

- §100.366. Termination of a Provider Agreement.*
- §100.367. Maximum Payment.*
- §100.368. Charges to ICF/MR.*
- §100.369. Payment of Claims.*
- §100.371. Time Limits, Return, and Denial of Claims.*
- §100.372. Dental Problems Discovered by the Utilization-review Dentist.*
- §100.373. Utilization of Peer Review or Grievance Committees.*
- §100.374. Utilization of Texas State Board of Dental Examiners.*
- §100.375. Types of Reviews.*
- §100.376. Notification to Provider about Utilization Review.*
- §100.377. Provider Cooperation.*
- §100.378. Report of Findings.*
- §100.379. Classification of Review Findings.*
- §100.380. Restitution of Overpayments.*
- §100.381. Administrative Actions.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) proposes the repeal of Chapter 218, Subchapter D, §218.40, Applicability. The department also proposes amendments to Subchapter A, §218.1, Purpose; §218.2, Definitions; Subchapter B, §218.11, Motor Carrier Registration; §218.12, Issuance of United States Department of Transportation Numbers; §218.13, Application for Motor Carrier Registration; §218.14, Expiration and Renewal of Commercial Motor Vehicle Registration; §218.16, Insurance Requirements; §218.17, Unified Carrier Registration System; §218.18, Short-term Lease and Substitute Vehicles; Subchapter C, §218.31, Investigations and Inspections of Motor Carrier Records; §218.32, Motor Carrier Records; §218.33, Enforcement; Subchapter D, §218.41, Bond; §218.42, Fees; Subchapter E, §218.51, Household Goods Agents; §218.52, Advertising; §218.54, Selling Insurance to Shippers; §218.55, Information for Shippers; §218.56, Proposals and Estimates for Moving Services; §218.57, Moving Services Contract; §218.58, Moving Services Contract - Options for Carrier Limitation of Liability; §218.61, Claims; §218.62, Mediation by the Department; §218.64, Rates; §218.65, Tariff Registration; Subchapter F, §218.70, Purpose; §218.71, Administrative Penalties; §218.73, Administrative Proceedings; §218.74, Settlement Agreements; and §218.76, Registration Suspension Ordered under Family Code. The department further proposes new Subchapter G,

Financial Responsibility for Foreign Commercial Motor Vehicles, §218.80, Purpose and Scope; §218.81, Definitions; and §218.82, Financial Responsibility.

EXPLANATION OF PROPOSED REPEAL, AMENDMENTS, AND NEW SUBCHAPTER

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that §218.40 should be repealed because it duplicates language that is already in statute.

Amendments to §218.1, Purpose, are proposed to include Transportation Code, Chapters 646 and 648 because the rules in Chapter 218 also implement the provisions of these two chapters of the Transportation Code.

Amendments to §218.2, Definitions, are proposed to modify definitions of existing terms and to add new terms for consistency and accuracy. An amendment is proposed to delete a portion of the definition of a commercial motor vehicle because the definition of a commercial motor vehicle under Transportation Code, §643.051(a) differs from the definition under 49 C.F.R. §390.5 and because a proposed amendment adds a definition for a foreign commercial motor vehicle. An amendment is proposed to add a definition for a foreign commercial motor vehicle for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102.

Amendments to §218.12 are proposed to delete language that is already contained in statute.

Amendments to §218.13 are proposed to delete language that is already contained in statute and in a Texas Department of Public Safety administrative rule. A proposed amendment clarifies that certain qualifying interstate motor carriers are not required to renew certificates of registration. Also, a proposed amendment allows motor carriers to display insurance cab card information via a wireless communication device. Further, a proposed amendment deletes language about incomplete applications because the language is not consistent with agency practice.

Amendments to §218.14 are proposed for consistency with 49 U.S.C. §14504a and Transportation Code, Chapter 643. Additional amendments clarify the procedure for a motor carrier to obtain a non-expiring certificate of registration, as well as the procedure when the motor carrier no longer qualifies for a non-expiring certificate of registration.

Amendments to §218.16 are proposed for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102. Amendments to Figure: 43 TAC §218.16(a) are made for clarity and for consistency with Transportation Code, Chapter 643 and 49 C.F.R. Part 387. An amendment is proposed to delete the adoption of all final orders of the Railroad Commission of Texas because department rules establish the current procedures regarding self-insurance and because any final orders that were in effect on August 31, 1995, are outdated. In addition, the department proposes amendments to clarify the procedures for self-insurance versus the procedures for a motor carrier's insurer to file evidence of insurance with the department. Further, proposed amendments replace terminology with defined terms and delete language that is already contained in statute.

Amendments to §218.17 are proposed to correct the citation to 49 U.S.C. §14504a. Amendments are also proposed to clarify that the department, interstate motor carriers, brokers, freight forwarders, motor private carriers of property, and leasing companies must comply with 49 U.S.C. §14504a, as well as the plan and agreement under 49 U.S.C. §14504a. Amendments are further proposed to adopt the Unified Carrier Registration Agreement by reference and to address the methods for applying for registration under the plan and agreement under 49 U.S.C. §14504a.

An amendment to §218.32 is proposed to add a reference to proposed amendments regarding the display of the insurance cab card information via a wireless communication device. An amendment is also proposed to clarify that a motor carrier is not required to carry in its vehicle proof of compliance with 49 U.S.C. §14504a or the plan or agreement under 49 U.S.C. §14504a.

Amendments to §218.52 are proposed to require household goods carriers to provide their USDOT number in addition to the TxDMV certificate of registration number on print advertisements and on websites. An amendment is proposed to delete "nationally placed billboards" because all billboards are considered to be print advertisements. Household goods carriers are currently required to include on their Internet websites the department's toll free telephone number as listed in §218.52. An amendment is proposed to delete the department's toll-free telephone number from §218.52 and to replace the language with a reference to the department's toll-free consumer helpline as listed on the department's website, in case the department ever changes this number.

The proposed amendments to §218.52 will not be effective until August 5, 2015, to give the household goods carriers time to implement the changes and to lessen any economic impact to the household goods carriers. If a household goods carrier chooses to implement the adopted amendments sooner than August 5, 2015, the household goods carrier will not be in violation of the requirements in §218.52.

Amendments to §218.61 are proposed to direct questions or complaints concerning household goods carrier's claims handling to the department's Enforcement Division because the department's Motor Carrier Division does not handle these questions or complaints. Also, an amendment is proposed to delete the department's toll-free telephone number from §218.61 and to replace the language with a reference to the department's toll-free consumer helpline as listed on the department's website. Similar amendments are proposed to §218.65 regarding public inspection of the tariffs that household goods carriers file with the department pursuant to Transportation Code, §643.153.

Amendments to §218.71 are proposed to revise the definition of "knowingly" because the current definition is not sufficient. Also, proposed amendments delete language already contained in statute.

Amendments to §218.73 and §218.74 are proposed to delete the word "unappealable," so the language is consistent with Transportation Code, §643.2525.

An additional amendment to §218.74 is proposed to delete subsection (d) regarding the revocation of the settlement agreement because the clause is unnecessary. According to §218.74(b), if the settlement agreement requires the payment of a penalty, the motor carrier must submit payment in an agreed amount before the agreement may be executed. In addition, if the settlement agreement involves revocation or suspension of the operating

authority, the revocation or suspension is activated by the department.

New Subchapter G, §§218.80 - 218.82, is proposed to comply with Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

Proposed amendments are made throughout the proposed amended sections to revise terminology for consistency with other department rules and with current department practice. In addition, nonsubstantive amendments are proposed to correct punctuation, grammar, capitalization, and references throughout the proposed amended sections.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the repeal, amendments, and new subchapter as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the repeal, amendments, and new subchapter.

Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal, amendments, and new subchapter.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the repeal, amendments, and new subchapter are in effect, the public benefit anticipated as a result of adoption of the proposed repeal, amendments, and new subchapter will be accuracy and clarity of the department's rules and greater protection for the traveling public on public roads and highways in Texas.

