

1 218.75, 218.76, 218.77, and 218.78, because those provisions would be incorporated into proposed new
2 Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

3 **EXPLANATION.**

4 A proposed amendment to §218.10 would replace the word “accident” with “accidental” to be
5 consistent with the terminology in Transportation Code, §643.106.

6 A proposed amendment to §218.16(d)(6) would replace the reference to orders issued or adopted
7 by the department regarding self-insured status with a reference to the department’s approval letter.
8 When the department grants an applicant self-insured status under §218.16(d) and Transportation Code,
9 §643.102, it issues an approval letter that contains the scope and terms of the approval, including
10 maintenance requirements. A proposed amendment to §218.16(d) would also clarify the scope of the
11 reasons for which self-insured status could be revoked by referring to the applicable requirements under
12 §218.16, instead of the requirements under §218.16(d)(6). In addition, a proposed amendment to
13 §218.16(d)(6) would refer to proposed new Chapter 224 for the revocation of self-insured status.

14 Proposed amendments to §218.16(d)(7) would delete reference to revocation of self-insured
15 status and modify the catch line to indicate this change because revocations are addressed in
16 §218.16(d)(6). Revocations would be treated differently than a denial of an application for self-insured
17 status under proposed new Chapter 224. Government Code, §2001.054 authorizes this distinction
18 between the two actions and the applicable procedures. Proposed amendments to §218.16(d)(7) would
19 also reference proposed new §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status)
20 regarding the filing of an appeal of a denial of an application for self-insured status, and clarify that the
21 applicant would file an appeal, rather than a petition for an administrative hearing. In addition, a proposed
22 amendment to §218.16(d)(7) would replace the reference to “self-insurance status” with a reference to
23 “self-insured status” to be consistent with the terminology in §218.16(d). Further, a proposed amendment

1 to §218.16(d)(7) would delete the reference to Chapter 206, Subchapter D of this title (relating to
2 Procedures in Contested Cases). In this issue of the *Texas Register*, the department is proposing
3 amendments which would repeal Subchapter D of Chapter 206 and replace it with provisions in proposed
4 new Chapter 224.

5 A proposed amendment to §218.16(h) would replace the word “accidents” with “collisions” to
6 implement HB 2190, which changed the word “accident” to “collision” in Transportation Code, §643.105.

7 A proposed amendment to §218.33 would replace the reference to Subchapter F of Chapter 218
8 with a reference to proposed new Chapter 224, which would include all department adjudicative practice
9 and procedure rules in one chapter.

10 Proposed amendments to §218.64(c)(7) would delete language regarding the current procedure
11 for non-approval of a collective ratemaking agreement under Transportation Code, §643.154. Proposed
12 amendments would replace the language with a new procedure that would be governed by proposed new
13 Chapter 224. Department staff do not recall having any hearings regarding the rejection of a collective
14 ratemaking agreement, which may be because the requirements for an acceptable collective ratemaking
15 agreement are minimal. The proposed deletions in §218.64(c)(7) would provide for greater flexibility in
16 the procedure for these cases and would make the procedure consistent with Transportation Code,
17 §643.154 and other contested cases under Transportation Code, Chapter 643 to the extent applicable.

18 A proposed amendment to the heading for Subchapter F of Chapter 218 would make the heading
19 consistent with the proposed amendments and repeals in Subchapter F that would change the scope of
20 the subchapter. Proposed amendments to §218.70 would make the section consistent with the proposed
21 amendments to and repeals of sections within Subchapter F. In addition, proposed amendments to
22 §218.70 would reference the assessment of civil penalties in certain cases under federal law regarding the
23 interstate movement of household goods under current §218.71(c). A proposed amendment to §218.70

1 would also state that the enforcement actions under Chapter 218 are governed by Transportation Code,
2 Chapters 643 and 645; and proposed new Chapter 224 of this title (relating to Adjudicative Practice and
3 Procedure).

