



Office of the Governor

Regulatory Compliance Division

Rule Submission Memorandum

To: Erin Bennett, Regulatory Compliance Division Director

From: Tracey Beaver, General Counsel

Date: August 27, 2020

Subject: 43 TAC §215.500 and §215.504

The Texas Department of Motor Vehicles has proposed a rulemaking for 43 TAC §215.500 and §215.504 in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5874). The proposed rules affect market competition and are, thus, submitted to the Regulatory Compliance Division for review. The proposed rules, as it appeared in the Texas Register in its entirety, are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas Department of Motor Vehicles provides answers to the following questions.

1. Briefly describe the proposed rule.

The proposed amendment to §215.500 adds refunds to the existing list of administrative sanctions available to the department. Proposed new §215.504 permits the board to order a person to issue a refund if, after a proceeding under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules and defines refund.

2. What is the purpose of the proposed rule?

The primary purpose of the proposal is to implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The impetus was the enactment of SB 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle.

4. Describe the legal authority for the proposed rule.

- a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Yes. Occupations Code §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

- b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the rule is within the scope, and reference the applicable state statute(s).

Yes. Occupations Code §2301.155, which provides the board authority to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

The Texas Department of Motor Vehicles reviewed legislation and drafted the proposed rule. The department's Consumer Protection Advisory Committee discussed refunds in two of its meetings and the department also used that guidance in drafting the rule. The board of the Texas Department of Motor Vehicles considered the proposed rule in an open meeting, requested comments from stakeholders at the open meeting, and authorized the department to publish the proposed rule for public comment in the *Texas Register*.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm. If applicable, attach any documentation or records of the harm.

The proposed rule expands the administrative tools that the board has to assist consumers harmed by violations of the Occupations Code.

7. Summarize any less restrictive alternatives that the state agency identified for addressing the same harm, including a comparison of the proposed rule to the alternatives, and provide a justification for not pursuing a less restrictive alternative.

A less restrictive alternative was not identified. The proposal is based on the statutory requirements in Occupations Code Chapter 2301 and SB 604.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

The proposal:

- It creates a barrier to market participation in the state.

- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

The proposal affects market competition to the extent that:

While the proposed rules do not add new requirements for dealers under the Occupations Code, it may increase the prices for products or services by increasing the cost of doing business by increasing the administrative penalties available to the department's enforcement division.

10. Did the state agency self-determine that the proposed rule affects market competition or did the Regulatory Compliance Division identify the proposed rule as possibly affecting market competition?

The Texas Department of Motor Vehicles identified the proposed rule as affecting market competition.

11. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

The proposed rule does not relate to a question that is the subject of an opinion request pending before the Office of the Attorney General or to an opinion previously issued by the Office of the Attorney General.

12. Does the proposed rule relate to a matter on which there is pending litigation?

The proposed rule does not relate to a matter on which there is pending litigation.

13. Is there anything else that you would like the Regulatory Compliance Division to know about the proposed rule?

The department has attached a copy of the proposed rule.

Sincerely,



Tracey Beaver
General Counsel
Texas Department of Motor Vehicles

Office of the Governor

Regulatory Compliance Division

Rule Submission Memorandum

To: Erin Bennett, Regulatory Compliance Division Director

From: Tracey Beaver, General Counsel

Date: August 27, 2020

Subject: 43 TAC §218.72

The Texas Department of Motor Vehicles has proposed a rulemaking for 43 TAC §218.72 in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5876). The proposed rule affects market competition and are, thus, submitted to the Regulatory Compliance Division for review. The proposed rule, as it appeared in the Texas Register in its entirety, are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas Department of Motor Vehicles provides answers to the following questions.

1. Briefly describe the proposed rule.

The proposed amendments to §218.72 adds proposed new subsection (d), which adds refunds to the existing list of administrative sanctions available to the department. The department's enforcement division may order a motor carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the motor carrier to transport household goods.

2. What is the purpose of the proposed rule?

The primary purpose of the proposal is to implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Transportation Code Chapter 643 by adding §643.257 authorizing the department to order a motor carrier that violates Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The impetus was the enactment of SB 604, 86th Legislature, Regular Session (2019), which amended Transportation Code Chapter 643 by adding §643.257 authorizing the department to order a motor carrier that violates Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

4. Describe the legal authority for the proposed rule.

- a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Yes. Transportation Code Chapter §643.257 authorizing the department to order a motor carrier that violates Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

- b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the rule is within the scope, and reference the applicable state statute(s).

