

SENATE No. 1955

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to uniform hazardous material transportation procedures ..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Short Title. This act shall be known and may be cited as the "Hazardous
2 Materials Transportation Uniform Procedures Act."

3 SECTION 2. Purposes. The purposes of this section are as follows:

4 Public health and safety. The uniform procedures established by the act seek to enhance
5 public health and safety by increasing compliance by motor carriers with state requirements for
6 the safe transportation of hazardous materials.

7 Entrance into the Alliance for Uniform Hazmat Transportation Procedures. The purpose
8 of this section is to enable the Commonwealth to participate in and enter into the Alliance for
9 Uniform Hazmat Transportation Procedures ("the Uniform Program").

10 Establish a uniform program for hazardous material and hazardous waste transportation.
11 In conformity with the Uniform Program, the Commonwealth shall establish, implement and
12 administer a uniform registration and permitting program for persons who transport (optional: or

13 ship) hazardous material or hazardous waste by motor vehicle on the public highways in
14 interstate or intrastate commerce.

15 Retention of enforcement authority. It is the intention of the legislature that the
16 Commonwealth shall retain enforcement authority under the agreement. Nothing in the Uniform
17 Program shall limit the authority of the Commonwealth from enforcing laws governing the
18 operation of hazardous materials motor carriers.

19 Base state program. The Uniform Program is implemented through a single base state,
20 with reciprocal recognition of base state-issued credentials in other participating states. In its role
21 as a base state, the Commonwealth shall adhere to all requirements applying to base states under
22 the Uniform Program.

23 SECTION 3. Definitions. For the purposes of this section, the following words and
24 phrases have the meanings given to them in this section:

25 "Alliance for Uniform Hazmat Transportation Procedures (AUHMTP)" means the group
26 of states that have adopted the recommendations concerning uniform forms and procedures for
27 hazardous materials transportation registration and permitting pursuant to 49 CFR 5119.

28 "Applicant" means a motor carrier that completes the required application forms
29 necessary to be considered to receive a uniform program registration and/or permit credential.
30 Complete means all application requirements are met, fees are remitted, insurance requirements
31 are met, and other requirements are met that a state may deem appropriate.

32 "Base state" means the state selected by a carrier according to the procedures established
33 by the agreement.

34 "Base state agreement" means the agreement between participating states electing to
35 register or permit carriers of hazardous materials or hazardous waste.

36 "Credential" means the document issued by the base state indicating that a motor carrier
37 has successfully registered and received a permit allowing it to transport hazardous
38 materials/hazardous waste in participating states. (Note: A state may elect to only register motor
39 carriers.)

40 "Department" means the Massachusetts Highway Department.

41 "Designated hazardous material" means a hazardous material described in the Code of
42 Federal Regulations, Title 49, Section 107.6-1.

43 "Hazardous material" means any of the following:

44 a hazardous material of a type or in a quantity that requires the transport vehicle to be
45 placarded in accordance with the Code of Federal Regulations, Title 49, Part 172; or

46 a hazardous substance or marine pollutant when transported in bulk packaging as defined
47 in the Code of Federal Regulations, Title 49, Section 171.8.

48 a hazardous waste, which means hazardous waste of a type and amount that requires the
49 shipment to be accompanied by a uniform hazardous waste manifest described in the Code of
50 Federal Regulations, Title 40, Part 262, including state-designated hazardous wastes when a list
51 of state-designated hazardous wastes has been filed by the state with the national repository
52 under the uniform program.

53 "Hazardous material transportation" means the transportation of hazardous material or
54 hazardous waste, or both, on the public highways.

55 "Letter of filing" means a letter from a participating state to an applicant that has
56 completed the application process indicating the applicant's compliance with application
57 requirements of the Uniform Program, which is valid for up to 360 days. Letters of filing shall
58 only be issued to carriers that have filed complete applications. If the application is incomplete,
59 the base state shall notify the applicant of the deficiencies and indicate that the issuance of the
60 letter of filing is subject to the applicant providing, in writing on the appropriate forms, the
61 missing information. A letter of filing shall serve as a provisional credential.

62 "Motor carrier" means a for-hire motor carrier or a private motor carrier. The term
63 includes a motor carrier's agents, officers and representatives as well as employees responsible
64 for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned
65 with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.
66 This definition is found in 9 CFR 390.5 under "motor carrier."

