

1 **ADOPTION OF**

2 **SUBCHAPTER F. ENFORCEMENT**

3 **43 TAC §218.72**

4 **INTRODUCTION.** The Texas Department of Motor Vehicles adopts an amendment to 43 TAC §218.72  
5 concerning administrative sanctions. The amendment implements Senate Bill (SB) 604, 86th Legislature,  
6 Regular Session (2019). Senate Bill 604 amended Transportation Code Chapter 643 by adding §643.257,  
7 authorizing the department to order a motor carrier that violates Transportation Code Chapter 643, or a  
8 department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor  
9 carrier to transport household goods. The department adopts the amendments to §218.72 without  
10 changes to the proposed text as published in the August 21, 2020 issue of the *Texas Register* (45 TexReg  
11 5876). The rule will not be republished.

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

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

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

1 New §218.72(d)(2)(A) clarifies that a refund includes overpayments, fees paid for services not  
2 rendered, and fees paid for charges not listed on the household mover's tariff after the household mover  
3 takes possession of the customer's property. Adopted new §218.72(d)(2)(B) clarifies that a refund does  
4 not include any consideration of damages or harm over the amount paid by the customer. New  
5 §218.72(d)(2)(A) and (B) are necessary to clarify that a refund is not a mechanism for restitution or to  
6 make the consumer whole, such as a household good mover reimbursing the consumer for the cost of  
7 third-party services to complete services not rendered by the mover. A refund is a tool that may be used  
8 by the department's enforcement division to order a household good mover to refund the customer by  
9 returning money paid, or contracted to be paid, because they did not receive a service or item. The refund  
10 all circumstance would be limited to funds paid or contracted to be paid to the household goods mover.

11 **SUMMARY OF COMMENTS.** The department received no comments on the proposal.

12 **STATUTORY AUTHORITY.** The department adopts amended §218.72 under Transportation Code §643.003  
13 and Transportation Code §1002.001.

14 Transportation Code §643.003, authorizes the department to adopt rules to administer Chapter  
15 643.

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

18 **CROSS REFERENCE TO STATUTE.** Transportation Code §643.257.

19 **TEXT.**

20 **Subchapter F. Enforcement**

21 **43 TAC §218.72**

22 §218.72. Administrative Sanctions.

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

4 (b) Department of Public Safety enforcement recommendations.

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

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

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

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

12 (c) Probation.

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

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

15 (A) the seriousness of the violation;

16 (B) prior violations by the motor carrier;

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

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

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

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

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

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

5 (d) Refund.

6 (1) The department may order a motor carrier that violates Transportation Code Chapter  
7 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue  
8 a refund to a customer who paid the motor carrier to transport household goods.

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

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

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

17 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be  
18 within the state agency's legal authority to adopt.

19 Issued at Austin, Texas, on December 10, 2020.

20 /s/ Tracey Beaver  
21 Tracey Beaver, General Counsel