Yes. Transportation Code §643.003, which provides the department authority adopt rules to administer Chapter 643.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

The Texas Department of Motor Vehicles reviewed legislation and drafted the proposed rule. The department's Consumer Protection Advisory Committee discussed refunds in two of its meetings and the department also used that guidance in drafting the rule. The board of the Texas Department of Motor Vehicles considered the proposed rule in an open meeting, requested comments from stakeholders at the open meeting, and authorized the department to publish the proposed rule for public comment in the *Texas Register*.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm. If applicable, attach any documentation or records of the harm.

The proposed rule expands the administrative tools that the board has to assist consumers harmed by violations of the Occupations Code.

7. Summarize any less restrictive alternatives that the state agency identified for addressing the same harm, including a comparison of the proposed rule to the alternatives, and provide a justification for not pursuing a less restrictive alternative.

A less restrictive alternative was not identified. The proposal is based on the statutory requirements in Transportation Code Chapter 643 and SB 604.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

The proposal:

- It creates a barrier to market participation in the state.

- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

The proposal affects market competition to the extent that:

While the proposed rules do not add new requirements for household good movers under the Transportation Code, it may increase the prices for products or services by increasing the cost of doing business by increasing the administrative penalties available to the department's enforcement division.

10. Did the state agency self-determine that the proposed rule affects market competition or did the Regulatory Compliance Division identify the proposed rule as possibly affecting market competition?

The Texas Department of Motor Vehicles identified the proposed rule as affecting market competition.

11. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

The proposed rule does not relate to a question that is the subject of an opinion request pending before the Office of the Attorney General or to an opinion previously issued by the Office of the Attorney General.

12. Does the proposed rule relate to a matter on which there is pending litigation?

The proposed rule does not relate to a matter on which there is pending litigation.

13. Is there anything else that you would like the Regulatory Compliance Division to know about the proposed rule?

A copy of the executive summary for the proposal that was submitted to the board of the Texas Department of Motor Vehicles is attached.

Sincerely,



Tracey Beaver
General Counsel
Texas Department of Motor Vehicles

(a) If a party wants to provide a presentation aid to the board, it must provide the presentation aid to the department and all other parties in accordance with §215.30 of this title (Relating to Filing of Documents) and §215.49 of this title (Relating to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 21 days prior to the date of the board meeting. If a party wants to provide a rebuttal presentation aid to the board, it must provide the rebuttal presentation aid to the department and all other parties in accordance with §215.30 of this title and §215.49 of this title at least 14 days prior to the date of the board meeting. If a party fails to timely provide a presentation aid to the department or any other party, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting.

(b) For the purposes of this section, presentation aids are defined as written materials, such as a document or PowerPoint slides, which contain a party's arguments and discussion of evidence, laws, and rules regarding the contested case. Presentation aids shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, any party may argue that the board should remand the case to SOAH.

(c) All information in the presentation aids shall include a cite to the SOAH administrative record on all points to specifically identify where the information is located.

(d) Presentation aids shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12-point type. Initial presentation aids are limited to four pages, and rebuttal presentation aids are limited to two pages for a total of six pages. If a party provides the department with a presentation aid that contains more pages than the maximum allowed, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting.

§215.61. Limiting Arguments and Discussion to Evidence in the Administrative Record.

(a) The parties to a contested case under review by the board shall limit their arguments and discussion to evidence in the SOAH administrative record, and their arguments and discussion shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, any party may argue that the board should remand the case to SOAH.

(b) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

§215.62. Order of Presentations to the Board for Review of a Contested Case.

(a) The department's staff will present the procedural history and summary of the contested case.

(b) The party that is adversely affected has the opportunity to present its case first. However, the board chairman is authorized to determine the order of each party's presentation in the event of the following:

- (1) it is not clear which party is adversely affected;
- (2) it appears as though more than one party is adversely affected; or
- (3) different parties are adversely affected by different portions of the contested case under review.