67 "Motor vehicle" has the meaning given by 49 CFR 390.5, e.g. any vehicle, machine,
68 tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon the
69 highways in the transportation of passengers or property, or any combination thereof determined
70 by the Federal Highway Administration, but does not include any vehicle, locomotive or car
71 operated exclusively on a rail or rails or a trailer bus operated by electric power derived from a
72 fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

73 "Participating state" means a state electing to participate in the uniform program by
74 entering into the base state agreement.

75 "Permit" means the authority granted to qualified motor carriers, that have been reviewed
76 under procedures consistent with those recommended by the AUHMTP.

77 "Person" means an individual, firm, co-partnership, cooperative, company, association,
78 limited liability company, corporation or public entity.

79 "Power unit" means a truck or truck tractor as defined in 49 CFR 390.5. A truck means
80 any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the
81 transportation of property. A truck tractor means a self-propelled commercial motor vehicle
82 designed and/or used primarily for drawing other vehicles.

83 "Principal place of business" means the state in which a motor carrier maintains its
84 central records relating to the transportation of hazardous materials.

85 "Public entity" means a carrier who is a federal or state agency or political subdivision.

86 "Registration" means the process by which a motor carrier of hazardous materials is
87 identified by the base state.

88 "Shipper" means a person who offers a hazardous material to another person for shipment
89 or who causes a hazardous material to be transported or shipped by another person, which
90 maintains facilities in the Commonwealth.

91 "Uniform application" means the uniform motor carrier registration and permit
92 application form and accompanying documents established under the uniform program.

93 "Uniform Program" means the forms and procedures developed pursuant to the
94 "Hazardous Materials Transportation Uniform Safety Act of 1990," United States Code, Title 49,
95 Section 5119, known as the Alliance for Uniform Hazmat Transportation Procedures in reports
96 submitted to the U.S. Department of Transportation in 1993 and 1996, as modified and amended

97 pursuant to 49 U.S.C. 5119(b), and as contained in the current AUHMTP State Program
98 Administrators' Manual.

99 SECTION 4. Entrance into the uniform program. The Commonwealth shall enter into
100 the Uniform Program for Hazardous Materials Transportation Registration and Permitting
101 developed by the Alliance for Uniform Hazmat Transportation Procedures. The Department shall
102 adopt all rules and regulations necessary to establish, implement, and administer the terms of the
103 Uniform Program including, but not limited to, base state duties and responsibilities,
104 participation in AUHMTP governance activities, support of centralized AUHMTP activities and
105 dispute resolution. In administering the Uniform Program, the Department shall use the uniform
106 application and supporting documents and follow the administrative guidance of the AUHMTP.

107 SECTION 5. General requirements.

108 No motor carrier may transport a hazardous material by motor vehicle in the
109 Commonwealth unless it has complied with the terms of this Article.

110 No shipper may offer a designated hazardous material for shipment or cause a designated
111 hazardous material to be transported or shipped in the Commonwealth unless it has complied
112 with this Article.

113 SECTION 6. Hazardous materials transportation registration and permit.

114 A motor carrier shall determine its base state in the following manner:

115 A motor carrier that has its principal place of business in this state shall designate this
116 state as its base state.

117 A motor carrier that has its principal place of business outside of this state shall
118 determine its base state designation by the highest number of International Registration Plan,
119 International Fuel Tax Agreement or equivalent miles traveled among the states participating in
120 the uniform program.

121 A motor carrier that designates this state as its base state pursuant to subsection (a) shall
122 register with and obtain a permit from the department prior to transporting hazardous materials
123 within this state.

124 A motor carrier that designates another participating state as its base state pursuant to
125 subsection (a) shall register with and obtain a permit from that state, with the appropriate fees
126 paid for this state, prior to transporting hazardous materials in this state.

127 A motor carrier who engages in the interstate transportation of a hazardous material and
128 who is required to register its hazardous material transportation in this state shall file parts I, II
129 and IV of the uniform application with the Department and pay an administrative processing fee
130 and an apportioned vehicle registration fee. The amount of the apportioned vehicle registration
131 fee must be calculated under Section 5.

