

1 **PROPOSAL OF REVISIONS TO**
2 **SUBCHAPTER F. COMPLIANCE**
3 **§219.82**
4 **SUBCHAPTER H. ENFORCEMENT**
5 **§§219.120, 219.121, AND 219.126**
6 **REPEAL OF**
7 **SUBCHAPTER H. ENFORCEMENT**
8 **§§219.122, 219.124 AND 219.127**

9
10 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43
11 Texas Administrative Code (TAC) Subchapter F, Compliance, §219.82; and Subchapter H, Enforcement,
12 §§219.120, 219.121, and 219.126. The department also proposes the repeal of Subchapter H,
13 Enforcement, §§219.122, 219.124, and 219.127.

14 These amendments and repeals are necessary to delete language regarding adjudicative practice
15 and procedure. In addition, the amendments are necessary to refer to proposed new Chapter 224 of this
16 title (relating to Adjudicative Practice and Procedure), which the department proposes in this issue of the
17 *Texas Register* to include all department adjudicative practice and procedure rules in one chapter.

18 **EXPLANATION.**

19 Amendments to §219.82 would delete the word “enforcement” and add a reference to proposed
20 new Chapter 224, which would apply to any adjudicative practice and procedure under the department’s
21 rules, including Chapter 219.

22 A proposed amendment to the heading for Subchapter H of Chapter 219 would make the heading
23 consistent with the rules under Subchapter H because the proposed amendments and repeals would

1 change the contents of this subchapter. Proposed amendments to §219.120 would make the section
2 consistent with the proposed amendments to and repeals of sections within Subchapter H. A proposed
3 amendment to §219.120 would also state that the enforcement actions under this chapter are governed
4 by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,
5 Chapters 621 through 623 for clarity and ease of reference.

6 Proposed amendments to §219.121 would replace the current language with a summary of the
7 department’s authority under Transportation Code, §623.271 to investigate and impose an administrative
8 penalty or revoke an oversize or overweight permit. Current language in §219.121(a) repeats the language
9 found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. A
10 proposed amendment to the title of §219.121 would include sanctions and a reference to Transportation
11 Code, §623.271 to address the expanded scope of §219.121 due to the proposed amendments and to
12 distinguish §219.121 from §219.126 of this title (relating to Administrative Penalty for False Information
13 on Certificate by a Shipper) regarding the administrative penalty under Transportation Code, §623.272.

14 Proposed amendments to §219.121(b) would delete the language regarding the calculation of
15 administrative penalties under Transportation Code, §623.271, which says the amount of an
16 administrative penalty imposed under §623.271 is calculated in the same manner as the amount of an
17 administrative penalty imposed under Transportation Code, §643.251. In this issue of the *Texas Register*,
18 the department proposes new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).
19 The language in current §219.121(b) would be addressed in proposed new §224.115 of this title (relating
20 to Administrative Penalty Assessment and Probation of Suspension).

21 A proposed amendment would repeal §219.122. Current language in §219.122(a) repeats the
22 language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules.
23 Current language in §219.122(b) is not expressly authorized under Transportation Code, Chapter 623.

1 A proposed amendment to §219.126 would delete subsection (b) because a proposed
2 amendment to §219.120 would state that the enforcement actions under this chapter are governed by
3 Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,
4 Chapters 621 through 623. It is not necessary for §219.126 to cite the specific provisions in proposed new
5 Chapter 224 regarding notice and hearing requirements. A proposed amendment to §219.126 would also
6 delete subsection (c) regarding the calculation of an administrative penalty under §219.126. In this issue
7 of the *Texas Register*, the department proposes new Chapter 224 of this title (relating to Adjudicative
8 Practice and Procedure). The language in current §219.126(c) would be addressed in proposed new
9 §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension). Due
10 to the proposed deletions of §219.126(b) and (c), a proposed amendment to §219.126 would delete the
11 “(a)” because there would only be one subsection in §219.126. An amendment to §219.126 would also
12 cite to Transportation Code, §623.272 as the authority for the administrative penalty to help distinguish
13 §219.126 from the provisions in §219.121 regarding the administrative penalty under Transportation
14 Code, §623.271.

15 Proposed amendments would repeal §219.124 and §219.127. In this issue of the *Texas Register*,
16 the department proposes new Chapter 224, which would include the language in current §219.124 and
17 §219.127 with some modifications. Current §219.124 would be addressed in proposed new §224.116 of
18 this title (relating to Administrative Proceedings). Current §219.127 would be addressed in proposed new
19 §224.31 of this title (relating to Cost of Record on Appeal).