4 A proposed amendment to §218.70 would delete reference to Transportation Code, Chapter 648
5 regarding foreign commercial motor transportation because the department enforces the insurance
6 requirements under Transportation Code, Chapter 643, rather than Chapter 648. Transportation Code,
7 §643.101(b) requires the department by rule to set the amount of liability insurance required for a motor
8 carrier at an amount that does not exceed the amount required under a federal regulation adopted under
9 49 U.S.C. §13906(a)(1). The insurance requirements in 49 C.F.R. Part 387 were adopted under 49 U.S.C.
10 §13906. The department adopted the insurance requirements under Subchapter G of Chapter 218 under
11 Transportation Code, §643.101(b). Also, Chapter 648 does not provide enforcement authority for the
12 department; however, Transportation Code, Chapter 643 provides the department with enforcement
13 authority, such as §§643.251, 643.252, 643.2525, 643.254, and 643.256.

14 Proposed amendments to §218.71 would delete subsections (b) and (d). In this issue of the *Texas*
15 *Register*, the department is proposing new Chapter 224, which would include new §224.115 of this title
16 (relating to Administrative Penalty Assessment and Probation of Suspension), which would contain the
17 language found in current §218.71(b). Chapter 224 would also include new §224.116 of this title (relating
18 to Administrative Proceedings), which would contain a modified version of the language the department
19 proposes to delete from §218.71(d). A proposed amendment to §218.71 would re-letter subsection (c)
20 due to the deletion of current subsection (b).

21 Proposed amendments to §218.72(a) would add language regarding the department's authority
22 to deny a certificate of registration to a motor carrier under Transportation Code, §643.252, as well as the
23 department's authority to place on probation a motor carrier whose registration is suspended. Proposed

1 amendments to §218.72 would also delete subsection (c) and re-letter current subsection (c) to
2 subsection (d). In this issue of the *Texas Register*, the department is proposing new Chapter 224, which
3 would include new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of
4 Suspension), which would contain a modified version of the language found in current §218.72(c)
5 regarding the probation of any suspension ordered under Transportation Code, §643.252.

6 Proposed amendments would repeal the following sections: §§218.73, 218.75, 218.76, 218.77,
7 and 218.78. In this issue of the *Texas Register*, the department is proposing new Chapter 224, which would
8 include the language in these sections with some modifications. Current §218.73 would be addressed in
9 proposed new §224.116 of this title (relating to Administrative Proceedings), current §218.75 would be
10 addressed in proposed new §224.31 of this title (relating to Cost of Record on Appeal), current §218.76
11 would be addressed in proposed new §224.120 of this title (relating to Registration Suspension Ordered
12 Under Family Code), current §218.77 would be addressed in proposed new §224.114 of this title (relating
13 to Cease and Desist Order), and current §218.78 would be addressed in proposed new §224.124 of this
14 title (relating to Appeal of a Denial Under Transportation Code, §643.2526).

15 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
16 has determined that for each year of the first five years the amendments and repeals will be in effect,
17 there will be no significant fiscal impact to state or local governments as a result of the enforcement or
18 administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that
19 there will be no significant impact on local employment or the local economy as a result of the proposal.

20 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five
21 years the amended and repealed sections are in effect, there are two anticipated public benefits regarding
22 the amendments and repeals.

1 Anticipated Public Benefits. One anticipated public benefit as a result of the proposal is updated
2 rules that would contain terminology that is consistent with statute and current practice. Another public
3 benefit is that the repeal of language regarding adjudicative practice and procedure in Chapter 218 in
4 conjunction with the department’s proposal of new Chapter 224 would consolidate all of the
5 department’s rules regarding adjudicative practice and procedure in one chapter that provides more
6 clarity, consistency regarding adjudicative practice and procedure, and consistency with statute.

7 Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs
8 to comply with these rules.

9 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
10 Code, §2006.002, the department has determined that the proposed amendments and repeals will not
11 have an adverse economic effect on small businesses, micro-businesses, and rural communities because
12 the changes are not sufficient to create an adverse economic effect. The department’s current Chapter
13 218 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with
14 adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications,
15 including modifications to make the rule text consistent with statute. In addition, the proposed
16 amendments would not change the fact that the contested case procedures and requirements are
17 primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are the rules of
18 procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed amendments
19 would not change the fact that Transportation Code, Chapter 643 imposes certain requirements for a
20 contested case under Chapter 643, such as the requirements in Transportation Code, §643.2525.
21 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government
22 Code, §2006.002.