132 A motor carrier who engages only in the intrastate transportation of a hazardous material
133 and who is required to register its hazardous material in this state shall file parts I and IV of the
134 uniform application with Massachusetts Highway Department, and pay a registration fee as
135 determined by the Massachusetts Highway Department.

136 Upon a motor carrier's compliance with this section, the Department shall issue a
137 registration credential and permit to the carrier. A registration credential must include a company
138 registration number. A registration is valid for one year from the date a notice of registration

139 form is issued. A permit is valid for three years from the date issued or until a motor carrier fails
140 to renew its registration, whichever occurs first.

141 A motor carrier shall maintain a copy of the registration credential in each power unit
142 used to transport hazardous materials in all participating states. The registration credential and
143 permit are not transferable between motor carriers. The original registration credential and
144 permit shall be maintained at the motor carrier's principal place of business as noted on the
145 credentials, and shall be available for inspection during normal business hours.

146 The Commonwealth may issue a "letter of filing" to an applicant that has filed a
147 completed application in cases where the Commonwealth is unable to process such application
148 within the Uniform Program timeframe.

149 A motor carrier may obtain, for intrastate transportation only, a single-trip permit in lieu
150 of a notice of registration form and a permit. The single-trip permit shall expire 72 hours after
151 issuance, it shall only be valid within the borders of the Commonwealth, and a fee shall be
152 assessed for the single-trip permit.

153 SECTION 7. Vehicle registration fee calculation

154 The apportioned vehicle registration fee required under section 3 and section 4 shall be
155 equal to the percentage of transportation in this state multiplied by the percentage of all
156 hazardous materials transportation or hazardous waste transportation, multiplied by the total
157 number of power units operated, multiplied by a per-vehicle fee and shall be calculated as
158 follows:

159 A motor carrier shall determine its percentage of transportation in this state by dividing
160 the number of miles traveled in this state under the international registration plan during the
161 previous year by the number of miles it traveled nationwide under the international registration
162 plan. If a motor carrier operated only in this state, its percentage is 100%. If a motor carrier is not
163 registered in the international registration plan, the motor carrier shall calculate the number of
164 miles traveled using the method in the international registration plan. If a motor carrier operates
165 more than 1 fleet under the international registration plan, the motor carrier may calculate each
166 fleet's contribution to the motor carrier's total fee separately. A motor carrier who operated in
167 another state under a reciprocal agreement with that state shall include the miles operated under
168 the agreement as miles traveled in this state in calculating mileage under this section.

169 A motor carrier shall determine its percentage of hazardous materials transportation or
170 hazardous waste transportation using one of the following:

171 For less than truckload shipments, it must divide the weight of all of the motor carrier's
172 hazardous materials shipments or hazardous waste shipments transported during the previous
173 year by the total weight of all shipments transported during the same year.

174 For truckload shipments, it must divide the total number of hazardous materials
175 shipments or hazardous waste shipments during the previous year by the total number of all
176 shipments transported during the same year.

177 A carrier that transports both less-than-truckload and truckload shipments of hazardous
178 materials shall calculate the percentage of hazardous materials activity on a proportional basis.

179 A motor carrier shall use data from its most recent complete fiscal year or the most recent
180 complete calendar year in calculating the percentages required under this section.

181 Revenues generated through registration fees shall be used by the Department for
182 purposes that enhance the safe transportation of hazardous materials. Revenues generated
183 through permitting fees shall be used only to cover the costs associated with administering the
184 permit process. The Department may develop a fee structure associated with the level of effort
185 required to review individual applications as long as the state provides an estimate of charges to
186 the applicant and establishes an appeals process. Revenues generated through the processing fee
187 shall be used to cover costs associated with administering the registration process.

188 SECTION 8. Base state agreement

189 The Department may enter into agreements with federal agencies, a national repository,
190 or other participating states as needed to allow for the reciprocal registration and permitting of
191 motor carriers transporting hazardous materials or hazardous waste. The agreements may include
192 procedures for determining base states, the collection and distribution of fees, dispute resolution,
193 the exchange of information for reporting and enforcement, and other provisions necessary to
194 administer this act and the Uniform Program.

195 The Department may make payments to agencies of other participating states in the
196 Uniform Program for the purposes of reimbursement of apportioned registration permit fees.

