

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tyneka Thomas ARM-105, (202) 267-7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 29, 2012.

**Brenda D. Courtney,**  
*Acting Deputy Director, Office of Rulemaking.*

#### Petition for Exemption

**Docket No.:** FAA-2012-0075.  
**Petitioner:** American Aviation, Inc.  
**Section of 14 CFR Affected:** 14 CFR 119.1(e)(6).

**Description of Relief Sought:** The relief sought would allow American Aviation, Inc., to conduct parachute operations dropping test flares more than 25-statute-miles from the airport of takeoff.

[FR Doc. 2012-5404 Filed 3-5-12; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2012-08]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 5, 2012.

**ADDRESSES:** You may send comments identified by Docket Number FAA-

2012-0123 using any of the following methods:

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- **Fax:** Fax comments to the Docket Management Facility at 202-493-2251.

- **Hand Delivery:** Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Frances Shaver, ARM-207, (202) 267-4059, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591, or Ted Jones, ASW-111, (817) 222-5329, FAA Southwest Regional Office, 2601 Meacham Blvd., Fort Worth, TX 76137.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 29, 2012.

**Brenda D. Courtney,**  
*Acting Deputy Director, Office of Rulemaking—Aviation Safety.*

#### PETITION FOR EXEMPTION

**Docket No.:** FAA-2012-0123  
**Petitioner:** Bell Helicopter Textron Canada Limited  
**Section of 14 CFR Affected:** § 27.1

**Description of Relief Sought:** The exemption would permit an increase in

the maximum gross weight of the Bell 429 from 7,000 pounds to 7,500 pounds to enable the aircraft to carry additional safety related equipment and fuel. The relief would result in an expanded radius of operation for Helicopter Air Ambulance operations, increased capability and availability for public safety operations and improved efficiency and safety for American petroleum and utility industry operations.

[FR Doc. 2012-5406 Filed 3-5-12; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2009-0271]

#### Identification of Interstate Motor Vehicles: New York City, Cook County, and New Jersey Tax Identification Requirements; Petition for Reconsideration.

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

**ACTION:** Notice; Grant of petition for reconsideration.

**SUMMARY:** The FMCSA grants a petition for reconsideration submitted by the New York City Department of Finance (DOF) requesting reconsideration of the Agency's previous determination that the credential display requirement of New York City's Commercial Motor Vehicle Tax (CMV Tax) is preempted. Federal law prohibits States and their political subdivisions from requiring motor carriers to display in or on commercial motor vehicles (CMVs) any form of identification other than forms required by the Secretary of Transportation, with certain exceptions. FMCSA has determined that the CMV Tax qualifies for one of the statutory exceptions.

**DATES:** This decision is effective March 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-7056; email [Genevieve.Sapir@dot.gov](mailto:Genevieve.Sapir@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 25, 2008, the American Trucking Associations (ATA) petitioned FMCSA to preempt § 11-809 of New York City's Administrative Code, which requires CMVs used principally in New

York City or in connection with a business carried on within New York City to display a stamp evidencing payment of the city's CMV Tax. ATA alleged that New York City's credential display requirement was preempted under 49 U.S.C. 14506(a), which prohibits States from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation. Section 14506(b), however, establishes several exceptions to this prohibition [all statutory references are to title 49, United States Code]:

(b) Exception.—Notwithstanding subsection (a), a State may continue to require display of credentials that are required—

(1) Under the International Registration Plan under section 31704;

(2) Under the International Fuel Tax Agreement under section 31705 or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement;

(3) Under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate;

(4) In connection with Federal requirements for hazardous materials transportation under section 5103; or

(5) In connection with the Federal vehicle inspection standards under section 31136.

In response to this and other petitions ATA submitted seeking preemption of credential display requirements in New Jersey and Cook County, Illinois, FMCSA published a notice in the **Federal Register** seeking comment on whether the credential display requirements of New York City, the State of New Jersey, and Cook County, Illinois should be preempted (74 FR 53578, Oct. 19, 2009). FMCSA specifically requested comment from the three jurisdictions, but neither New Jersey nor New York City responded with comments. After the close of the comment period, Cook County sent a letter conceding that its ordinance was preempted under § 14506.

On October 20, 2010, FMCSA issued an order preempting all three credential requirements (75 FR 64779). FMCSA's preemption analysis focused solely on whether the exception in § 14506(b)(3) applied. However, in reaching this determination, FMCSA concluded that all of the exceptions at § 14506(b) could apply to political subdivisions of States, including municipalities, if they otherwise meet the statutory criteria (75 FR at 64780–81).

On January 3, 2011, New York City's Department of Finance (DOF) submitted a petition requesting reconsideration of FMCSA's preemption determination.

DOF's petition contended that New York City's credential display requirement was based on a form of highway use taxation excepted from preemption under § 14506(b)(2). For the reasons set forth below, FMCSA grants the DOF's petition for reconsideration.