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

5 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
6 first five years the proposed amendments and repeals are in effect, no government program would be
7 created or eliminated. Implementation of the proposed amendments and repeals would not require the
8 creation of new employee positions or elimination of existing employee positions. Implementation would
9 not require an increase or decrease in future legislative appropriations to the department or an increase
10 or decrease of fees paid to the department. The proposed amendments and repeals do not create a new
11 regulation; however, they technically enable the expansion of an existing regulation regarding the
12 department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter
13 218 enable the department's proposed new Chapter 224 to govern the adjudicative practice and
14 procedure under Chapter 218, which results in more detailed requirements and clarity for contested cases
15 under Chapter 218. Lastly, the proposed amendments and repeals do not affect the number of individuals
16 subject to the applicability of the rules and will not affect this state's economy.

17 **REQUEST FOR PUBLIC COMMENT.**

18 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on
19 January 28, 2024. A request for a public hearing must be sent separately from your written comments.
20 Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General
21 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
22 held, the department will consider written comments and public testimony presented at the hearing.

23

1 SUBCHAPTER B. MOTOR CARRIER REGISTRATION

2 **43 TAC §218.10 and §218.16**

3 **STATUTORY AUTHORITY.**

4 The department proposes the amendments under Transportation Code, §643.003, which
5 authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation
6 Code, §643.101(b), which requires the department by rule to set the amount of liability insurance required
7 for a motor carrier at an amount that does not exceed the amount required under a federal regulation
8 adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes a motor carrier
9 to comply with the requirements under Transportation Code, §643.101 through self-insurance if it
10 complies with the requirements; Transportation Code, §643.2525, which provides the administrative
11 hearing process under Transportation Code, Chapter 643; Transportation Code, Section 648.102, which
12 requires the department to adopt rules that conform with 49 C.F.R. Part 387 that require motor carriers
13 operating foreign commercial motor vehicles in this state to maintain financial responsibility; and
14 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
15 appropriate to implement the powers and duties of the department under the Transportation Code and
16 the other laws of this state.

17 The department also proposes the amendments under the authority of Government Code,
18 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
19 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
21 a license; and the statutory authority referenced throughout this preamble.

22 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapters 643
23 and 648; and Government Code, Chapter 2001.

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Text.

§218.10. Purpose.

Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless the carrier registers with the department or is exempt from registration under Transportation Code, §643.002. This subchapter prescribes the procedures by which a motor carrier, leasing business, or for-hire transporter of household goods may register, and sets out minimum insurance requirements and minimum workers' compensation or accidental [~~accident~~] insurance requirements.

§218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective

1 October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an
2 effective date of October 23, 2015.

3 [Attached Graphic](#)

4 (b) Cargo insurance. Household goods carriers shall file and maintain with the department proof
5 of financial responsibility.

6 (1) The minimum limits of financial responsibility for a household goods carrier for hire
7 is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

8 (2) The minimum limits of financial responsibility for a household goods carrier for hire
9 is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In
10 cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater
11 than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers
12 in relationship to the damage incurred by each shipper.

13 (c) Workers' compensation or accidental insurance coverage.

14 (1) A motor carrier that is required to register under this subchapter and whose primary
15 business is transportation for compensation or hire between two or more incorporated cities, towns, or
16 villages shall provide workers' compensation for all its employees or accidental insurance coverage in
17 the amounts prescribed in paragraph (2) of this subsection.

18 (2) Accidental insurance coverage required by paragraph (1) of this subsection shall be
19 at least in the following amounts:

20 (A) \$300,000 for medical expenses and coverage for at least 104 weeks;

21 (B) \$100,000 for accidental death and dismemberment, including 70 percent of
22 employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

23 (C) \$500 for the maximum weekly benefit.

1 (d) Qualification of motor carrier as self-insured.

2 (1) General qualifications. A motor carrier may meet the insurance requirements of
3 subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to
4 qualify as a self-insured. The application must include a true and accurate statement of the motor
5 carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily
6 injury and property damage liability without affecting the stability or permanency of its business. The
7 department may accept USDOT evidence of the motor carrier's qualifications as a self-insured.

8 (2) Applicant guidelines. In addition to filing an application as prescribed by the
9 department, an applicant for self-insured status must submit materials that will allow the department to
10 determine the following information.