197 The Department may make payments to a national repository for the purposes of
198 facilitating this agreement.

199 The Department may develop the necessary forms, applications, and software required to
200 implement this act.

201 SECTION 9. Enforcement

202 The Department may inspect or examine any motor vehicle or facility operated by a
203 motor carrier, or conduct investigations, audits, or compliance reviews as necessary to determine
204 compliance with this act and the Uniform Program, or to determine eligibility for registration or
205 permitting under this act and the Uniform Program.

206 The Department may inspect and electronically reproduce any papers, books, records,
207 documents, or evidentiary material necessary to determine if a motor carrier is complying with
208 this act and the Uniform Program, or to determine eligibility for registration or permitting under
209 this act and the uniform program.

210 The Department also may conduct investigations and audits necessary to determine if a
211 motor carrier is entitled to a permit or to make suspension or revocation determinations.

212 A person who fails to comply with this act is responsible for a state civil infraction and
213 may be subject to a fine. This may be per violation or a per day penalty.

214 SECTION 10- Suspension, revocation and denial

215 The Department shall immediately suspend or revoke a registration or permit, or deny an
216 application for a registration or permit, upon determination of any of the following conditions:

217 The motor carrier made a materially false or misleading statement in an application.

218 The motor carrier's operation consists of one or more serious or repeated violations of the
219 law of this state.

220 The motor carrier has been issued an unsatisfactory rating under the motor carrier rating
221 system developed by the United States Department of Transportation.

222 The motor carrier is under a current out of service order (49 CFR 395.13, 396.9(c)(12).

223 The motor carrier does not maintain the appropriate level of financial liability coverage
224 mandated by the laws of this state.

225 The motor carrier has exhibited a reckless disregard for the public and the environment.

226 If the Department determines that any of the conditions of subsection (a) exist, the
227 Department shall do one (1) of the following, as appropriate:

228 Suspend or revoke the registration credential or permit previously issued under this act.

229 Suspend or revoke the hazardous materials or hazardous waste transportation operations
230 in this state by a motor carrier operating under a registration or permit issued by another
231 participating state.

232 Deny an application for registration or permit by a motor carrier.

233 Upon revocation, suspension, or application denial, the Department shall notify the motor
234 carrier, in writing, by certified mail, of the reasons for suspension, revocation, or application
235 denial, and indicate the steps necessary for reinstatement. In the case of a suspension, the
236 Department shall also indicate the date by which compliance is required prior to revocation being
237 issued. The Department shall also indicate the steps provided for appeal of suspension,
238 revocation or application denial.

239 Upon notification of suspension, revocation, or application denial, a motor carrier may
240 submit a written request for a contested case hearing pursuant to chapter 30A with the
241 Department, by certified mail, within 15 days of receipt of the notice of suspension, revocation,

242 or application denial. A contested case hearing shall be scheduled within 30 days of the receipt
243 of the request for a contested case.

244 The Department may reinstate a notice of registration form or permit that was suspended
245 pursuant to this section if the Department is satisfied that the violations causing the suspension
246 have been corrected and the motor carrier's operations have changed sufficiently to prevent
247 further occurrences of violations.

248 The Department may issue a registration credential or permit that was previously denied
249 to a motor carrier if the department was satisfied that the violations causing the denial have been
250 corrected and the motor carrier's operations have changed sufficiently to prevent further
251 occurrences of the violations.

252 SECTION 11. Preemption

253 Any hazardous materials transportation registration or permitting program administered
254 or enforced by any state agency, city, county, or other political subdivision in the state is
255 preempted and superseded.

256 SECTION 12. Commonwealth participation in AUHMTP governance and central 257 activities

258 To become party to the Uniform Program, the Commonwealth shall meet the
259 requirements of admittance as contained in the Uniform Program Administrator's manual and
260 petition the Governing Board for admittance.

261 As required by Uniform Program procedures, the Commonwealth shall appoint a person
262 to attend all meetings of the AUHMTP and serve on the Alliance Governing Board as
263 appropriate.

264 Massachusetts Highway Department shall supply information as requested to the
265 AUHMTP data repository.

266 The Department shall adhere to AUHMTP requirements regarding the assessing of fees
267 to support central AUHMTP functions. Such fees will be paid by the Commonwealth to the
268 AUHMTP based on the Alliance fee schedule.