(c) The other party or parties then have an opportunity to respond. If there are more than one other party, each party will have an

opportunity to respond in alphabetical order based on the name of the party in the pleadings in the SOAH administrative record.

(d) Each party then has an opportunity to provide a rebuttal.

(e) A party must timely comply with the requirements of §215.59 of this title (relating to Request for Oral Argument) before it is authorized to provide oral argument to the board.

§215.63. Board Conduct and Discussion When Reviewing a Contested Case.

(a) The board shall conduct its review of a contested case in compliance with Government Code Chapter 2001, including the limitations on changing a finding of fact or conclusion of law made by the administrative law judge at SOAH, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) Board members may question any party or the department on any matter that is relevant to the proposal for decision or the evidence contained in the SOAH administrative record; however, any questions shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e), and the communication must comply with §215.22 of this title (Relating to Prohibited Communications). In addition, board members are authorized to ask questions regarding arguments or a request to remand the case to SOAH.

(c) Board members may use their industry expertise to help them understand the case and make effective decisions, consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, board members are not advocates for a particular industry. Board members are public servants who take an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003212

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

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



SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.500, §215.504

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 TAC §215.500, concerning administrative sanctions and procedures and add new §215.504 concerning buyer and lessee refunds. The proposed amended and new sections implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle.

EXPLANATION. The proposed amendment to §215.500 adds §215.500(a)(5) to the existing list of administrative sanctions available to the department. The department's enforcement division will order refunds within existing enforcement procedures

outlined in Chapter 215. The board could order the issuance of refunds through settlement negotiations undertaken under Chapter 215 as well as the adoption of a proposal for decision issued by an administrative law judge at the State Office of Administrative Hearings. Proposed new §215.500(a)(5) is necessary to implement SB 604 and to clarify that refunds will be ordered using the same procedures as existing sanctions under the rules.

Proposed new §215.504(a) permits the board to order a person to issue a refund if, after a proceeding under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules. Proposed new §215.504 (a) is necessary to implement SB 604.

Proposed new §215.504(b) defines "refund" as the return of any percentage of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or the overall amount paid by a customer. Proposed new §215.504(b) explains that a refund may include overpayments, fees paid for services not rendered, and payments made for products not delivered. A refund does not include any consideration of damages or harm over the amount paid by the customer. Occupations Code §2301.807 did not extend the department's sanction authority to order damages or restitution. Proposed new §215.504(b) is necessary to explain the meaning of refund in the subsection and clarify that the refund is not a mechanism for restitution or to make the consumer whole; such as, the dealer licensee reimbursing the buyer or lessee for the cost of third-party services in a situation where the buyer or lessee must engage a third-party to complete services not rendered. A refund is a tool that may be used by the department's enforcement division to order a person who has violated Occupations Code Chapter 2301 to refund the customer by giving back or returning money paid or contracted to be paid, if the customer has entered into a financing agreement, because the consumer did not receive a service or item. The refund is limited to funds paid or contracted to be paid to the dealer licensee.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amended and new sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amended and new sections are in effect, there are public benefits anticipated from the ability of the board to order refunds.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include expanding the administrative tools that the board has to sanction dealer licensees that violate the Occupations Code and department rules and providing buyers and lessees a means of receiving a refund of money paid to dealer licensees for overpayments, fees paid for services not rendered, and payments made for products not delivered.

Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that there will be no costs to comply with these rules. The proposed rules do not create any compliance requirement of cost of compliance on a regulated person. The proposed rules implement a potential statutory sanction provision that the

department may order against a person that violates Occupations Code Chapter 2301 or a rule adopted under the chapter.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule because it will not create additional requirements or costs on regulated persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that during the first five years the proposed amended and new sections are in effect, no government program would be created or eliminated. Implementation of the proposed amended and new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amended and new sections do not create a new regulation, or expand, or repeal an existing regulation. Lastly, the proposed amended and new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendment and new rule are proposed under Occupations Code §2301.155, which provides the board authority to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board and 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 the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.807.

§215.500. *Administrative Sanctions and Procedures.*

- (a) An administrative sanction may include:
 - (1) denial of an application for a license;
 - (2) suspension of a license;
 - (3) revocation of a license; [ø]
 - (4) the imposition of civil penalties; or [-]

(5) a refund under §215.504 of this title (concerning buyer or lessee refund).