11 (A) Applicant's net worth. An applicant's net worth must be adequate in relation
12 to the size of its operations and the extent of its request for self-insurance authority. The applicant must
13 demonstrate that it can and will maintain an adequate net worth.

14 (B) Self-insurance program. An applicant must demonstrate that it has
15 established and will maintain a sound insurance program that will protect the public against all claims
16 involving motor vehicles to the same extent as the minimum security limits applicable under this
17 section. In determining whether an applicant is maintaining a sound insurance program, the department
18 will consider:

- 19 (i) reserves;
- 20 (ii) sinking funds;
- 21 (iii) third-party financial guarantees;
- 22 (iv) parent company or affiliate sureties;
- 23 (v) excess insurance coverage; and

1 (vi) other appropriate aspects of the applicant's program.

2 (C) Safety program. An applicant must submit evidence of substantial
3 compliance with the federal motor carrier safety regulations as adopted by the Texas Department of
4 Public Safety and with Transportation Code, Chapter 644.

5 (3) Other securities or agreements. The department may accept an application for
6 approval of a security or agreement if satisfied that the security or agreement offered will adequately
7 protect the public.

8 (4) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly
9 reports, and any other reports required by the department reflecting the applicant's financial condition
10 and the status of its self-insurance program while the motor carrier is self-insured.

11 (5) Duration and coverage of self-insured status. The department may approve an
12 applicant as a self-insured for any specific time or for an indefinite time. An approved self-insured status
13 only applies to the type of cargo that the applicant reported to the department in the application for
14 self-insured status.

15 (6) Revocation of self-insured status. On receiving evidence that a self-insured motor
16 carrier's financial condition has changed, that its safety program or record is inadequate, or that it is
17 otherwise not in compliance with this subchapter, the department may at any time require the self-
18 insured to provide additional information. On 10 days' notice from the department, the self-insured
19 shall appear and demonstrate that it continues to have adequate financial resources to pay all claims
20 involving motor vehicles for bodily injury and property damage liability. The self-insured shall also
21 demonstrate that it remains in compliance with the requirements of this section and of any active self-
22 insurance requirements included in the department's approval letter. [~~orders issued or adopted by the~~
23 ~~department.~~] If an applicant fails to comply with the applicable requirements under this section, [this

1 ~~paragraph,~~ its self-insured status may be revoked. The revocation of self-insured status will be
2 governed by Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative
3 Practice and Procedure).

4 (7) Appeal of denial of application for self-insured status. An applicant may
5 appeal a denial ~~[or revocation]~~ of self-insured ~~[self insurance]~~ status by filing an appeal ~~[a petition for an~~
6 ~~administrative hearing]~~ in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-
7 Insured Status). ~~[Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).]~~

8 (e) Filing proof of insurance with the department.

9 (1) Forms.

10 (A) A motor carrier shall file and maintain proof of automobile liability insurance
11 for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a
12 form acceptable to the director.

13 (B) A household goods carrier shall also file and maintain proof of cargo
14 insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

15 (2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of
16 insurance on a form acceptable to the director:

17 (A) at the time of the original application for motor carrier certificate of
18 registration;

19 (B) on or before the cancellation date of the insurance coverage as described in
20 subsection (f) of this section;

21 (C) when the motor carrier changes insurers;

22 (D) when the motor carrier asks to retain the certificate number of a revoked
23 certificate of registration;

1 (E) when the motor carrier changes its name under §218.13(e)(2) of this title
2 (relating to Application for Motor Carrier Registration);

3 (F) when the motor carrier, under subsection (a) of this section, changes the
4 classification of the cargo being transported; and

5 (G) when replacing another active insurance filing.

6 (3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with
7 the department for the coverage required under this section shall be accompanied by a nonrefundable
8 filing fee of \$100. This fee applies both when the carrier submits an original application and when the
9 carrier submits a supplemental application when retaining a revoked certificate of registration number.

10 (4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the
11 department in a form prescribed by the department and approved by an authorized agent of the
12 insurer.

13 (f) Cancellation of insurance coverage. Except when replaced by another acceptable form of
14 insurance coverage or proof of financial responsibility approved by the department, no insurance
15 coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by
16 the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven
17 day or 90 day certificate of registration may be canceled by the insurer without 30 days' notice if the
18 certificate of registration is expired, suspended, or revoked, and the insurer provides a cancellation date
19 on the proof of insurance coverage.