There are no anticipated economic costs for persons required to comply with the repeal of §218.40 or the proposed amendments or new subchapter, other than the proposed amendments to §218.52. Any economic costs associated with compliance with the rules in proposed new Subchapter G are the result of Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility. There may be anticipated economic costs for persons required to comply with the proposed amendments to §218.52 regarding required language on household goods carriers' print advertisements and Internet websites. There may be adverse economic effect on small businesses or micro-businesses required to comply with the proposed amendments to §218.52. However, the department has attempted to reduce any adverse economic effect by delaying the effective date of these amendments until August 5, 2015, so the household goods carriers have time to implement the changes.

ECONOMIC IMPACT STATEMENT

Out of the 511 active household goods carriers that are registered with the Texas Workforce Commission, the department determined that 98% are small businesses. Out of this 98%, 78% fall within the definition of a micro-business because the carrier has 20 or fewer employees. A review of the North American Industry Classification System (NAICS) on the U.S. Census Bureau website revealed that there are five different types of movers that are included in this classification. The five differ-

ent types of movers are Furniture Moving, Used; Motor Freight Carrier, Used Household Goods; Trucking Used Household, Office, or Institutional Furniture and Equipment; Used Household and Office Goods Moving; and Van Lines, Moving and Storage Services.

The department performed research to determine the estimated cost for small businesses to comply with the proposed amendments to §218.52 regarding print advertising and websites. The department concluded that an entity would have to create new advertising materials, discard any old print advertisement, and absorb the costs of doing so. However, it is possible that a small business may utilize a different approach to comply with the new advertising requirements.

The department priced office stationery and basic print advertising that a small business might need in order to conduct business. We estimate that it would cost approximately \$1,970.00 to replace envelopes, letterhead, flyers, brochures, door hangers, and presentation folders in a quantity of one thousand for each item.

If a household goods carrier manages its website in-house, the cost would be minimal for the time spent in updating their website. If a household goods carrier hired an external company to create and maintain the carrier's website, the carrier would not incur a cost if the update is covered by the monthly maintenance fee under their contract. However, if a household goods carrier has to hire someone to update the carrier's website, the carrier might have to pay an hourly rate of \$125.00 for an update that takes about 15 minutes.

While billboard advertisement might only be cost-efficient for a large household goods carrier, it is possible that a small business might advertise on billboards. A carrier would have to commit to advertising on multiple signs in order to get adequate market exposure and a reasonable rate. Based on a rate chart from Lamar Signs, the average cost per month is \$1,747.00 per panel. The price per panel is based on an order of eight (14'x48') signs. This would cost the carrier \$13,976.00 per month. Even if a carrier is required to replace all of the panels to comply with the amendments to §218.52, the estimated cost is approximately \$8,800.00. This estimated cost is based upon an estimated average cost of \$1,095.36 per sign for the design, material, production, and installation costs.

If a publication or an electronic news medium is not already in print or production, there is no charge for a modification as long as the household goods carrier does not exceed the allotted characters or spacing under their contract. However, if a publication or an electronic news medium is already in print or production, the household goods carrier will likely have to pay extra to modify their advertisement. Since there are so many variations in the publications and the sizes of advertisements, an exact cost cannot be determined. The economic impact would vary from business to business, and the associated cost would ultimately have to be absorbed by each household goods carrier.

The department did not find evidence that the proposed amendments to §218.52 would have an adverse economic effect on micro-businesses that is distinct from any potential adverse economic effect on small businesses. However, it is possible that any potential adverse economic effects on micro-businesses would be less to the extent that micro-businesses are less likely to advertise on nationally placed billboards.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, requires state agencies to prepare a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The department has considered several alternative options for minimizing the potential adverse economic impact on small businesses. After considering the alternative options, the department decided to move forward with Option 4 by delaying the effective date of the proposed amendments to §218.52 until August 5, 2015.

Option 1 - Maintaining §218.52 as it is currently written. If the department does not amend §218.52, this option would eliminate the potential adverse economic impact on small businesses. However, the proposed amendments to §218.52 provide the public with the information to search the Federal Motor Carrier Safety Administration (FMCSA) website for additional information on the household goods carrier. The information from the FMCSA website may help the public to make a more informed decision in selecting a household goods carrier.

Option 2 - Not including the nationally placed billboards within the definition of print advertisement. Since this is the largest potential expense that a small business might incur if the department amends §218.52, this option could reduce the potential adverse economic impact on small businesses. However, the department does not have evidence on the number of household goods carriers that fall within the definition of a small business and that advertise on nationally placed billboards.

A small business could also reduce the potential adverse economic impact by choosing to alter an existing vinyl sign by overlaying the required information onto the existing sign. However, the sign may not be aesthetically pleasing with an overlay.

Option 3 - Requiring the additional information on written proposals and binding contracts, rather than on print advertisements and websites. This option would provide the same information as a print advertisement or a website when it is most critical. For example, the department rule could require that all proposals include a brightly colored sheet that specifically provides the potential customer with all of same information as the proposed changes to §218.52, as well as specific instructions on how to conduct a due diligence investigation on their potential household goods carrier. This would inform the public and also save the small business the added expense of complying with the proposed changes to §218.52. However, the proposed changes to §218.52 give the potential customer earlier access to additional information that may help the customer make a more informed decision in selecting a household goods carrier.

Option 4 - Delaying the effective date of the proposed amendments to §218.52. It is possible that the proposed amendments to §218.52 could become effective as early as February 5, 2015. However, it is likely that a delay in the effective date of these proposed amendments could reduce the potential adverse economic impact on small businesses, while still providing additional information to help the public make a more informed decision in selecting a household goods carrier.

The adopted changes to §218.52 could be published as early as January 30, 2015. Since the proposed amendments could become effective as early as February 5, 2015, a delay of the effective date until August 5, 2015, gives the household goods carriers six additional months to comply with the proposed amendments if the amendments are adopted.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal, amendments, and new subchapter may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on November 17, 2014.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.1, §218.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.1. Purpose.

Transportation Code, Chapters 643, 645, 646, and 648 [~~and 646~~] require the department to regulate motor carriers, leasing businesses, [~~as defined in §218.2 of this subchapter (relating to Definitions).~~] and motor transportation brokers in order to protect the welfare of the public and ensure fair treatment of consumers by household goods carriers. The sections under this chapter prescribe the policies and procedures for the regulation of motor carriers, leasing businesses, and transportation brokers by providing for insurance limits, the issuance of motor carrier credentials, the filing of performance bonds for transportation brokers, audit and record keeping functions, and enforcement.

§218.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this title [~~chapter~~] (relating to Rates).

(2) Binding proposal--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(3) Board--Board of the Texas Department of Motor Vehicles. [~~The Texas Motor Vehicle Board.~~]

(4) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety com-

pany warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §218.16 of this title [~~chapter~~] (relating to Insurance Requirements).

(5) Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(6) Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(7) Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver; and

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101-5128). [~~and~~]

~~{(iv) a commercial motor vehicle, as defined by 49 C.F.R. §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.}~~

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle operated by a governmental entity;

(v) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(vi) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(8) Commercial school bus--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code, Chapter 548; and

(E) complies with Transportation Code, §521.022.

(9) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(10) Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Business and Organizations Code, §10.154. [~~Texas Business Corporation Act, Article 5.218.~~]

(11) Department--Texas Department of Motor Vehicles (~~TxDMV~~). [~~(DMV)~~.]

(12) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(13) Division--The Motor Carrier Division.

[(14) DOI--Texas Department of Insurance.]

(14) [(15)] Estimate--An informal oral calculation of the approximate price of transporting household goods.

(15) [(16)] Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(16) [(17)] Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(17) FMCSA--Federal Motor Carrier Safety Administration.

(18) Foreign commercial motor vehicle--A commercial motor vehicle that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(19) [(18)] Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading;
or

(B) the maximum lawful weight of the equipment and its lading.

(20) [(19)] Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(21) [(20)] Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(22) [(21)] Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise.

(23) [(22)] Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.

(24) [(23)] Inventory--A list of the items in a household goods shipment and the condition of the items.

(25) [(24)] Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(26) [(25)] Manager--The manager of the department's Motor Carrier Division, Credentialing Section. [~~Motor Carrier Operations Section.~~]

(27) [(26)] Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(28) [(27)] Motor Carrier or carrier--A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(29) [(28)] Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(30) [(29)] Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(31) [(30)] Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(32) [(31)] Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(33) [(32)] Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(34) [(33)] Public highway--Any publicly owned and maintained street, road, or highway in this state.

