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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Department” means the Massachusetts Highway Department.

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

"Hazardous material" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. General requirements.

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

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

SECTION 6. Hazardous materials transportation registration and permit.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. Vehicle registration fee calculation

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

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

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

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

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

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

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

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

SECTION 8. Base state agreement

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

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

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

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

SECTION 9. Enforcement

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

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

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

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

SECTION 10- Suspension, revocation and denial

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. Preemption

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

SECTION 12. Commonwealth participation in AUHMTP governance and central activities

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

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

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

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