20 (g) Replacement insurance filing. The department will consider a new insurance filing as the
21 current record of financial responsibility required by this section if:

22 (1) the new insurance filing is received by the department; and

23 (2) a cancellation notice has not been received for previous insurance filings.

1 (h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or
2 becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an
3 affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the
4 motor carrier and show that:

5 (1) no collisions [~~accidents~~] have occurred and no claims have arisen during the
6 insolvency of the insurance carrier; or

7 (2) all claims have been satisfied.

8

9 SUBCHAPTER C. RECORDS AND INSPECTIONS

10 **43 TAC §218.33**

11 **STATUTORY AUTHORITY.**

12 The department proposes the amendments under Transportation Code, §643.003, which
13 authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation
14 Code, §643.251, which authorizes the department to impose an administrative penalty against a motor
15 carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter
16 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the
17 department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or
18 place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525,
19 which provides the administrative hearing process under Transportation Code, Chapter 643; and
20 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
21 appropriate to implement the powers and duties of the department under the Transportation Code and
22 the other laws of this state.

1 The department also proposes the amendments under the authority of Government Code,
2 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
3 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
4 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
5 a license; and the statutory authority referenced throughout this preamble.

6 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapters 643
7 and 645; and Government Code, Chapter 2001.

8
9 §218.33. Enforcement.

10 A motor carrier who fails or refuses to permit an inspection, fails to maintain and make available
11 the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a
12 violation subject to enforcement under Chapter 224 of this title (relating to Adjudicative Practice and
13 Procedure). [~~Subchapter F of this chapter (relating to Enforcement).~~]

14
15 SUBCHAPTER E. CONSUMER PROTECTION

16 **43 TAC §218.64**

17 **STATUTORY AUTHORITY.**

18 The department proposes the amendments under Transportation Code, §643.003, which
19 authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation
20 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under
21 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;
22 Transportation Code, §643.2525, which provides the administrative hearing process under Transportation
23 Code, Chapter 643; and Transportation Code, §1002.001, which authorizes the board to adopt rules that

1 are necessary and appropriate to implement the powers and duties of the department under the
2 Transportation Code and the other laws of this state.

3 The department also proposes the amendments under the authority of Government Code,
4 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
5 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
6 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
7 a license; and the statutory authority referenced throughout this preamble.

8 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapter 643;
9 and Government Code, Chapter 2001.

10

11 §218.64. Rates.

12 (a) **Ratemaking.** A household goods carrier and/or its household goods agent shall set maximum
13 rates and charges for services in its applicable tariff. The household goods carrier and/or its household
14 goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a
15 shipment between two incorporated cities.

16 (b) **Prohibited charges and allowances.** A household goods carrier and/or its household goods
17 agent shall not charge more than the maximum charges published in its tariff on file with the
18 department for services associated with transportation between two incorporated cities.

19 (c) **Collective ratemaking agreements.**

20 (1) **Eligibility.** In accordance with Transportation Code, §643.154, a household goods
21 carrier and/or its household goods agent may enter into collective ratemaking agreements between one
22 or more other household goods carriers or household goods agents concerning the establishment and
23 filing of maximum rates and charges, classifications, rules, or procedures.

1 (2) Designation of collective ratemaking associations. An approved association may be
2 designated by a member household goods carrier as its collective ratemaking association for the
3 purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating
4 to Tariff Registration).

5 (3) Submission. In accordance with Transportation Code, §643.154, a collective
6 ratemaking agreement shall be filed with the department for approval. The agreement shall include the
7 following information:

8 (A) full and correct name, business address (street and number, city, state and
9 zip code), and phone number of the association;

10 (B) whether the association is a corporation or partnership; and

11 (i) if a corporation, the government, state, or territory under the laws of
12 which the applicant was organized and received its present charter; and

13 (ii) if an association or a partnership, the names of the officers or
14 partners and date of formation;

15 (C) full and correct name and business address (city and state) of each
16 household goods carrier on whose behalf the agreement is filed and whether it is an association, a
17 corporation, an individual, or a partnership;

18 (D) the name, title, and mailing address of counsel, officer, or other person to
19 whom correspondence in regard to the agreement should be addressed; and

20 (E) a copy of the constitution, bylaws, or other documents or writings, specifying
21 the organization's powers, duties, and procedures.