(35) [(34)] Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(36) [(35)] Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(37) [(36)] Revocation--The withdrawal of registration and privileges by the department or a registration state.

(38) [(37)] Shipper--The owner of household goods or the owner's representative.

(39) [(38)] Short-term lease--A lease of 30 days or less.

(40) [(39)] SOAH--The State Office of Administrative Hearings.

(41) [(40)] Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(42) [(41)] Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(43) [(42)] Unified Carrier Registration System or UCR [carrier registration system]--A motor vehicle registration system established under 49 U.S.C. §14504a or a successor federal registration program.

(44) USDOT--United States Department of Transportation.

(45) USDOT number--An identification number issued by or under the authority of the FMCSA or its successor.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.11 - 218.14, 218.16 - 218.18

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.11. Motor Carrier Registration.

(a) A motor carrier may not operate a commercial motor vehicle upon the public roads or highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number. [United States Department of Transportation (USDOT) number issued by or under the authority of the Federal Motor Carrier Safety Administration (FMCSA).]

(b) A household goods carrier may not operate a vehicle upon the public roads or highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number. [issued by or under the authority of the FMCSA.]

(c) For the purposes of this subchapter, a valid USDOT number is an active USDOT number.

§218.12. Issuance of United States Department of Transportation Numbers.

USDOT numbers for intrastate and interstate operations can be obtained by filing a FMCSA MCS-150 form available from the FMCSA or by registering online at www.fmcsa.dot.gov.

[(a) Every person or entity operating or intending to operate as a motor carrier in intrastate or interstate commerce shall obtain a valid USDOT number.]

[(b) USDOT numbers for intrastate and interstate operations can be obtained by filing a FMCSA MCS-150 form available from the FMCSA or by registering online at www.fmcsa.dot.gov.]

[(c) USDOT numbers for intrastate only operations can be obtained utilizing an application form prescribed by the department.]

§218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT number. [numbers issued by or under the authority of the FMCSA.]

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(4) Principal place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(5) Legal agent. [Agent.]

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household goods, or hazardous materials; or

(B) is domiciled in a foreign country.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title [subchapter] (relating to Insurance Requirements).

(9) Safety affidavit. Each motor carrier must complete, as part of the application, an affidavit stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

~~[(A) Drug-testing consortium participants. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.]~~

~~[(B) Report of positive result. A motor carrier required to register under this section shall report to the Department of Public Safety, in the manner required by the Department of Public Safety, a valid positive result on a controlled substances test performed as part of the carrier's drug testing program on an employee of the carrier who holds a commercial driver's license under Transportation Code, Chapter 522. The term "employee" as used in this subparagraph includes all employees as defined in 49 C.F.R. §40.3.]~~

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Registration may be for seven calendar days or for 90 days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles. Household goods carriers may not obtain seven day or 90 day certificates of registration.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Registration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees and information must be submitted with all applications.

(A) An application must be accompanied by an application fee of:

- (i) \$100 for annual and biennial registrations;
- (ii) \$25 for 90 day registrations; or
- (iii) \$5 for seven day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

- (i) \$10 for each vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration; or
- (ii) \$20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §218.16. ~~[of this subchapter.]~~

(D) An application must be accompanied by any other information required by law.

~~[(b) Incomplete applications. The director will return an application to the applicant if it is not accompanied by all fees and by proof of insurance or financial responsibility.]~~

(b) ~~[(e)]~~ Conditional acceptance of application. The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.

(c) ~~[(d)]~~ Approved application. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents: ~~[Disposition of application.]~~

~~[(1) Approval. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents:]~~

(1) ~~[(A)]~~ Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(2) ~~[(B)]~~ Insurance cab card. The department will issue an ~~[original]~~ insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier.

(A) ~~[(i)]~~ A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) ~~[(ii)]~~ On demand by a department-certified inspector or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver must locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) ~~[(iii)]~~ The motor carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its insurance cab card.

(D) ~~[(iv)]~~ Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void. ~~[; alteration, or unauthorized use of an insurance cab card renders it void.]~~

(E) ~~[(v)]~~ If an ~~[original]~~ insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department will print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.~~[, if it becomes illegible, or if it otherwise requires replacement, a new insurance cab card will be issued by the department at the request of the motor carrier.]~~

(F) The department is not responsible for a motor carrier's inability to access the insurance information using the department's online system.

(G) The display of an image of the insurance cab card or the display of insurance information from the department's online system via a wireless communication device by the motor carrier does not constitute effective consent for a law enforcement officer, the department-certified inspector, or any other person to access any other content of the wireless communication device.

~~[(vi)]~~ Registration listings previously issued by the department will remain valid until expiration or renewal or until revoked or suspended by the department.]

~~[(2)]~~ Denial. The department may deny a registration if the applicant:]

~~[(A)]~~ had a registration revoked under §218.72 of this chapter (relating to Administrative Sanctions); or]

~~[(B)]~~ is a for-hire motor carrier of passengers required to register with the FMSCA and the federal registration is denied, revoked, suspended, or terminated.]

(d) ~~[(e)]~~ Additional and replacement vehicles. ~~[Replacement Vehicles:]~~ A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of \$10 for each additional vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of \$20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of \$10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(e) ~~[(f)]~~ Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16. ~~[of this subchapter.]~~

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the

amounts specified by §218.16. ~~[of this subchapter.]~~ A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to re-register instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the facts that gave rise to the suspension or revocation.

(f) ~~[(g)]~~ Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) ~~[(h)]~~ Alternative vehicle registration for household goods agents. To avoid multiple registrations of a commercial motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate will include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) ~~[(i)]~~ Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title ~~[subchapter]~~ (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of

this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

§218.14. Expiration and Renewal of Commercial Motor Vehicle Registration.

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration will be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart:

Figure: 43 TAC §218.14(a)(1) (No change.)

(2) 90 day certificates of registration are valid for 90 calendar days from the effective date.

(3) Seven day certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) Approximately 60 days before the expiration of registration, the department will mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration. The notice will be mailed to the carrier's last known address according to the division's records. Failure to receive the notice does not relieve the registrant of the responsibility to renew. A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section. A supplement to an application for motor carrier registration renewal must:

(A) supply any new information required under §218.13(e) of this title [~~§218.13(f) of this subchapter~~] (relating to Application for Motor Carrier Registration) if the information has not previously been supplied to the department; and

(B) include a \$10 fee for each vehicle that the carrier operates under an annual certificate of registration and a \$20 fee for each vehicle that the carrier operates under a biennial certificate of registration.

(2) Seven day and 90 day registrations may not be renewed.

(3) A motor carrier shall maintain continuous insurance or evidence of financial responsibility in an amount at least equal to the amount prescribed under §218.16 of this title [~~subchapter~~] (relating to Insurance Requirements).

(4) The insurance cab card issued to a motor carrier is valid for the same period as the motor carrier's certificate of registration.

(5) To renew registration after it has expired, a motor carrier must identify its vehicles on a form prescribed by the director, pay all vehicle fees, and if current proof of insurance is not on file with the division, meet all insurance requirements.

(c) Interstate motor carrier operating in intrastate commerce.

(1) An interstate motor carrier registered under §218.17 of this title [~~subchapter~~] (relating to Unified Carrier Registration System) is not required to renew a certificate of registration issued under §218.11 of this title [~~subchapter~~] (relating to Motor Carrier Registration) except when the motor carrier is operating [~~commercial motor vehicles~~] as a

(A) non-charter [~~charter~~] bus carrier;

(B) [~~for-hire~~] household goods carrier; or

(C) recyclable materials or waste carrier.

(2) If a motor carrier that registered under §218.17 [~~of this subchapter~~] does not maintain continuous motor carrier registration un-

der §218.11, [~~of this subchapter~~], the motor carrier must file a supplemental application to re-register [~~an application~~] under §218.13 [~~of this subchapter~~] to operate on public streets and highways in this state.

(3) The motor carrier must notify the department if the motor carrier is registered under UCR. The notification must be filed with the department on a form prescribed by the department. Once the department receives the notification, the department will convert the motor carrier's certificate of registration to a non-expiring certificate of registration if the motor carrier qualifies for a non-expiring certificate of registration.

