

guidance in calculating the tax due on the non-exempt use of an item purchased tax-free. Paragraph (2) states that records must be maintained to document when an item purchased tax-free is used in a taxable manner and to document the payment of sales or use tax due on such use.

No comments were received regarding adoption of the new section.

The new section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2 (State Taxes).

The new section implements Tax Code, §151.3185 (Property Used in the Production of Motion Pictures or Video or Audio Recordings and Broadcasts) and Tax Code, §151.3415 (Items Sold to or Used to Construct, Maintain, Expand, Improve, Equip, or Renovate Media Production Facilities at Media Production Locations; Report).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 218, Motor Carriers, Subchapter A: §218.2, Definitions; Subchapter B: §218.13, Application for Motor Carrier Registration; Subchapter C: §218.31, Investigations and Inspections of Motor Carrier Records; and §218.32, Motor Carrier Records; and Subchapter E: §218.52, Advertising; §218.53, Household Goods Carrier Cargo Liability; §218.56, Proposals and Estimates for Moving Services; §218.59, Inventories; 218.60, Determination of Weights; and §218.61, Claims, without changes to the proposed text as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9246). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §643.155, requires the department to appoint a rules advisory committee (advisory committee) consisting of representatives of the public, the department, and motor carriers transporting household goods. The rules advisory committee is required to examine rules adopted by the department under §§643.153(a) and (b) and make recommendations to the

department on modernizing and streamlining the rules. The advisory committee made recommendations to the department after meeting four times to discuss and examine the rules. The majority of the amendments resulted from the advisory committee's recommendations to the department.

Amendments to §218.2 add definitions for the terms "advertisement" and "print advertisement," which are regulated to protect the shippers (consumers). Amendments renumber the remaining terms. Also, an amendment to the existing term "household goods carrier" clarifies that the term applies to all motor carriers that transport household goods for compensation, regardless of the size of the vehicle. Further, the definition for the term "manager" was deleted because the amendments delete this term from Chapter 218.

An amendment to §218.13 requires an application for registration by a household goods carrier to include a tariff. This amendment helps to protect the consumers by ensuring a tariff is on file before the household goods carrier begins to transport household goods for compensation. The tariff lists the maximum rates the household goods carrier can charge the consumer. According to the Better Business Bureau (BBB) representative on the advisory committee, the second most frequent complaint they receive from consumers regarding household goods carriers is that the price at the end of the move is different than the verbal quote. The BBB representative also stated they will not accredit a household goods carrier until the carrier is registered with the department. If the BBB has not accredited a household goods carrier, a consumer may be less likely to do business with that carrier.

An amendment to §218.13 clarifies that the director's conditional acceptance of an application does not authorize the applicant to operate as a motor carrier. This amendment helps protect consumers from motor carriers that may incorrectly think they can operate as a motor carrier if the director has conditionally accepted an application.

Amendments to §218.31 clarify that employees of the department are certified as department investigators and may conduct investigations and inspect records under Transportation Code, Chapters 643 and 645. Amendments further specify the time, location, and notification requirements for the investigations and inspections. Conforming amendments throughout Chapter 218 use the term "department investigator."

Amendments to §218.32 delete unnecessary language regarding household goods carrier's records and clarify that all records must be prepared and maintained in a complete and accurate manner. Also, an amendment clarifies that an out-of-state motor carrier may maintain the required records at a business location in Texas, rather than at its principal place of business in Texas because an out-of-state motor carrier might not have a principal place of business in Texas.

Amendments to §218.52 modify the requirements for household goods carrier advertisements, including the specific requirements for print advertisements and websites. Amendments also delete outdated language and modify the requirements regarding the identifying markings on household goods carrier's vehicles. The amendments require a household goods carrier that is operating vehicles under a short-term lease to display the name of the carrier and the carrier's certificate of registration number on both sides of the vehicle. The markings help to protect consumers by enabling law enforcement officers and the department's investigators to quickly identify vehicles involved in

the transportation of household goods. In addition, the markings help the consumer identify the household goods carrier.

Amendments to §218.53 clarify the amount of and the method of calculating a carrier's liability for loss or damage of cargo. According to the BBB representative on the advisory committee, the third most frequent complaint they receive from consumers regarding household goods carriers is that the consumer does not understand how the liability works.

An amendment to §218.56 removes the language that prohibits a motor carrier from including the following in a proposal because this language is inconsistent with current practice: the name, logo, or motor carrier registration number of any other motor carrier. An amendment also clarifies that proposals based on hourly rates are required to state the maximum amount the consumer could be required to pay for the listed transportation and related services. According to one of the household goods carrier representatives on the advisory committee, some household goods carriers believe the current rules do not require a proposal based on hourly rates to state the maximum amount the consumer could be required to pay. According to the BBB representative on the advisory committee, the second most frequent complaint they receive from consumers regarding household goods carriers is the price at the end of the move is different than the verbal quote. This clarification helps to protect consumers by making it clear that any proposal must state the maximum amount the consumer could be required to pay.

Amendments to §218.59 modify the requirements regarding inventories prepared by agreement between the motor carrier and the consumer to give the parties the flexibility they need for each move. Amendments clarify that a consumer's agent may sign an inventory for the consumer at origin and designation.

Amendments to §§218.59, 218.60, and 218.61, respectively, allow the inventory to be prepared in an electronic format, allow weight tickets to be in an electronic format, and allow a claim and an acknowledgment of a claim to be filed in an electronic format. These amendments expressly allow the consumer and the household goods carrier to benefit from the convenience of modern technology.

Amendments to §218.61 also add clarifying language.

Amendments are made throughout Chapter 218 to revise terminology for consistency with other department rules and with current department practice. Nonsubstantive amendments correct grammar throughout the amended sections.

COMMENT

The department received a comment from John D. Esparza on behalf of Southwest Movers Association (SMA) and Texas Trucking Association (TXTA) stating that these trade associations represent approximately 800 motor carriers. SMA and TXTA are in full support of the department's proposed amendments to Chapter 218 and urge the department to adopt the amendments at its earliest convenience.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §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; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.13

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; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.31, §218.32

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; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.52, 218.53, 218.56, 218.59 - 218.61

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; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

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