets, Room PL-401, 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 **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 July 18, 1997, Mr. Durham applied for a waiver of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. The FHWA denied his application on September 11, 1998, because Mr. Durham did not have three years of recent experience driving with his vision deficiency. He appealed the agency's decision to the United States Court of Appeals for the Sixth Circuit on November 6, 1998. (Case No. 98-4331, *James F. Durham, Jerry W. Parker v. United States Department of Transportation, Federal Highway Administration, and the United States of America*). The FHWA and Mr. Durham have agreed to settle the case without further litigation. In accordance with that agreement, the FHWA has

reconsidered Mr. Durham's waiver application and determined that it should be granted for the reasons discussed in this notice.

When Mr. Durham's application was filed on July 18, 1997, the FHWA was authorized by 49 U.S.C. 31136(e) to waive application of the vision standard if the agency determined the waiver was consistent with the public interest and the safe operation of CMVs. Because the statute did not limit the effective period of a waiver, the agency had discretion to issue waivers for any period warranted by the circumstances of a request. On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107 (1998). Section 4007 of TEA-21 amended the waiver provisions of 49 U.S.C. 31315 and 31136(e) to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised sections 31315 and 31136(e), the FHWA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period. Mr. Durham's application falls within the scope of an exemption request under the revised statute.

The amendments to 49 U.S.C. 31315 and 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously, an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FHWA may grant an exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." According to the legislative history, Congress changed the statutory standard to give the agency greater discretion to consider exemptions. The previous standard was judicially construed as requiring an advance determination that absolutely no reduction in safety would result from an exemption. Congress revised the standard to require that an "equivalent" level of safety be achieved by the exemption, which would allow for more equitable resolution of such matters, while ensuring safety standards are maintained. (See H.R. Conf. Rep. No. 105-550, at 489 (1998)).

Although Mr. Durham's application was filed before enactment of TEA-21, the FHWA is required to apply the law in effect at the time of its decision unless (1) its application will result in a manifest injustice or (2) the statute or legislative history directs otherwise. *Bradley v. School Board of the City of*