(4) If the department issues the motor carrier a non-expiring certificate of registration, the motor carrier must notify the department if the motor carrier is no longer registered under UCR or if the motor carrier operates as a non-charter bus carrier, household goods carrier, or recyclable materials or waste carrier. The notification must be filed with the department on a form prescribed by the department.

§218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.
Figure: 43 TAC §218.16(a)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses and coverage for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) \$500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept USDOT [~~United States Department of Transportation~~] evidence of the motor carrier's qualifications as a self-insured.

~~[(2) Adopted final orders. The department adopts all final orders of the Railroad Commission of Texas to the extent that they concern self-insurance and were in effect on August 31, 1995. Those final orders are continued in effect until changed by order of the department.]~~

(2) [(3)] Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

- (i) reserves;
- (ii) sinking funds;
- (iii) third-party financial guarantees;
- (iv) parent company or affiliate sureties;
- (v) excess insurance coverage; and
- (vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the federal motor carrier safety regulations [~~Federal Motor Carrier Safety Regulations~~] as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(3) [(4)] Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) [(5)] Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) [(6)] Duration and coverage of self-insured status. The department may approve an applicant as a self-insured for any specific

time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the applicant reported to the department in the application for self-insured status.

(6) [(7)] Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured to provide additional information. On 10 days' [days] notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance orders issued or adopted by the department. If an applicant fails to comply with this paragraph, its self-insured status may be revoked.

(7) [(8)] Appeal. An applicant may appeal a denial or revocation of self-insurance status by filing a petition for an administrative hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). [~~§§206.61 et seq. of this title (relating to Scope and Purpose).~~]

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. [~~and financial responsibility.~~] A motor carrier's insurer [~~insurance or surety company, bank, or other financial institution~~] shall file and maintain proof of insurance [~~or financial responsibility~~] on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title [~~§218.13(f)(2) of this subchapter~~] (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of \$100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the

department and approved by an authorized agent of the insurer. [The department will accept an insurance policy or certificate of insurance:]

~~[(A) issued by:]~~

~~[(i) an insurance company licensed and authorized to do business in the state of Texas; or]~~

~~[(ii) a surplus lines insurer that meets the requirements of Insurance Code, Chapter 981, and rules adopted by the DOI under that chapter; and]~~

~~[(B) in a form prescribed or approved by the DOI and signed or countersigned by an authorized agent of the insurance company.]~~

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurer [insurance company] in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurer [insurance company] without 30 days' [days] notice if the certificate of registration is expired, suspended, or revoked, and the insurer [insurance company] provides a cancellation date on the proof of insurance coverage. [The department will revoke a certificate of registration under §218.72 of this chapter (relating to Administrative Sanctions) for failure to maintain proof of current insurance.]

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no accidents have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

~~[(i) Notifications. The department shall notify the Texas Department of Public Safety and other law enforcement agencies of each motor carrier whose certificate of registration has been revoked for failing to maintain liability insurance coverage.]~~

§218.17. Unified Carrier Registration System.

(a) The State of Texas, through the department, shall participate in the federal motor carrier registration program under the Unified Carrier Registration System plan and agreement. [system as defined in §218.2(42) of this chapter (relating to Definitions).]

(b) An interstate motor carrier operating in Texas, as well as a broker, freight forwarder, motor private carrier of property, and leasing company, must register and comply with the provisions of the Unified Carrier Registration System as required by 49 U.S.C. §14504a and the UCR plan and agreement. [14504(a).]

(c) The department adopts by reference the May 20, 2010, version of the Unified Carrier Registration Agreement. A copy of the agreement is available for review in the Motor Carrier Division, Texas Department of Motor Vehicles.

(d) An application for UCR must be filed online as prescribed by the department, or an application must be filed with the department on a form prescribed by the department.

§218.18. Short-term Lease and Substitute Vehicles.

(a) Registration. A short-term lease vehicle registered under this section is exempt from the registration requirements described in §218.13 of this title [subchapter] (relating to Application for Motor Carrier Registration) while leased to a registered motor carrier.

(1) Application. A leasing business registering vehicles under this section shall file an application on a form prescribed by the director.

(2) Annual report. ~~[Report.]~~ The operation of a short-term lease vehicle shall be reported to the department on a form prescribed by the director not later than April 1 of each calendar year for the previous calendar year's operations. The report must identify the number of short-term lease vehicles that would otherwise be subject to the registration requirements of this subchapter.

(3) Fees. An annual registration fee of \$10 per vehicle operated must be paid at the time the report is filed under paragraph (2) of this subsection.

(4) Cancellation, expiration, and revocation. ~~[Expiration, and Revocation.]~~

(A) A leasing business must make a written request for cancellation of registration.

(B) A leasing business registration expires on April 30 of each year unless the leasing business reports by April 1 the actual number of vehicles requiring registration operated in the previous calendar year.

(C) The department may suspend or revoke a leasing business registration under §218.72 of this title [chapter] (relating to Administrative Sanctions).

(b) Proof of contingency liability insurance. A leasing business registering a vehicle under this section must file and maintain proof of liability insurance on a form prescribed by the director as required by §218.16 of this title [subchapter] (relating to Insurance Requirements).

(1) Filings. A leasing business shall file proof of insurance at the time of its initial registration and whenever it changes insurance carriers in accordance with §218.16. ~~[of this subchapter.]~~

(2) Filing fee. Each proof of insurance filing under this section shall be accompanied by a nonrefundable \$100 filing fee.

(3) Cancellation of insurance coverage. Any cancellation of insurance filed under this section must comply with the requirements set out in §218.16. ~~[of this subchapter.]~~

(c) Substitute vehicles. A registered motor carrier is not required to comply with the provisions of §218.13(d) ~~§218.13(e) of this subchapter~~ for a vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(d) Identification. A registered motor carrier is not required to carry proof of registration, as required by §218.13(c)(2), ~~§218.13(d)(1)(B) of this subchapter,~~ in a vehicle leased from a registered leasing business. A copy of the lease agreement or of the lease for the originally leased vehicle, in the case of a temporary replacement vehicle, must be carried in the cab of the vehicle.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 465-5665



SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §§218.31 - 218.33

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.31. *Investigations and Inspections of Motor Carrier Records.*

(a) Certification of inspectors. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified inspectors for the purpose of entering the premises of a motor carrier to copy or verify documents required by this section to be maintained by the motor carrier. The executive director or designee shall provide credentials to certified inspectors identifying them as department certified inspectors.

(b) Inspections.

(1) A motor carrier shall grant [~~admit~~] a certified inspector access to the carrier's premises to conduct inspections or investigations of alleged violations of this chapter and of [~~of~~] Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate work space with reasonable working conditions[~~;~~] and allow the certified inspector to copy and verify records and documents required to be maintained by the carrier under §218.32 of this title [~~subchapter~~] (relating to Motor Carrier Records).

(2) The certified inspector may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The certified inspector will present his or her credentials and a written statement from the department to the motor carrier indicating the inspector's authority to inspect and investigate the motor carrier.

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal place of business; or

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting and provide notice by certified mail or facsimile.

§218.32. *Motor Carrier Records.*

(a) General records to be maintained. Every motor carrier shall prepare and maintain:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) complete and accurate records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

(b) Additional records for household goods carriers. In order to verify compliance with Subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every household goods carrier shall retain complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce. Household goods carriers shall retain all of the following information and documents:

(1) moving services contracts, such as [~~;~~] bills of lading or receipts;

(2) proposals for moving services;

(3) inventories, if applicable;

(4) freight bills;

(5) time cards, trip sheets, or driver's logs;

(6) claim records;

(7) ledgers and journals;

(8) canceled checks;

(9) bank statements and deposit slips;

(10) invoices, vouchers, or statements supporting disbursements; and

(11) dispatch records.

(c) Proof of motor carrier registration.

(1) Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this title (relating to Application for Motor Carrier Registration), every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a certified inspector or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is regis-

tered under §218.18 of this title [chapter] (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(3) A motor carrier is not required to carry proof of compliance with UCR or the UCR plan or agreement in its vehicle.

(d) Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal place of business in Texas all records and information required by the department.

