

tor 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.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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### SUBCHAPTER G. INSPECTIONS

#### 43 TAC §§217.141 - 217.143

##### STATUTORY AUTHORITY

The new subchapter is adopted 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.

##### CROSS REFERENCE TO STATUTE

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### SUBCHAPTER H. DEPUTIES

#### 43 TAC §217.161

##### STATUTORY AUTHORITY

The new subchapter is adopted 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.

#### CROSS REFERENCE TO STATUTE

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### SUBCHAPTER I. SALVAGE VEHICLE DEALERS

#### 43 TAC §§217.181 - 217.192

##### STATUTORY AUTHORITY

The new subchapter is adopted 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.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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### CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) adopts the repeal of Chapter 218, Subchapter D, §218.40, Applicability. The department also adopts the 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 Re-

newal 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 adopts new Subchapter G, Financial Responsibility for Foreign Commercial Motor Vehicles, §218.80, Purpose and Scope; §218.81, Definitions; and §218.82, Financial Responsibility. The amendments to §218.52 and §218.71 are adopted with changes to the proposed text as published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8240) and will be republished. The amendments to §§218.1, 218.2, 218.11 - 218.14, 218.16 - 218.18, 218.31 - 218.33, 218.41, 218.42, 218.51, 218.54 - 218.58, 218.61, 218.62, 218.64, 218.65, 218.70, 218.73, 218.74, and 218.76; the repeal of §218.40; and new §§218.80 - 218.82, are adopted without changes and therefore, will not be republished.

#### EXPLANATION OF 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 intention to review was published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8273).

As a result of the review, the department determined that §218.40 should be repealed because it duplicates language that is already in statute.

Amendments to §218.1, Purpose, 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, modify definitions of existing terms and add new terms for consistency and accuracy. An amendment deletes 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 an amendment adds a definition for a foreign commercial motor vehicle. An amendment adds 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 delete language that is already contained in statute.

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

incomplete applications because the language is not consistent with agency practice.

Amendments to §218.14 are adopted 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 adopted 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 deletes 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 adopts 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, amendments replace terminology with defined terms and delete language that is already contained in statute.

Amendments to §218.17 correct the citation to 49 U.S.C. §14504a. Amendments also 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 made 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 adds a reference regarding the display of the insurance cab card information via a wireless communication device. An amendment also clarifies 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.

An amendment to §218.52 deletes "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 deletes the department's toll-free telephone number from §218.52 and replaces 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 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 of §218.52.

Amendments to §218.61 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 deletes the department's toll-free telephone number from §218.61 and replaces the language with a reference to the department's toll-free consumer helpline

as listed on the department's website. Similar amendments to §218.65 regarding public inspection of the tariffs that household goods carriers file with the department pursuant to Transportation Code, §643.153 are adopted.

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

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

An additional amendment to §218.74 deletes 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, complies 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.

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

#### COMMENT

The department received one written comment from the Texas Trucking Association (TXTA) and Southwest Movers Association (SMA) expressing their opposition to the proposed amendments to §218.52 and §218.71.

TXTA and SMA requested the department to remove proposed language in §218.52 that requires both a TxDMV certificate of registration number and the U.S. DOT registration number on print advertisements and websites. They feel that either number is adequate to identify the motor carrier, and the requirement to list both numbers adds unnecessary costs. TXTA and SMA also requested the department to modify the proposed definition of the word "knowingly" in §218.71 because they do not think the proposed definition is appropriate for an administrative enforcement case.

#### RESPONSE

The department deleted the proposed language that requires the U.S. DOT registration number on print advertisements and websites because the TxDMV certificate of registration number is sufficient to identify the motor carrier. The department also modified the proposed definition of the word "knowingly."

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §218.1, §218.2

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

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### SUBCHAPTER B. MOTOR CARRIER REGISTRATION

#### 43 TAC §§218.11 - 218.14, 218.16 - 218.18

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

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## SUBCHAPTER C. RECORDS AND INSPECTIONS

### 43 TAC §§218.31 - 218.33

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

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## SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

### 43 TAC §218.40

#### STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board of the Texas 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 de-

partment 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.

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### 43 TAC §218.41, §218.42

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

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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 adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

#### §218.52. 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. \_\_\_\_\_".

(c) 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) 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) 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; and
- (2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. \_\_\_\_\_".
- (h) 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 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) 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.

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## SUBCHAPTER F. ENFORCEMENT

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

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

#### §218.71. *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. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.

(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.

(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.

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## SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

### 43 TAC §§218.80 - 218.82

#### STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Texas 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.

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