22 (4) Signature. The collective ratemaking agreement shall be signed by all parties subject
23 to the agreement or the association's executive officer.

1 (5) Incomplete agreement. If the department receives an agreement which does not
2 comply with this subsection, the department will send a letter to the individual submitting the
3 agreement. The letter shall identify the information that is missing and advise the association that the
4 agreement will not be processed until the information is received.

5 (6) Approval. In accordance with Transportation Code, §643.154, the director or
6 designee will approve a collective ratemaking agreement if the agreement provides that:

7 (A) all meetings are open to the public; and

8 (B) notice of meetings shall be sent to shippers who are multiple users of
9 household good carriers.

10 (7) Noncompliance. If the director or the director's designee determines that an
11 agreement does not comply with paragraph (6) of this subsection, the matter will be governed by
12 Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative Practice and
13 Procedure).

14 [~~(A) If the director or designee determines that an agreement does not comply~~
15 ~~with paragraph (6) of this subsection, the department will notify the association representative by~~
16 ~~certified mail of:]~~

17 [(~~i~~) the specific reason that an agreement is not being approved; and]

18 [(~~iii~~) the hearing date.]

19 [(~~B~~) If the association representative resubmits an acceptable agreement which
20 meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing
21 date, the hearing will be canceled and the agreement will be approved. The State Office of
22 Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D
23 of this title (relating to Procedures in Contested Cases).]

1 ~~[(C) If the hearing is held, the presiding officer shall explain the reason(s) that~~
2 ~~the agreement was rejected. The association representative will be allowed to respond to the objections~~
3 ~~and present evidence or exhibits which relate to his or her response. The hearing examiner, based on~~
4 ~~the evidence provided, will make a recommendation to the board whether the agreement should be~~
5 ~~approved or resubmitted. The association representative shall be advised of the examiner's~~
6 ~~recommendation. The final order will be submitted to the board for approval.]~~

7 (8) New parties to an agreement. An updated agreement shall be filed with the
8 department as new parties are added.

9 (9) Amendments to approved agreements. Amendments to approved agreements
10 (other than as to new parties) may become effective only after approval of the department.

11
12 SUBCHAPTER F. Enforcement

13 **43 TAC §§218.70, 218.71, and 218.72**

14 **STATUTORY AUTHORITY.**

15 The department proposes the amendments under Transportation Code, §643.003, which
16 authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation
17 Code, §643.251, which authorizes the department to impose an administrative penalty against a motor
18 carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter
19 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the
20 department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or
21 place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525,
22 which provides the administrative hearing process under Transportation Code, Chapter 643;
23 Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for

1 registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; and
2 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
3 appropriate to implement the powers and duties of the department under the Transportation Code and
4 the other laws of this state.

5 The department also proposes the amendments under the authority of Government Code,
6 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
7 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
8 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
9 a license; and the statutory authority referenced throughout this preamble.

10 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapters 643
11 and 645; and Government Code, Chapter 2001.

12

13 **SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS [ENFORCEMENT]**

14 §218.70. Purpose.

15 The purpose of this subchapter is to provide for administrative penalties and sanctions under
16 Transportation Code, Chapters 643 and 645, as well as the probation of the suspension of a motor
17 carrier's certificate of registration. This subchapter also provides for the assessment of civil penalties in
18 certain cases under federal law regarding the interstate movement of household goods. The
19 enforcement actions under this chapter are governed by Transportation Code, Chapters 643 and 645;
20 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure), as applicable. [an efficient
21 and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by
22 establishing procedures for the assessment of administrative penalties; the suspension, revocation, and

1 ~~denial of motor carrier registration and leasing business registration; cease and desist orders; and~~
2 ~~probation of the suspension of a motor carrier's certificate of registration.]~~

3

4 §218.71. Administrative Penalties.

5 (a) Authority. The department, after notice and opportunity for hearing, may impose an
6 administrative penalty against the following:

7 (1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or
8 Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645;
9 or

10 (2) a motor carrier or broker that violates a federal law or regulation, the enforcement
11 of which has been delegated to the department.