(1) Texas firms. If a motor carrier wishes to maintain records at a specific location other than its principal place of business in Texas, the motor carrier shall make a written request to the manager. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the manager.

(2) Out-of-state firms. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal place of business in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this title [subchapter] (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location, whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made available for inspection upon request at the motor carrier's principal place of business or other location specified by the Department within 48 hours after a request is made. Saturdays, Sundays, and federal and state [Federal and State] holidays are excluded from the computation of the 48-hour period of time in accordance with 49 C.F.R. §390.29.

(e) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

§218.33. Enforcement.

A motor carrier who fails or refuses to permit an inspection, fails to [does not] maintain and make available the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a violation subject to enforcement under Subchapter F of this chapter (relating to Enforcement).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 465-5665



SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §218.40

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.40. Applicability.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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43 TAC §218.41, §218.42

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.41. Bond.

(a) Filing. A motor transportation broker shall file a bond with the department before it may act as a motor transportation broker.

(b) Conditions of bond.

(1) The bond shall be:

(A) in an [the] amount of at least \$10,000;

(B) [be] executed by a bonding company authorized to do business in the state of Texas; and

(C) [be] payable to the State [state] of Texas or a person to whom the motor transportation broker provides services.

(2) The bond shall be conditioned upon:

(A) the faithful performance of the contracts or agreements of transportation by the motor carrier or motor carriers for whom the motor transportation broker is acting, and which were negotiated by the broker; and

(B) the honest and faithful performance by the motor transportation broker in that capacity.

(3) The bond shall provide that all defenses available to the motor carrier shall be available to the principal and surety, but no condition or provision of the bond shall otherwise affect the right of the shipper to collect all damages to which it may be entitled at law.

(c) Expiration or cancellation of bond. The bond shall not expire or be subject to cancellation until the 30th day after written notice of expiration or cancellation has been served on the principal and the department, either personally or by certified mail. Unless the principal files a new bond in compliance with the requirements of this section on or before the expiration of the 30-day period, the person may not act as a motor transportation broker.

(d) Amount of recovery. [Recovery.] In no event shall the total of all recoveries under a bond exceed the penal amount.

§218.42. *Fees.*

(a) Bond review fee. Upon submission of a bond to the department, the motor transportation broker shall include a bond review fee of \$5, payable as described in subsection (b) of this section.

(b) Payment of fees. [Fees.]

(1) Non-refundable. All fees paid to the department as provided for in this section are non-refundable.

(2) Payment methods. All fees shall be paid to the department as provided by §209.23 of this title (relating to Methods of Payment).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.51, 218.52, 218.54 - 218.58, 218.61, 218.62, 218.64, 218.65

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.51. *Household Goods Agents.*

(a) Appointment of household goods agent. A household goods carrier may appoint a household goods agent to represent the household goods carrier's business interests in Texas.

(b) Liability. A household goods carrier is responsible for the acts, delinquencies, omissions, and conduct of each of its household goods agents while acting on behalf of the household goods carrier.

(c) Agent filing. A household goods carrier shall file with the department, on a form approved by the director, a current, accurate list of its household goods agents and their addresses.

(1) A household goods carrier using alternative vehicle registration under §218.13(g) of this title [~~§218.13(e) of this chapter~~] (relating to Application for Motor Carrier Registration) shall notify the department 30 days prior to the creation or termination of an agency agreement.

(2) A household goods carrier not using the alternative vehicle registration shall notify the department on or before January 1, April 1, July 1, and October 1, of each year of the creation or termination of an agency agreement.

(d) Use of household goods carrier's name. When representing a household goods carrier, the agent:

(1) shall operate under the name of the represented household goods carrier, as shown on the certificate of registration issued by the department;

(2) shall use only the moving services contract of the represented household goods carrier; and

(3) may include its name, as listed on the household goods carrier's agent filing, on the carrier's advertisements.

(e) Availability of tariff records. A household goods carrier shall require each of its household goods agents to keep copies of the applicable tariff in the household goods agent's office and open to public inspection.

(f) Shipping records maintained. A household goods agent shall keep a record of every shipment that it sells or handles for at least two years after the date of shipment.

(g) Agency agreements. An agreement between a household goods carrier and its household goods agent shall be in writing and

signed by the household goods carrier and the household goods agent, and copies of any agreement must be kept in the files of the household goods carrier for a period of not less than two years following the date of termination of each agreement.

§218.52. Advertising.

(a) Print advertising through August 4, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "DMV No. _____".

(b) Print advertising on or after August 5, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____" and the household goods carrier's identification number issued by FMCSA, in the following form, "USDOT No. _____".

(c) ~~[(b)]~~ Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(d) ~~[(e)]~~ Items not considered to be print advertisements through August 4, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent;
- (5) nationally placed billboards; and
- (6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.

(e) Items not considered to be print advertisements on or after August 5, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) Internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent; and
- (5) single-line listings of a household goods carrier's name, address, and telephone number in a directory or similar publication.

(f) ~~[(d)]~~ Internet websites through August 4, 2015. A household goods carrier shall provide the department's toll-free telephone

number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.

(g) Internet websites on or after August 5, 2015. A household goods carrier shall provide the following information on any website operated by or for the household goods carrier:

- (1) department's toll-free consumer helpline as listed on the department's website;
 - (2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____", and
 - (3) the household goods carrier's identification number issued by FMCSA, in the following form, "USDOT No. _____".
- (h) ~~[(e)]~~ Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of either the power unit or trailer:

(A) the name of the carrier as it appears on the motor carrier certificate of registration; and

(B) the carrier's registration number as it appears on the motor carrier certificate of registration.

(2) The markings required by paragraph (1) of this subsection shall have clearly legible letters and numbers at least two [2] inches in height.

(3) This subsection does not apply to vehicles:

(A) required to comply with Transportation Code, Chapter 642; or

(B) operated under a short-term lease.

(i) ~~[(f)]~~ Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

§218.54. Selling Insurance to Shippers.

(a) Type of insurance. A household goods carrier and its representatives may sell, or offer to sell, or procure insurance for a shipper for transported or stored property. The insurance policy must cover loss or damage in excess of the household goods carrier liability as specified in §218.53 of this title ~~[subchapter]~~ (relating to Household Goods Carrier Cargo Liability).

(b) Policy issuance. A copy of the policy or other appropriate evidence of purchased insurance must be issued to the shipper before the shipment is loaded.

(c) Policy language. Policies or other appropriate evidence of purchased insurance must be written in a clear and concise manner, specifying the nature and extent of coverage including any deductibles. The policies or other appropriate evidence of purchased insurance must also clearly indicate:

(1) the name, address, and telephone number of the insurance company;

(2) the policy number; and

(3) a statement of whether claims are to be filed with the insurance company or with the household goods carrier.

(d) Penalty. If the shipper purchased insurance from the household goods carrier and the household goods carrier does not

obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper, the household goods carrier shall be subject to full liability for all of the loss or damage caused by the household goods carrier.

§218.55. Information for Shippers.

(a) When the household goods carrier provides the shipper with an original written proposal, as required in §218.56 of this title [subchapter] (relating to Proposals and Estimates for Moving Services), the household goods carrier shall also provide a copy of the information sheet entitled, Your Rights and Responsibilities When You Move in Texas as prescribed by the director.

(b) The household goods carrier may duplicate the department's form provided the exact text is reproduced in a legible manner in at least 10 point type font. No additional information that interferes with or alters the text may be added to the form.

§218.56. Proposals and Estimates for Moving Services.

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent. A proposal may not include the name, logo, or motor carrier registration number of any other motor carrier.

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as[,] if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as[,] a cashier's check.

(5) A proposal must conspicuously state that a household goods carrier's liability for loss or damage to cargo is limited to \$.60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability.

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional

services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

- (1) allow the original proposal to remain in effect;
- (2) amend the original proposal or moving services contract; or

- (3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage according to the terms in §218.58 of this title [subchapter] (relating to Moving Services Contract - Options for Carrier Limitation of Liability), without a written agreement with the shipper to amend or substitute the original proposal.

(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

§218.57. Moving Services Contract.