### Applicable Law

New York City's CMV Tax has been in effect since 1960. See Administrative Code of the City of New York, Title 11, Chapter 8. Subject to several exemptions, the tax applies to both "commercial motor vehicle[s]" and "motor vehicle[s] for the transportation of passengers" that operate on a public highway or public street and are "propelled by any power other than muscular power." §§ 11–801(2)–(4); 11–803. The tax applies to a "commercial motor vehicle" that is "used principally in the city or used principally in connection with a business carried on within the city." § 11–801(3). According to the DOF Web site, the term "principally used in the city" means that 50% or more of a CMV's mileage during a year is within New York City limits. See [http://www.nyc.gov/html/dof/html/business/business\\_tax\\_cmv.shtml](http://www.nyc.gov/html/dof/html/business/business_tax_cmv.shtml). The tax also applies to a "motor vehicle for transportation of passengers" that is "used regularly, even though not principally, in the city." § 11–801(4). The tax rate varies based on the class of the vehicle; for example, the annual tax on a truck is based on maximum gross weight, in accordance with the following classes: 10,000 pounds or less, \$40; 10,001–12,500 pounds, \$200; 12,501–15,000 pounds, \$275; and 15,000 pounds or over, \$300, but the annual tax on passenger vehicles is a flat rate of \$400. § 11–802.a.1.(C). Subject to certain exceptions, the tax is paid to the Commissioner of Finance on an annual basis. § 11–808. However, the tax on trucks registered in New York with a maximum gross weight not exceeding 10,000 pounds and certain passenger vehicles is collected by the Commissioner of Motor Vehicles when the vehicle registration is renewed. § 11–809.1(a). The Commissioner of Finance is authorized to require that a tax decal or other indicia of payment be affixed to a vehicle. § 11–809(a); New York City Rules, Tit. 19, § 6–09.

Section 14506(a) prohibits the States or their political subdivisions from requiring a motor carrier to display either in or on a CMV any form of identification other than a form required by the Secretary of Transportation. However, § 14506(b)(2) provides that:

Notwithstanding [§ 14506(a)], a State may continue to require display of credentials that are required—(2) under the International

Fuel Tax Agreement \* \* \* or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement;

(emphasis added).

### FMCSA Decision

To qualify for the statutory exception at 49 U.S.C. 14506(b)(2), the credentials (in this case a decal) required by New York City's CMV tax must be part of a highway use tax that was in effect prior to October 1, 2006. Because the tax has been in effect since 1960, the only question before the Agency is whether it is a highway use tax within the meaning of the statutory exception.

In enacting § 14506(b)(2), Congress did not define a highway use tax. Nor is there any other statutory or regulatory definition of highway use tax applicable to this statutory provision. In the absence of controlling authority, the Agency looks to common usage of the term. In the broadest sense, a highway use tax could mean any type of tax to support highways or any kind of tax on highway business, vehicles, or commerce, or any combination of these. E.M. Cope, *Trends in Highway Taxation in the United States*, 49 American Highways 8, 9 (Oct. 1970). Perhaps a better focused definition is any "lev[y] that appl[ies] to motor vehicles because of their highway use." *Id.*

In the absence of statutory or regulatory guidance, the Agency examines the plain language of New York City's CMV Tax. By definition, the tax is levied for use of a CMV on the public highways or streets of the city. See § 11–801 (definitions of "commercial motor vehicle" and "use"). Section 11–802(b) offers alternative interpretations of the tax, both of which characterize it as one based on use of highways:

To the extent that the tax as imposed by subdivision a of this section may be invalid solely because it is based on the use in the city of the motor vehicles, the tax shall also be deemed to be based on the privilege of using the public highways or streets of the city by such motor vehicle.

Accordingly, on its face, the CMV Tax is for use of the public highways.

Proceeds from highway use taxes are often dedicated, at least in part, to a special fund for highway infrastructure; however the DOF's petition does not state how revenue from the CMV Tax is used. Nonetheless, a highway use tax may be levied without demonstrating that the revenues are earmarked for highway infrastructure. See, e.g., *Mid-States Freight Lines, Inc. v. Bates*, 200 Misc. 885, 890 (N.Y. Sup. Ct.), *aff'd*, 279 A.D. 451 (3d Dep't.), *aff'd*, 304 N.Y. 700

(1952). Stated otherwise, a highway use tax need not necessarily be dedicated to highway purposes. As a result, the DOF's failure to demonstrate a connection between the CMV Tax and highway funding is not dispositive.

FMCSA concludes, therefore, that New York City's CMV Tax is a highway use tax within the meaning of 49 U.S.C. 14506(b)(2).

In consideration of the above, FMCSA grants the DOF's petition for reconsideration and reverses its decision preempting New York City's credential display requirement. Today's decision is limited to the new arguments the DOF raised in its petition for reconsideration claiming exception from preemption under § 14506(b)(2). Under this analysis, New York City's credential display requirement in § 11-809 is not preempted and New York City may resume enforcement.