(b) The department shall issue and mail a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:

- (1) an application for a license should be denied; or
- (2) administrative sanctions should be imposed.

(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its license, when a license holder renews its license, or when the license holder notifies the department of a change in the license holder's mailing address.

(d) The Notice of Department Decision shall include:

- (1) a statement describing the department decision and the effective date;
- (2) a description of each alleged violation;
- (3) a description of each administrative sanction being proposed;
- (4) a statement regarding the legal basis for each administrative sanction;
- (5) a statement regarding the license applicant, license holder, or other person's right to request a hearing;
- (6) the procedure to request a hearing, including the deadline for filing; and
- (7) notice to the license applicant, license holder, or other person that the proposed decision and administrative sanctions in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person fails to timely request a hearing.

(e) The license applicant, license holder, or other person must submit, in writing, a request for a hearing under this section. The department must receive a request for a hearing within 26 days of the date of the Notice of Department Decision.

(f) If the department receives a timely request for a hearing, the department will set a hearing date and give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing.

(g) If the license applicant, license holder, or other person does not make a timely request for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department Decision, the department decision becomes final.

§215. 504. Buyer or Lessee Refund.

(a) The board may order a person to issue a refund if, after a proceeding under this chapter, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules.

(b) Under this section, a refund is the return of any percentage ordered by the department of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or part of the overall amount paid by a consumer. Refund may include overpayments, fees paid for services not rendered, and payments made for products not delivered.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003214

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

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



CHAPTER 218. MOTOR CARRIERS SUBCHAPTER F. ENFORCEMENT

43 TAC §218.72

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 of the Texas Administrative Code (TAC) §218.72 concerning administrative sanctions. The proposed amendment implements Senate Bill 604, 86th Legislature, Regular Session (2019). Senate Bill 604 amended Transportation Code Chapter 643 by adding §643.257, authorizing the department to order a motor carrier that violates Transportation Code Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

EXPLANATION. The proposed amendment to §218.72 adds proposed new subsection (d), which adds refunds to the existing list of administrative sanctions available to the department. Department enforcement will employ the use of refunds within existing enforcement procedures outlined in Chapter 218.

Proposed new §218.72(d)(1) permits the department to order a motor carrier that violates Transportation Code Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods. Proposed new §218.72(d)(1) is necessary to implement SB 604.

Proposed new §218.72(d)(2) defines "refund" as the return of any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer. Proposed new §218.72(d)(2) is necessary to explain the meaning of "refund" in the subsection.

Proposed new §218.72(d)(2)(A) clarifies that a refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property. Proposed new §218.72(d)(2)(B) clarifies that a refund does not include any consideration of damages or harm over the amount paid by the customer. Proposed new §218.72(d)(2)(A) and (B) are necessary to clarify that a refund is not a mechanism for restitution or to make the consumer whole, such as a household good mover reimbursing the consumer for the cost of third-party services to complete services not rendered by the mover. A refund is a tool that may be used by the department's enforcement division to order a household good mover to refund the customer by returning money paid, or contracted to be paid, because they did not receive a service or item. The refund all circumstance

would be limited to funds paid or contracted to be paid to the household goods mover.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amended section is in effect, there are public benefits anticipated from the ability of the department to order refunds.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include expanding the administrative tools that the department has to sanction household good movers that violate the Transportation Code and department rules and providing consumers a means of receiving a refund of money paid to household good movers for overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property.

Anticipated Costs to Comply with the Proposal. Ms. Thompson anticipates that there will be no costs to comply with these rules. The proposed rule does not create any compliance requirement of cost of compliance on a regulated person. The proposed rule implements a potential statutory penalty provision that the department may order against a person who violates Transportation Code Chapter 643 or a rule adopted under the chapter.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code §2006.002, the department has determined that the proposed new amendment will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule because it will not create additional requirements or costs on regulated persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that during the first five years the proposed amendment is in effect, no government program would be created or eliminated. Implementation of the proposed amendments will not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendment does not create a new regulation, or expand, or repeal an existing regulation. Lastly, the proposed amendment does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendment is proposed under Transportation Code §643.003, which provides the department authority to adopt rules to administer Chapter 643 and 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 the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §643.257.