(a) Requirements. A household goods carrier must give a copy of the moving services contract to the shipper prior to the loading of the shipment. This copy must include:

(1) the name and motor carrier registration number of the household goods carrier as they appear on the motor carrier certificate of registration, and the address and telephone number of the household goods carrier or the household goods agent that prepared the moving services contract;

(2) the date the shipment is loaded and a description of the shipment as household goods;

(3) the name and address of the shipper;

(4) the addresses of the:

(A) origin;

(B) destination, if known; and

(C) any stops in transit, if known;

(5) the moving services to be performed;

(6) the conspicuous statement, "A household goods carrier's liability for loss or damage to any shipment is \$.60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability.";

(7) a conspicuous explanation of any agreement for increased carrier liability limit, the amount of increased carrier liability, the cost of the increased limit, any deductible above the carrier's \$.60 per pound per article liability, and the statement, "This is not insurance.";

(8) a clear notice of the amount of any insurance for property that is transported or stored, the amount of insurance premiums, and the insurance policy number, if insurance for the shipment was purchased from or through the household goods carrier;

(9) the conspicuous statement, "This is a contract for moving services and is subject to the terms and conditions on the front and back of this document and any addendum.";

(10) a description of whether the proposal is a binding or not-to-exceed proposal, and the maximum price the shipper could be required to pay for the services listed;

(11) a statement authorizing performance of the listed services, signed and dated by the household goods carrier and the shipper; and

(12) a statement signed and dated by the shipper authorizing delivery of household goods at a destination where the shipper is not present if the shipper intends for the household goods carrier to deliver to a site where the shipper will not be present.

(b) Delivery. A household goods carrier must give a completed copy of the moving services contract to the shipper upon delivery of the shipment. The household goods carrier must release the household goods to the shipper at destination if the shipper pays the maximum price listed on the moving services contract. Except as provided by subsection (c) of this section, the moving services contract shall be signed and dated by the household goods carrier and the shipper confirming the shipment has been delivered. This signature only confirms delivery of the shipment. Except as provided in subsection (e) of this section, this copy must include the information listed in subsection (a) of this section and:

(1) the total charges for the shipment and the specific nature of each charge, including the method used to calculate the minimum and total charges if the shipment was not transported based on a binding proposal;

(2) an explanation of all additional moving services provided in accordance with §218.56(d) of this title [subchapter] (relating to Proposals and Estimates for Moving Services); and

(3) the addresses of the origin, destination, and any stops in transit if not previously provided on the moving services contract at the origin.

(c) Delivery to a destination where the shipper is not present. If a shipper authorizes the household goods carrier to deliver household goods to a destination where the shipper is not present, as allowed in subsection (a)(12) of this section, the moving services contract need not be signed and dated by the shipper at the time of delivery.

(d) Pre-existing transportation contracts. A household goods carrier is not required to comply with subsection (b)(1) and (2) of this section if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation ser-

vices. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(e) Signatures. The signatures of the shipper, as required by subsections (a)(11) and (b) of this section, may be transmitted by facsimile or other electronic means. These signatures must be separate from any signatures required by the household goods carrier such as the acknowledgment of the statement of value of the shipment.

§218.58. *Moving Services Contract - Options for Carrier Limitation of Liability.*

(a) General.

(1) Household goods shipments transported between points in Texas shall be subject to all terms and conditions of the moving services contract, as set forth in §218.57 of this title [subchapter] (relating to Moving Services Contract), except in cases where such terms and conditions are in conflict with the laws of the State of Texas.

(2) If a household goods carrier chooses to use additional limitations of liability on a shipment, the limitations shall be either of the options specified in subsections [subsection] (b) or (c) of this section. A household goods carrier may not alter or expand on the limitation to its liability or the exact wording set out in subsections [subsection] (b) or (c) of this section. The option selected by the household goods carrier shall be included with and is part of the moving services contract.

(b) Option 1. If this option is chosen, the following language must be used verbatim.

(1) Section 1 - General Provisions.

(A) For the purposes of this subsection, the following terms will mean:

(i) Household goods carrier--The motor carrier/mover contracted to transport a shipment of household goods.

(ii) Shipper--The owner of the household goods shipment or his representative.

(B) Changes to the moving service contract are not valid unless agreed to in writing by the household goods carrier and the shipper.

(C) Household goods carriers will transport shipments with reasonable dispatch. Reasonable dispatch requires the transportation of a shipment within the agreed period of time shown on the moving services contract, except when circumstances beyond the carrier's control, force majeure, prevent or delay transportation.

(D) Moving services contracts must comply with all other applicable laws of the State of Texas.

(2) Section 2 - Cargo Liability Provisions.

(A) The household goods carrier is liable for any loss or damage to the shipment, except as listed in subparagraphs (B) and (C) of this paragraph.

(B) The household goods carrier is not responsible for loss, damage, or delay due to acts of God, acts of civil authorities, defects in the shipment, a riot, a strike, or an act or default of the shipper.

(C) The household goods carrier is not liable for loss or damage caused by dangerous or explosive goods unless the shipper notifies the carrier, in writing, of the nature of the goods and the carrier agrees, in writing, to the transportation of these goods.

(3) Section 3 - Claims Provisions.

(A) A written claim must be filed by the shipper within 90 days of delivery of the shipment to the final destination. In case of failure to make delivery, then a written claim must be filed by the shipper within 90 days after a reasonable time for delivery has elapsed.

(B) A household goods carrier is not liable for any claim that is not filed within 90 days of the delivery of the shipment to the final destination. A household goods carrier is not liable for any claim that is not filed within 90 days after a reasonable time for delivery has elapsed for shipments that were not delivered.

(4) Section 4 - Payment Provisions. The shipper must pay the freight charges upon delivery unless the shipper and household goods carrier agree otherwise.

(5) Section 5 - Provisions for Shipments Not Delivered.

(A) A household goods carrier may place a shipment of household goods into storage if the shipper is not available for delivery of the goods as scheduled.

(B) The cost of such storage is the responsibility of the shipper of the household goods.

(C) A shipment of household goods placed in storage is subject to liens for storage, freight, and other lawful charges.

(D) A household goods carrier must issue written notice of the storage of the household goods to the shipper at each address shown on the moving services contract within three days of placing the goods in storage.

(E) If the shipper refuses to accept or does not claim the household goods within 15 days of the written notice of storage, the household goods carrier may begin the process of selling the goods at public sale, as prescribed in Transportation Code, Chapter 6.

(F) A household goods carrier must give written notice of the public sale to the shipper at each address shown on the moving services contract.

(G) The moving services contract does not prohibit the sale of the goods under any other lawful manner if the method set out in the contract cannot be reasonably accomplished.

(c) Option 2. If this option is chosen, the following language must be used verbatim.

(1) Section 1 of contract terms and conditions.

(A) The household goods carrier or party in possession of any of the property herein described shall be liable at common law for any loss thereof or damage thereto, except as hereinafter provided.

(B) No household goods carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by an act of God, the public enemy, the authority of law, or an act or default of the shipper or owner. The household goods carrier's liability shall be that of warehouseman only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file after notice of the arrival of the property at destination has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the household goods carrier or party in possession (and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession), the household goods carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or inher-

ent vice of the article, including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein, or from riots or strikes. Except in the case of household goods carrier's negligence, no household goods carrier, or party in possession of all or any of the property herein described, shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession.

(C) In case of quarantine the property may be discharged at the risk and expense of the owner into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the household goods carrier's dispatch at the nearest available point in the household goods carrier's judgment, and in any such case the household goods carrier's responsibility shall cease when property is so discharged, or property may be returned by the household goods carrier at the owner's expense to the shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owner of the property or the household goods carrier may file a lien. The household goods carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by the household goods carrier's officers, local agents, or employees, nor for detention, loss, or damage of any kind occasioned by the quarantine or its enforcement. A household goods carrier shall not be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the household goods carrier, its local agents, or officers, as to quarantine laws or regulations. The shipper shall hold the household goods carrier harmless from any expense it may incur, or damages it may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

(2) Section 2 of contract terms and conditions.

(A) A household goods carrier is not bound to transport property by any particular scheduled vehicle or in time for any particular market other than with reasonable dispatch. A household goods carrier shall have the right, in case of physical necessity, to forward the property by any household goods carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges, if paid, shall be the maximum amount recovered, whether or not such loss or damage occurs from negligence.