This decision does not affect the Agency's previous determination preempting the credential display requirements in New Jersey and Cook County, Illinois.

Issued on: February 29, 2012.

**Anne S. Ferro,**

*Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 2012-5319 Filed 3-5-12; 8:45 am]

**BILLING CODE: P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2012-0044]

#### Pipeline Safety: Notice to Operators of Driscopipe® 8000 High Density Polyethylene Pipe of the Potential for Material Degradation

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice; Issuance of Advisory Bulletin.

**SUMMARY:** PHMSA is issuing this advisory bulletin to alert operators using Driscopipe® 8000 High Density Polyethylene Pipe (Drisco8000) of the potential for material degradation. Degradation has been identified on pipe between one-half inch to two inches in diameter that was installed between 1978 and 1999 in desert-like environments in the southwestern United States. However, since root causes of the degradation have not been determined, PHMSA cannot say with certainty that this issue is isolated to these regions, operating environments, pipe sizes, or pipe installation dates.

While the manufacturer has attempted to communicate with known or suspected users, PHMSA and the National Association of Pipeline Safety Representatives (NAPSR) have identified several operators currently using Drisco8000 pipe who had not received communications about the issue. PHMSA is issuing this advisory bulletin to all operators of Drisco8000 pipe in an effort to ensure they are aware of the issue, communicating with the manufacturer and their respective regulatory authorities to determine if their systems are susceptible to similar degradation, and taking measures to address it.

**ADDRESSES:** This document can be viewed on the PHMSA home page at: <http://www.phmsa.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Max Kieba by phone at 202-493-0595 or by email at [max.kieba@dot.gov](mailto:max.kieba@dot.gov). Pipeline operators with potentially affected pipe or anyone with questions specific to actions in a certain state or region are encouraged to communicate with the appropriate pipeline safety authority directly. Operators of pipelines subject to regulation by PHMSA should contact the appropriate PHMSA Regional Office. A list of the PHMSA Regional Offices and their contact information is available at: <http://www.phmsa.dot.gov/pipeline/about/org>. Pipeline operators subject to regulation by a state should contact the appropriate state pipeline safety authority. A list of state pipeline safety authorities and their contact is provided at: [http://www.napsr.org/managers/napsr\\_state\\_program\\_managers2.htm](http://www.napsr.org/managers/napsr_state_program_managers2.htm).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Two operators of natural gas pipeline systems have identified locations of material degradation on Drisco8000 pipe in Arizona and Nevada. The manufacturer of the pipe, Performance Pipe, a division of Chevron Phillips Chemical Company LP, confirmed that the pipe was degraded.

In 1999, a one-inch Copper Tube Size (CTS) Drisco8000 pipe service line in Arizona experienced a gas leak and was found to be degraded. The operator of this pipeline found areas of delaminating and surface cracking on Drisco8000 pipe ranging from one-half inch CTS to two inches Iron Pipe Size pipe at various locations in Arizona beginning in 2004. To better track the instances of the phenomenon, the operator implemented a procedure for reporting, defining the degradation area, and conducting leak surveys on the affected pipe. Chemical contamination

was considered a potential source for degradation, but after extensive testing by the manufacturer and various outside laboratories, no indications of chemical source could be verified as a root cause.

In 2007, the operator experienced a gas ignition incident on a one-inch CTS Drisco8000 service line in Arizona. Due to the slit crack nature of the pipe failure, the investigation of this incident included checking for the possibility of nylon contamination in the pipe material. Nylon contamination was ruled out, but degradation of the internal pipe wall was noted. An additional incident occurred elsewhere in Arizona in 2007. As a result of these incidents, the operator implemented a replacement program and follow-up leak survey program. The operator continues its investigation and is working cooperatively with the manufacturer and regulators to determine the root causes and necessary mitigative actions.

A second operator found two cases of degraded Drisco8000 pipe in Arizona in 2006 and reported them to the Arizona Corporation Commission Office of Pipeline Safety. This operator is now looking at other areas of their service territory for potential degraded pipe issues.

The affected pipes in the cases reported thus far have diameters from one-half inch to two inches and have installation dates that range from 1978 to 1999. All reported cases have been on systems operating at or below 60 psig in desert regions in the southwestern United States. In those cases where print line codes are present on the pipe, the codes identify the pipe as being manufactured at a Watsonville, California, pipe plant which closed in 2000. The manufacturer has indicated they do not have any evidence that the condition developed as a result of the manufacturing process.

According to the manufacturer, the degraded pipe is fairly easy to identify when the pipe is exposed. Affected pipe displays delaminating or peeling of the outer diameter or a friable or crumbling appearance on the inner diameter surfaces of the pipe. In addition, an audible cracking sound or noise may be detected when flexing, cutting, or squeezing the pipe.

Once installed and in service, degraded pipe is not easy to identify. The manufacturer is not aware of a current testing protocol that consistently identifies the affected material while it is in service. Existing leak survey technologies have proven to be the most effective tool in locating and identifying degraded pipe.