



GOVERNOR GREG ABBOTT

To: Guillermo Treviño, Chair
Whitney Brewster, Executive Director
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Texas Department of Motor Vehicles

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: November 16, 2020

Subject: Proposed Title 43 Texas Administrative Code Sections 215.500, 215.504, and 218.72 (RCD Rule Review #2020-020)

I. Syllabus

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §215.500, new 43 TAC §215.504, and amended 43 TAC §218.72, which set forth the conditions under which the department may order licensees to refund consumers for motor vehicle and motor carrier violations.¹ The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on August 27, 2020. The division invited public comments on the proposed rules for a 30-day period ending September 30, 2020, but received no comments. The department supplemented its submission to the division on October 20, 2020, clarifying that any refunds ordered pursuant to proposed §215.504 are based on amounts paid by the buyer or lessee of a motor vehicle.² The proposed rules, as supplemented, are narrowly tailored to adhere to the department’s authority to order refunds for consumers, and, thus, they are approved by the division for final adoption.

II. Analysis

Senate Bill 604, 86th Legislature, Regular Session (2019), added Section 2301.807, Texas Occupations Code, which authorizes the department to order a person to pay a refund to the buyer or lessee of a motor vehicle if the department finds that the person has violated Chapter

¹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Aug. 27, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 5874 (2020) (to be codified at 43 TAC §§215.500 and 215.504) (proposed Aug. 21, 2020) (Tex. Dep’t. Motor Vehicles); and 45 Tex. Reg. 5876 (2020) (to be codified at 43 TAC §218.72) (proposed Aug. 21, 2020) (Tex. Dep’t. Motor Vehicles).

² Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 20, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

2301, or a rule adopted or order issued under that chapter. Senate Bill 604 also added Section 643.257, Texas Transportation Code, which authorizes the department to order a motor carrier that violates Chapter 643, or a rule or order adopted under that chapter, to refund a consumer who paid the motor carrier for the transportation of household goods. The department asserts that the ability to order refunds could increase business expenses for licensees, so proposed §§215.500, 215.504, and 218.72, which implement that authority, affect competition under Section 57.105(d)(2), Texas Occupations Code.³

Proposed §215.500(a) expands the list of administrative sanctions that the department may order to include a refund issued under proposed §215.504. Providing more detail, proposed §215.504(a) restates the department's authority in Section 2301.807 to order a person to issue a refund if, after a proceeding, the department determines the person has violated Chapter 2301 or department rules. Proposed §215.504(b), as supplemented, defines refund as "the return of any percentage ... of funds paid, or contracted to be paid, to a [licensee under Chapter 2301]," including "overpayments, fees paid for services not rendered, and payments made for products not delivered." The department intends that provision to limit refunds to the amount actually paid by the buyer or lessee, not additional damages or costs incurred, which fall outside the scope of Section 2301.807.⁴ Because the proposed rules reflect the department's statutory authority to order a refund following a proceeding under Chapter 2301, both proposed §§215.500 and 215.504, as supplemented, are consistent with state policy.

Similarly, proposed §218.72(d)(1) restates the department's authority to order motor carriers to pay refunds under Section 643.257, which proposed §218.72(d)(2) also defines as "any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods." Proposed §218.72(d)(2)(A) includes in that definition "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."⁵ Finally, proposed §218.72(d)(2)(B) explicitly states refunds do not include consideration of additional damages or harm incurred by the customer in excess of the amount paid, which were not included in Section 643.257. Thus, the authority to order motor carriers to pay refunds in proposed §218.72 is consistent with state policy.

III. Determination

Based on the reasoning above, proposed amended 43 TAC §215.500, new 43 TAC §215.504, with the change submitted to the division, and amended 43 TAC §218.72 are approved by the division and may be finally adopted.

³ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Aug. 27, 2020), at 3 and 6.

⁴ 45 Tex. Reg. at 5875 (explanation to proposed 43 TAC §§215.500 and 215.504).

⁵ A tariff establishes the maximum rates a motor carrier can charge for various transportation services and, in this context, generally establishes the costs of moving household goods. *See* Sec. 643.153, Tex. Transp. Code, and 49 U.S.C. §13702 (1995).