

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

10
11 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
12 has determined that for each year of the first five years the amendment will be in effect, there will be no
13 fiscal impact to state or local governments as a result of the enforcement or administration of the
14 proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no
15 measurable effect on local employment or the local economy as a result of the proposal.

16
17 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five
18 years the amended section is in effect, there are public benefits anticipated from the ability of the
19 department to order refunds.

20 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include
21 expanding the administrative tools that the department has to sanction household good movers that
22 violate the Transportation Code and department rules and providing consumers a means of receiving a
23 refund of money paid to household good movers for overpayments, fees paid for services not rendered,

1 and fees paid for charges not listed on the household mover's tariff after the household mover takes
2 possession of the customer's property.

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

8
9 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the
10 Government Code §2006.002, the department has determined that the proposed new amendment will
11 not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a
12 result of implementing this rule because it will not create additional requirements or costs on regulated
13 persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under
14 Government Code §2006.002.

15
16 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
17 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
18 that would otherwise exist in the absence of government action and, therefore, does not constitute a
19 taking or require a takings impact assessment under the Government Code §2007.043.

20
21 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five
22 years the proposed amendment is in effect, no government program would be created or eliminated.
23 Implementation of the proposed amendments will not require the creation of new employee positions or

1 elimination of existing employee positions. Implementation would not require an increase or decrease in
2 future legislative appropriations to the department or an increase or decrease of fees paid to the
3 department. The proposed amendment does not create a new regulation, or expand, or repeal an existing
4 regulation. Lastly, the proposed amendment does not affect the number of individuals subject to the rule's
5 applicability and will not affect this state's economy.

6
7 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written
8 comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent
9 separately from your written comments. Send written comments or hearing requests by email to
10 *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000
11 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments
12 and public testimony presented at the hearing.

13
14 **STATUTORY AUTHORITY.** The amendment is proposed under Transportation Code §643.003, which
15 provides the department authority to adopt rules to administer Chapter 643 and Transportation Code
16 §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to
17 adopt rules that are necessary and appropriate to implement the powers and the duties of the
18 department.

19
20 **CROSS REFERENCE TO STATUTE.** Transportation Code §643.257.

21 **TEXT**

22 **Subchapter F. Enforcement**

23 **43 TAC §218.72**

1 §218.72. Administrative Sanctions.

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

5 (b) Department of Public Safety enforcement recommendations.

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

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

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

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

13 (c) Probation.

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

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

16 (A) the seriousness of the violation;

17 (B) prior violations by the motor carrier;

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

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

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

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

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

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

7 (d) Refund.

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

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

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

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

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

21 Issued at Austin, Texas, on August 7, 2020.

22 /s/ _____ Tracey Beaver _____
23 Tracey Beaver, General Counsel