20 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
21 has determined that for each year of the first five years the amendments and repeals will be in effect,
22 there will be no significant fiscal impact to state or local governments as a result of the enforcement or
23 administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has

1 determined that there will be no significant effect on local employment or the local economy as a result
2 of the proposal.

3 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five
4 years amendments and repeals will be in effect, there is one anticipated public benefit as a result of the
5 amendments and repeals.

6 Anticipated Public Benefits. The anticipated public benefit is that the repeal of language regarding
7 adjudicative practice and procedure in Chapter 219 in conjunction with the department's proposed new
8 Chapter 224 would consolidate all of the department's rules regarding adjudicative practice and
9 procedure in one chapter that provides more clarity and consistency.

10 Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs
11 to comply with these amendments and repeals.

12 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
13 Code, §2006.002, the department has determined that the proposed amendments and repeals will not
14 have an adverse economic effect on small businesses, micro-businesses, and rural communities because
15 the changes are not sufficient to create an adverse economic effect. The department's current Chapter
16 219 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with
17 adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications.
18 In addition, the proposed amendments would not change the fact that the contested case procedures and
19 requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which
20 are the rules of procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed
21 amendments would not change the fact that Transportation Code, Chapter 623 imposes certain
22 requirements for a contested case under Chapters 621 through 623, such as the requirements in

1 Transportation Code, §623.271. Therefore, the department is not required to prepare a regulatory
2 flexibility analysis under Government Code, §2006.002.

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

7 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
8 first five years the proposed amendments and repeals are in effect, no government program would be
9 created or eliminated. Implementation of the proposed amendments and repeals would not require the
10 creation of new employee positions or elimination of existing employee positions. Implementation would
11 not require an increase or decrease in future legislative appropriations to the department or an increase
12 or decrease of fees paid to the department. The proposed amendments and repeals do not create a new
13 regulation; however, they technically enable the expansion of an existing regulation regarding the
14 department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter
15 219 enable the department's proposed new Chapter 224 to govern the adjudicative practice and
16 procedure under Chapter 219, which results in more detailed requirements and clarity. Lastly, the
17 proposed amendments and repeals do not affect the number of individuals subject to the rule's
18 applicability and will not affect this state's economy.

19 **REQUEST FOR PUBLIC COMMENT.**

20 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on
21 January 28, 2024. A request for a public hearing must be sent separately from your written comments.
22 Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General

1 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
2 held, the department will consider written comments and public testimony presented at the hearing.

3

4 SUBCHAPTER F. Compliance

5 **43 TAC §219.82**

6 **STATUTORY AUTHORITY.**

7 The department proposes amendments under Transportation Code, §621.008, which authorizes
8 the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
9 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
10 implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et*
11 *seq.*, which authorize the department to issue a permit for transporting poles required for the
12 maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which
13 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
14 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
15 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
16 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
17 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
18 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
19 a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the
20 notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an
21 administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board
22 to adopt rules that are necessary and appropriate to implement the powers and the duties of the
23 department under the Transportation Code and other laws of this state.

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

6 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapters 621,
7 622, and 623; and Government Code, Chapter 2001.

8
9 Text.

10 §219.82. Falsification of Information on Application and Permit.

11 (a) A person who provides false information on the permit application or another form required
12 by the department for the issuance of an oversize or overweight permit commits a violation of this
13 chapter and is subject to revocation of an oversize or overweight permit and the ~~[enforcement]~~
14 provisions of Subchapter H of this chapter and Chapter 224 of this title (relating to Adjudicative Practice
15 and Procedure).

16 (b) A person violates this chapter if the person produces a counterfeit permit or alters a permit
17 issued by the department.

18
19 SUBCHAPTER H. ENFORCEMENT

20 **43 TAC §§219.120, 219.121, and 219.126**

21 **STATUTORY AUTHORITY.**

22 The department proposes amendments under Transportation Code, §621.008, which authorizes
23 the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;

1 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
2 implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et*
3 *seq.*, which authorize the department to issue a permit for transporting poles required for the
4 maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which
5 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
6 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
7 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
8 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
9 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
10 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
11 a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the
12 notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an
13 administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board
14 to adopt rules that are necessary and appropriate to implement the powers and the duties of the
15 department under the Transportation Code and other laws of this state.

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

21 **CROSS REFERENCE TO STATUTE.** The amendments would implement Transportation Code, Chapters 621,
22 622, and 623; and Government Code, Chapter 2001.