12 ~~[(b) Amount of administrative penalty for violations of state laws, rules, or orders.]~~

13 ~~[(1) In an action brought by the department, the aggregate amount of administrative~~
14 ~~penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a~~
15 ~~violation.]~~

16 ~~[(2) In an action brought by the department, if it is found that the motor carrier~~
17 ~~knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed~~
18 ~~\$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or~~
19 ~~acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness~~
20 ~~may be inferred from the conduct of the alleged violator or from the history of previous violations by~~
21 ~~the alleged violator.]~~

1 ~~[(3) In an action brought by the department, if it is found that the motor carrier~~
2 ~~knowingly committed multiple violations, the aggregate amount of administrative penalty for the~~
3 ~~multiple violations shall not exceed \$30,000.]~~

4 ~~[(4) Each day a violation continues or occurs is a separate violation for purposes of~~
5 ~~imposing an administrative penalty.]~~

6 **(b)**~~[(c)]~~ Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the
7 department and the Federal Motor Carrier Safety Administration, United States Department of
8 Transportation, the department is authorized to initiate an enforcement action and assess civil penalties
9 against a motor carrier or broker, as applicable, under the authority of the following:

10 (1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710,
11 14901(d)(2) and (3), 14901(e), and 14915, as amended;

12 (2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111,
13 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403,
14 and Part 386 Appendix B(g)(22) - (23), as amended; and

15 (3) any future delegations pursuant to 49 U.S.C. §14710.

16 ~~[(d) Enforcement process for federal laws and regulations. The department will follow the~~
17 ~~process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations~~
18 ~~cited in subsection(c) of this section via an administrative proceeding.]~~

19
20 §218.72. Administrative Sanctions.

21 (a) Grounds for suspension, ~~and~~ revocation, denial, and probation. Transportation Code,
22 §643.252 provides the grounds on ~~for~~ which the department can suspend, ~~or~~ revoke, or deny a
23 certificate of registration issued under Transportation Code, Chapter 643. Transportation Code,

1 §643.252 also provides the grounds on which the department can place on probation a motor carrier
2 whose registration is suspended.

3 (b) Department of Public Safety enforcement recommendations.

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

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

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

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

11 ~~[(c) Probation.]~~

12 ~~[(1) The department may probate any suspension ordered under this section.]~~

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

14 ~~[(A) the seriousness of the violation;]~~

15 ~~[(B) prior violations by the motor carrier;]~~

16 ~~[(C) whether the department has previously probated a suspension for the~~
17 ~~motor carrier;]~~

18 ~~[(D) cooperation by the motor carrier in the investigation and enforcement~~
19 ~~proceeding; and]~~

20 ~~[(E) the ability of the motor carrier to correct the violations.]~~

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

1 ~~[(4) The department will require that the motor carrier report monthly to the~~
2 ~~department 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 (c)~~(d)~~ Refund.

6 (1) The department may order a motor carrier that violates Transportation Code
7 Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643
8 to issue 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
13 fees paid for charges not listed on the household mover's tariff after the household mover takes
14 possession of 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
18 SUBCHAPTER F. Enforcement

19 **43 TAC §§218.73, 218.75, 218.76, 218.77, and 218.78**

20 **STATUTORY AUTHORITY.**

21 The department proposes the repeals under Transportation Code, §643.003, which authorizes the
22 department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code,
23 §643.251, which authorizes the department to impose an administrative penalty against a motor carrier

1 required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or
2 a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the
3 department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or
4 place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525,
5 which provides the administrative hearing process under Transportation Code, Chapter 643;
6 Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for
7 registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; and
8 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
9 appropriate to implement the powers and duties of the department under the Transportation Code and
10 the other laws of this state.

11 The department also proposes the repeals under the authority of Government Code, §2001.004,
12 which requires state agencies to adopt rules of practice stating the nature and requirements of all
13 available formal and informal procedures; Government Code, §2001.054, which specifies the
14 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
15 a license; and the statutory authority referenced throughout this preamble.

16 **CROSS REFERENCE TO STATUTE.** The repeals would implement Transportation Code, Chapters 643 and
17 645; and Government Code, Chapter 2001.

18

19 §218.73. Administrative Proceedings

20 §218.75. Cost of Preparing Agency Record

21 §218.76. Registration Suspension Ordered under Family Code

22 §218.77. Cease and Desist Order

23 §218.78. Appeal of Denial