(B) As a condition precedent to recovery, a claim must be filed in writing with the receiving or delivering household goods carrier, or the household goods carrier issuing the bill of lading or receipt, or the household goods carrier on whose line the loss, damage, injury, or delay occurred, or the household goods carrier in possession of the property when the loss, damage, injury, or delay occurred, within 90 days after delivery of the property or, in case of failure to make delivery, then within 90 days after a reasonable time for delivery has elapsed; and suits shall be instituted against any household goods carrier only within two years and one day from the day when notice in writing is given by the household goods carrier to the claimant that the household goods carrier has disallowed the claim or any of its part or parts specified in the notice. Where a claim is not filed or a suit is not instituted in accordance with the foregoing provisions, a household goods carrier hereunder shall not be held liable, and the claim will not be paid.

(C) Any household goods carrier or party liable on account of loss of or damage to any of the property shall have the full benefit of any insurance that may have been effected, upon, or on account of, said property, so far as this shall not avoid the policies or contracts of insurance; provided, that the household goods carrier reimburses the claimant for the premium paid.

(3) Section 3 of contract terms and conditions. Except where such service is required as the result of household goods carrier's negligence, all property shall be subject to necessary cooperation and baling at the owner's cost.

(4) Section 4 of contract terms and conditions.

(A) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination has been duly sent or given, and after tender of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vehicle, warehouse, or place of business of the household goods carrier, subject to the tariff charge for storage and to household goods carrier's responsibility as warehouseman, only, or at the option of the household goods carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available storage facility, at the cost of the owner and there held without liability on the part of the household goods carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading or receipt for notification, showing the warehouse in which the property has been placed.

(B) If nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the household goods carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the household goods carrier; provided, that the household goods carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading or receipt if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Thirty days must elapse after notice that the property was refused or remains unclaimed was mailed, sent, or given before notice of sale may be published.

(C) If perishable property which has been transported is refused by the consignee or party entitled to receive it, or the consignee or party entitled to receive it shall fail to receive it promptly, the household goods carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale; provided, that if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, notification shall be given, in such manner as the exercise of due diligence requires before the property is sold.

(D) If the procedure provided for in this section is not possible, it is agreed that nothing contained in the section shall be construed to abridge the right of the household goods carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(E) The proceeds of the sale shall be applied by the household goods carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care requires special expense. If there is a balance it shall be paid to the owner of the property.

(F) If the household goods carrier is directed by the consignor or its agent to load property from (or render any services at) a place or places at which the consignor or its agent is not present, the property shall be at the risk of the owner before loading.

(G) If the household goods carrier is directed by the consignee or its agent to unload or deliver property (or render any services) at the place or places at which the consignee or its agent is not present, the property shall be at the risk of the owner after unloading or delivery.

(5) Section 5 of contract terms and conditions. A household goods carrier shall not carry or be liable in any way for documents, specie, or for articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed.

(6) Section 6 of contract terms and conditions. Every party, whether the principal or local agent, shipping explosives or dangerous goods, without previous full written disclosure to the household goods carrier of their nature, shall be liable for and indemnify the household goods carrier against all loss or damage caused by the goods, and the goods may be warehoused at the owner's risk and expense or destroyed without compensation.

(7) Section 7 of contract terms and conditions.

(A) The owner or consignee shall pay the freight and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no household goods carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading or receipt until all rates and charges have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading or receipt that the household goods carrier shall not make delivery without requiring payment of the charges and the household goods carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for the charges. Where the household goods carrier has been instructed by the shipper or consignor to deliver the property to a consignee other than the shipper or consignor, the consignee shall not be legally liable for transportation charges in respect of the transportation of the property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee is an agent only and has no beneficial title in said property, and prior to delivery of said property has notified the delivering household goods carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading or receipt, has also notified the delivering household goods carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges.

(B) If the consignee has given to the household goods carrier erroneous information as to whom the beneficial owner is, such consignee shall be liable for the additional charges. Nothing herein shall limit the right of the household goods carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading or receipt, the freight charges must be paid on the articles actually shipped.

(8) Section 8 of contract terms and conditions. If this bill of lading or receipt is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading or receipt, the shipper's signature to the prior bill of lading or receipt as to the statement of value or otherwise, or election of common law or bill of lading or receipt, in or in connection with such prior bill of lading or receipt, shall be considered a part of this bill of lading or receipt as fully as if the same were written or made in or in connection with this bill of lading or receipt.

(9) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in this bill of lading or receipt which shall be made without the special notation herein of the agent of the household goods carrier issuing this bill of lading or receipt, shall be without effect, and this bill of lading or receipt shall be enforceable according to its original tenor.

§218.61. Claims.

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic document transfer with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier. A shipper must file a written claim within 90 days:

(A) of delivery of the shipment to the final destination;
or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send a written acknowledgment of the claim to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or his agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the department's Enforcement Division via the toll-free consumer helpline as listed on the department's website. [DMV's Motor Carrier Division at 1-888-368-4689.] Additionally, a claimant has the right to request mediation from TxDMV [DMV] within 30 days (excluding Sundays and nationally rec-

ognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved or the household goods carrier has initiated communication with the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim. However, the burden of proof of the claim resolution or communication with the claimant is the responsibility of the household goods carrier.

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through TxDMV [DMV] within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title [chapter] (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

(1) claim number (if assigned), date received, and amount of money or the requested remedy;

(2) number (if assigned) and date of the moving services contract;

(3) name of the claimant;

(4) date the carrier issued its claim acknowledgment letter;

(5) date and total amount paid on the claim or date and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.

§218.62. Mediation by the Department.

(a) The claimant may make a written request to the department for mediation.

(b) The claimant must attempt to resolve the claim with the household goods carrier by making a reasonable effort to follow the household goods carrier's claim process before requesting mediation by the department.

(c) Requests for mediation must be made within 30 days (excluding Sundays and nationally recognized holidays) after the earliest of the following events:

- (1) any portion of the claim is denied by the carrier;
- (2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or

(3) 90 days has elapsed since the carrier received the claim and the carrier has not responded to the claimant as prescribed in §218.61(b)(2) of this title [subchapter] (relating to Claims).

(d) Except as provided in subsection (e) of this section, the department will deny a request for mediation made more than 120 days (excluding Sundays and nationally recognized holidays) after the carrier received the claim. Additionally, the department will deny a request for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to the final destination or within 90 days after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(e) The department may grant a mediation request if the claimant and the carrier agree to participate in the mediation process and:

(1) the claimant was not advised in writing at least one time of the right to mediation as required by §218.61(b)(1)(A) or (2) [of this subchapter]; or

(2) the claimant does not receive the written denial or settlement offer letter required by §218.61(b)(2) [of this subchapter].

(f) For purposes of subsection (c)(1) and (2) of this section, the 30 day deadline for requesting mediation is calculated from the latter of:

- (1) the date of the claim denial or settlement offer letter; or
- (2) the date the claim denial or settlement offer letter is mailed or faxed to the claimant.

(g) The department will not grant more than one mediation request to a claimant for one shipment of household goods.

(h) The department will coordinate the selection of a mediator. The mediation will be conducted by written submissions, telephone conferences, or mediation sessions held at the department's facilities in Austin. The department will establish the time, date, and form of the mediation session.

(i) Household goods carriers must participate in this mediation process. The department may impose administrative sanctions, under §218.71 of this title [chapter] (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the mediation process or otherwise fails to comply with the requirements of this section.

(j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines the claimant has not cooperated in the mediation process, the department's mediation process shall be considered concluded. The claimant may consider pursuing the claim through an appropriate court of law.

(k) The mediator shall preside and have discretion over the mediation procedures, including the ability to require the claimant and the household goods carrier to provide information and documents in a timely fashion.

(l) If the household goods carrier makes a written report of the results of the inspection documenting the lost or damaged household

goods and uses the report during the department's mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

§218.64. Rates.

(a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) Prohibited charges and allowances. A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) Collective ratemaking agreements.

(1) Eligibility. In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) Designation of collective ratemaking associations. An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title [subchapter] (relating to Tariff Registration).