§218.72. *Administrative Sanctions.*

(a) Grounds for suspension and revocation. Transportation Code, §643.252 provides the grounds for which the department can suspend or revoke a certificate of registration issued under Transportation Code, Chapter 643.

(b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) Probation.

(1) The department may probate any suspension ordered under this section.

(2) In determining whether to probate a suspension, the department will review:

(A) the seriousness of the violation;

(B) prior violations by the motor carrier;

(C) whether the department has previously probated a suspension for the motor carrier;

(D) cooperation by the motor carrier in the investigation and enforcement proceeding; and

(E) the ability of the motor carrier to correct the violations.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(5) The department may revoke the probation and order the initial suspension and administrative penalty if the motor carrier fails to abide by any terms of the probation.

(d) Refund.

(1) The department may order a motor carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the motor carrier to transport household goods.

(2) Under this subsection, a refund is the return of any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer.

(A) A refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property.

(B) A refund does not include any consideration of damages or harm over the amount paid by the customer.

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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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63, concerning: 1) payment methods for oversize or overweight permits to streamline department processes; and 2) escort flag vehicles to conform the rules to Transportation Code §547.305(e-3) and (f)(1), as added by House Bill (HB) 61, 86th Legislature, Regular Session (2019).

EXPLANATION. Amendments to Title 43 TAC Subchapters A, B, D, and E are necessary to conform the rules to HB 61, 86th Legislature, Regular Session (2019). House Bill 61 added a new definition for "escort flag vehicle" under Transportation Code §547.305 and provided the operator of an escort flag vehicle with the option of equipping the escort flag vehicle with alternating or flashing blue and amber lights.

Amendments to Title 43 TAC §219.11(f) are necessary to streamline department processes to improve program efficiency by eliminating two escrow account payment methods for customers that purchase oversize or overweight permits. One of the escrow account payment methods requires department personnel to manually process payments, and the second escrow account payment method requires department personnel to reconcile the payment records.

Transportation Code §547.305(f)(1) defines an "escort flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads. To implement HB 61, the term, "escort vehicle" is changed to the term "escort flag vehicle" throughout Title 43 TAC Chapter 219.

Transportation Code §547.305(e-3) is permissive, allowing escort flag vehicles to be equipped with alternating or flashing blue and amber lights. Transportation Code §623.099(c)(1) already requires that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less than eight inches when escorting a manufactured house. Transportation Code §623.129 already requires that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less than eight inches when escorting a portable building and compatible cargo because the requirements under Transportation Code §623.099 apply to the movement of these vehicles.

Transportation Code §623.008(b) allows the department to require a person operating under a permit issued under the subtitle to use one or more escort flag vehicles if required by the Texas Department of Transportation or for the safe movement over roads of an oversize or overweight vehicle. Transportation Code §547.305(e-3) adds that the flashing lights for an escort flag vehicle may be alternating flashing blue and amber lights, and it controls under Government Code §311.025(a) to the extent of a conflict with §623.099 because §547.305(e-3) is the latest legislative enactment.

Proposed amendments to §219.2 add the word "flag" to the term "escort vehicle" to define "escort flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads. This change is necessary to track the statutory language in Transportation Code §547.305(f)(1) and clarify the use of the term throughout Title 43 TAC Chapter 219. Proposed amendments to §219.2 delete the term "permit account card" and renumber the remaining definitions because the department is proposing to eliminate this form of payment for an oversize or overweight permit.

Proposed amendments throughout §219.11 add the word "flag" to the term "escort vehicle" to conform to the definition of the term "escort flag vehicle" under Transportation Code §547.305(f)(1). Proposed amendment to §219.11(k)(7)(B) track the statutory language in Transportation Code §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights.

Proposed amendments to §219.15(f)(3)(C) track the statutory language in Transportation Code §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights.

Proposed amendments to §§219.13-219.15, 219.42, 219.43, 219.61-219.63 add the word "flag" to the term "escort vehicle" to clarify that the use of the term throughout the chapter is as defined under proposed amended §219.2 regarding an "escort flag vehicle."

Proposed amendments to §219.11(f) eliminate both permit account cards and escrow accounts (together referred to as "escrow accounts") as methods of payment for oversize or overweight permits.