23

1 Text.

2 **SUBCHAPTER H. ADMINISTRATIVE PENALTIES AND SANCTIONS [ENFORCEMENT]**

3 §219.120. Purpose.

4 The purpose of this subchapter is to provide for administrative penalties and sanctions under
5 Transportation Code, Chapters 621 through 623. The enforcement actions under this chapter are
6 governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and
7 Transportation Code, Chapters 621 through 623. ~~[an efficient and effective system of enforcement of~~
8 ~~Transportation Code, Chapters 621, 622, and 623 and the rules adopted under those chapters by setting~~
9 ~~out procedures for administrative penalties, revocation, and denial of oversize or overweight permits.]~~

10

11 §219.121. Administrative Penalties and Sanctions under Transportation Code, §623.271.

12 Transportation Code, §623.271 authorizes the department to investigate and impose an
13 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
14 Chapter 623.

15 [(a) Authority. The department, after notice and opportunity for hearing, may impose an
16 administrative penalty against a person or the holder of the permit who:]

17 [(1) provides false information on a permit application or another form required by the
18 department concerning the issuance of an oversize or overweight permit;]

19 [(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;]

20 [(3) violates an order adopted under this chapter or Transportation Code, Chapters 621,
21 622, or 623; or]

22 [(4) fails to obtain an oversize or overweight permit that is required under this chapter
23 or Transportation Code, Chapters 621, 622, or 623.]

1 ~~[(b) Amount of administrative penalty.]~~

2 ~~[(1) In an action brought by the department, the aggregate amount of administrative~~
3 ~~penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly~~
4 ~~committed a violation.]~~

5 ~~[(2) In an action brought by the department, if it is found that the person or the holder~~
6 ~~of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not~~
7 ~~exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,~~
8 ~~or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness~~
9 ~~may be inferred from the conduct of the alleged violator or from the history of previous violations by~~
10 ~~the alleged violator.]~~

11 ~~[(3) In an action brought by the department, if it is found that the person or the holder~~
12 ~~of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty~~
13 ~~for the multiple violations shall not exceed \$30,000.]~~

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

16 ~~[(5) Any recommendation that an administrative penalty should be imposed must be~~
17 ~~based on the following factors:]~~

18 ~~[(A) the seriousness of the violation, including the nature, circumstances, extent,~~
19 ~~and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or~~
20 ~~economic welfare of the public;]~~

21 ~~[(B) the economic harm to property or the environment caused by the~~
22 ~~violation;]~~

23 ~~[(C) the history of previous violations;]~~

1 ~~[(D) the amount necessary to deter future violations;]~~

2 ~~[(E) efforts made to correct the violation; and]~~

3 ~~[(F) any other matters that justice may require.]~~

4

5 §219.126. Administrative Penalty for False Information on Certificate by a Shipper.

6 ~~[(a)]~~ Transportation Code, §623.272 authorizes the ~~[The]~~ department to ~~[may]~~ investigate and
7 impose an administrative penalty on a shipper who does not provide a shipper's certificate of weight as
8 required under Transportation Code, §623.274(b) or provides false information on a shipper's certificate
9 of weight that the shipper delivers to a person transporting a shipment.

10 ~~[(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative~~
11 ~~Proceedings) apply to the imposition of an administrative penalty under this section.]~~

12 ~~[(c) The amount of an administrative penalty imposed under this section is calculated in the~~
13 ~~same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating~~
14 ~~to Administrative Penalties).]~~

15

16 SUBCHAPTER H. ENFORCEMENT

17 **43 TAC §§219.122, 219.124, and 219.127**

18 **STATUTORY AUTHORITY.**

19 The department proposes repeals under Transportation Code, §621.008, which authorizes the
20 board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
21 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
22 implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et*
23 *seq.*, which authorize the department to issue a permit for transporting poles required for the

1 maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which
2 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
3 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
4 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
5 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
6 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
7 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
8 a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the
9 notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an
10 administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board
11 to adopt rules that are necessary and appropriate to implement the powers and the duties of the
12 department under the Transportation Code and other laws of this state.

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

18 **CROSS REFERENCE TO STATUTE.** The repeals would implement Transportation Code, Chapters 621, 622,
19 and 623; and Government Code, Chapter 2001.

20

21 §219.122. Administrative Sanctions

22 §219.124. Administrative Proceedings

23 §219.127. Cost of Preparing Agency Record