(3) Submission. In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

- (A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;
- (B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) Signature. The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) Incomplete agreement. If the department receives an agreement which does not comply with this subsection, the department will send a letter to the individual submitting the agreement. The letter

shall identify the information that is missing and advise the association that the agreement will not be processed until the information is received.

(6) Approval. In accordance with Transportation Code, §643.154, the director or designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) Noncompliance.

(A) If the director or designee determines that an agreement does not comply with paragraph (6) of this subsection, the department will notify the association representative by certified mail of:

(i) the specific reason that an agreement is not being approved; and

(ii) the hearing date.

(B) If the association representative resubmits an acceptable agreement which meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing date, the hearing will be canceled and the agreement will be approved. The State Office of Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). [~~§206.61 et seq. of this title (relating to Procedures in Contested Cases).~~]

(C) If the hearing is held, the presiding officer shall explain the reason(s) that the agreement was rejected. The association representative will be allowed to respond to the objections and present evidence or exhibits which relate to his or her response. The hearing examiner, based on the evidence provided, will make a recommendation to the board [~~commission~~] whether the agreement should be approved or resubmitted. The association representative shall be advised of the examiner's recommendation. The final order will be submitted to the board [~~commission~~] for approval.

(8) New parties to an agreement. An updated agreement shall be filed with the department as new parties are added.

(9) Amendments to approved agreements. Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

§218.65. *Tariff Registration.*

(a) Submission. In accordance with Transportation Code, §643.153, a household goods carrier and/or its household goods agent shall file a tariff with the department. The tariff shall establish maximum rates and charges for transportation services when a highway between two or more incorporated cities, towns or villages is traversed. A household goods carrier who is not a member of an approved association under §218.64 of this title [subchapter] (relating to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, that is a member of an approved association in accordance with §218.64 [of this subchapter], may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) Contents. The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) may provide for the offering, selling, or procuring of insurance as provided in §218.54 of this title [subchapter] (relating to Selling Insurance to Shippers);

(C) may provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper from the household goods carrier is not issued to the shipper at the time of purchase;

(D) shall describe the procedure for determining charges that are below the maximum rate for each service performed; and

(E) shall reference a specific mileage guide or source, if information on rates and charges based on mileage is included in the tariff (The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer database as a mileage guide, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier).

(2) Interstate tariff. In accordance with Transportation Code, §643.153, a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal office;

(C) the household goods carrier's registration number;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff; and

(v) the tariff number; and

(C) separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than 10 days prior to the effective date of the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended

tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department will reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(8) Electronic filings. A household goods carrier may file an electronic copy of its tariff provided that the document is consistent with the provision of this subsection and is formatted in Microsoft Word or other format approved by the director.

(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff was submitted prior to November 1, 1995.

(c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with this section will be made available for public inspection at the TxDMV Enforcement Division or by calling the department's toll-free consumer helpline as listed on the department's website. [Motor Carrier Division, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731, and by calling 1-888-368-4689.]

(d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they may conflict with the provisions of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 465-5665



SUBCHAPTER F. ENFORCEMENT

43 TAC §§218.70, 218.71, 218.73, 218.74, 218.76

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.70. Purpose.

The purpose of this subchapter is to provide for an efficient and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by establishing [setting out] procedures for the assessment of administrative penalties;[;] the suspension, revocation, and denial of motor carrier registration and leasing business registration;[;] cease and desist orders;[;] and probation of the suspension of a motor carrier's certificate of registration.

§218.71. Administrative Penalties.

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against the following:

(1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645; or

(2) a motor carrier or broker that violates a federal law or regulation, the enforcement of which has been delegated to the department.

(b) Amount of administrative penalty for violations of state laws, rules, or orders.

(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a violation.

(2) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed \$15,000. A motor carrier acts knowingly if that motor carrier knew or should have known [has acted with knowledge] that the acts are in violation of Transportation Code, Chapter 643 or Chapter 645, or a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645. A motor carrier acts knowingly if the motor carrier or its agent had or should have had actual knowledge of the violation, acted in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the truth or falsity of the information. Proof of a person's specific intent to commit a violation is not required in an administrative proceeding to show that a motor carrier acted knowingly. For example, knowledge may be inferred from the department's records regarding the motor carrier, law enforcement records, or the motor carrier's records.

(3) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

[(5) Any recommendation that a penalty should be imposed must be based on the following factors:]

[(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;]

[(B) the economic harm to property or the environment caused by the violation;]

[(C) the history of previous violations;]

[(D) the amount necessary to deter future violations;]

[(E) efforts made to correct the violation; and]

[(F) any other matters that justice may require.]

(c) Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the department and the Federal Motor Carrier Safety Administration, United States Department of Transportation, the department is authorized to initiate an enforcement action and assess civil penalties against a motor carrier or broker, as applicable, under the authority of the following:

(1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915, as amended;

(2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111, 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403, and Part 386 Appendix B(g)(22) - (23), as amended; and

(3) any future delegations pursuant to 49 U.S.C. §14710.

(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection(c) of this section via an administrative proceeding.

§218.73. Administrative Proceedings.

(a) If the department decides to take an enforcement action under §218.71 of this title [subchapter] (relating to Administrative Penalties) or §218.72 of this title [subchapter] (relating to Administrative Sanctions), the department shall give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of the department.

(b) The notice required by subsection (a) of this section must include:

- (1) a brief summary of the alleged violation;
- (2) a statement of each sanction;
- (3) the effective date of each sanction;
- (4) a statement informing the carrier of the carrier's right to request a hearing;
- (5) a statement as to the procedure for requesting a hearing, including the period during which a request must be made; and
- (6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the motor carrier fails to request a hearing.

(c) The motor carrier must submit a written request for a hearing to the address provided in the notice not later than the 26th day after the date the notice is mailed.

(d) On receipt of the written request for a hearing the department will refer the matter to the State Office of Administrative Hearings. When the hearing is set, the department will give notice of the time and place of the hearing to the carrier.

(e) If the motor carrier does not make a written request for a hearing or enter into a settlement agreement under §218.74 of this title [subchapter] (relating to Settlement Agreements) before the 27th day after the date the notice is mailed, the department's decision becomes final [and unappealable].

§218.74. Settlement Agreements.

(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to other specified action by the department

against the violator and must be signed by the alleged violator and the director. A compromise agreement is not an admission of the alleged violation.

(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit a cashier's check or money order to the department in the agreed amount before the agreement may be executed.

(c) Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement is a department order that is final [and unappealable].

~~[(d) The settlement agreement must include a clause that allows the department the authority to revoke the settlement agreement and initiate a hearing on the original alleged violations if the alleged violator fails to abide by the terms of the settlement agreement.]~~

§218.76. Registration Suspension Ordered under Family Code.

(a) On receipt of a final order issued under Family Code, §232.003, §232.008, or §232.009, regarding child support enforcement, the department will suspend:

(1) a certificate of registration issued under Subchapter B of this chapter (relating to Motor Carrier Registration); or

(2) the registration of an interstate motor carrier issued under §218.17 of this title [~~§218.18 of this chapter~~] (relating to Unified Carrier Registration System).

(b) The department will charge an administrative fee of \$10 to a person whose registration is suspended under this section.

(c) A suspension under this section does not require the department to give notice or otherwise follow the administrative process provided under §218.73 of this title [subchapter] (relating to Administrative Proceedings).

(d) A registration suspended under this section may only be reinstated on receipt of an order issued under Family Code, §232.013.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Department of Motor Vehicles

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 465-5665



SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

43 TAC §§218.80 - 218.82

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes

the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.80. Purpose and Scope.

The purpose of this subchapter is to comply with Transportation Code, §648.102.

§218.81. Definitions.

The words and terms used in this subchapter are defined in Transportation Code, Chapter 648, unless the context clearly indicates otherwise.

§218.82. Financial Responsibility.

(a) Intrastate transportation. No motor carrier shall operate a foreign commercial motor vehicle in intrastate transportation in Texas, unless the motor carrier obtains and has in effect an insurance policy which covers at least the minimum level required by 49 C.F.R. Part

387. However, if the motor carrier is required to register with the department under Transportation Code, Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to Insurance Requirements). For the purposes of this subsection, intrastate transportation is any transportation on a public road or highway in Texas that is not described in 49 U.S.C. §13501.

(b) The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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