

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 224. ADJUDICATIVE PRACTICE AND PROCEDURE

SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

43 TAC §§224.116, 224.121, 224.124

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts, on an emergency basis, revisions to 43 Texas Administrative Code (TAC) Chapter 224, Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, by amending §224.116 and §224.124, and adding new §224.121, regarding the requirements and procedures under Transportation Code, §643.2526. The amendments and new section are necessary to implement House Bill (HB) 1672, 89th Legislature, Regular Session (2025). Adopted amendments are also necessary to clean up the rule text.

Government Code, §2001.034 authorizes a state agency to adopt an emergency rule without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034 may not be effective for longer than 120 days and may not be renewed for longer than 60 days.

EXPLANATION.

This emergency rulemaking is necessary because HB 1672 became effective on May 24, 2025, and requires the department to adopt rules to create the requirements and procedures for the following under Transportation Code, §643.2526: 1) the revocation or suspension of a motor carrier's registration; 2) the placement of a motor carrier on probation whose registration is suspended; and 3) the motor carrier's appeal of the revocation, suspension or probation. The board of the Texas Department of Motor Vehicles (board) did not meet in May or June of 2025 to approve the adoption of these emergency rules. The board met on July 10, 2025, and approved the adoption of these emergency rules.

Adopted amendments to §224.116 implement HB 1672 by modifying the title of the section and adding new subsection (h) to clarify that these administrative procedures do not apply to a proceeding under Transportation Code, §643.2526. Section 224.116 provides the administrative procedures for a proceeding under laws that require the department to provide written notice to the person and an opportunity for the person to request a hearing before the department takes an administrative action

against the person. Because Transportation Code, §643.2526 states that a department action under §643.2526 is not required to be preceded by notice and an opportunity for hearing, the department adopts amendments to §224.116 to clarify that this section does not apply to a proceeding under §643.2526. Adopted amendments to §224.116(a) are also necessary to clean up the rule text by adding a hyphen to the term "first class mail" to read "first-class mail."

Adopted new §224.121 and amendments to §224.124 are necessary to implement amendments made by HB 1672 to Transportation Code, §643.2526. Sections 224.121 and 224.124 govern the requirements and procedures under Transportation Code, §643.2526, which authorizes the department to deny an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643 (Motor Carrier Registration) prior to providing the person with notice and an opportunity for hearing. Upon request by the Texas Department of Public Safety (DPS) under Transportation Code, §643.252(b), and prior to providing the person with notice and an opportunity for hearing, the department is also authorized under Transportation Code, §643.2526 to revoke or suspend the registration of a motor carrier or to place a motor carrier on probation whose registration is suspended, if the motor carrier has an unsatisfactory safety rating under 49 C.F.R. Part 385 (Safety Fitness Procedures), which is determined by the Federal Motor Carrier Safety Administration (FMCSA); or multiple violations of Transportation Code, Chapter 644 (Commercial Motor Vehicle Safety Standards), a rule adopted under Chapter 644, or Subtitle C (Rules of the Road) of Transportation Code, Title 7 (Vehicles and Traffic), which is determined by DPS. The references to registration under Transportation Code, Chapter 643 are references to operating authority to operate as a motor carrier, rather than vehicle registration under Transportation Code, Chapter 502.

Adopted new §224.121 is necessary to provide the requirements and procedures regarding the department's action under Transportation Code, §643.2526. Adopted new §224.121(a) states that the department will only revoke a motor carrier's registration under Transportation Code, §643.2526 pursuant to a request from DPS under Transportation Code, §643.252(b). Although Transportation Code, §643.252(b) authorizes DPS to request the department to suspend or revoke a registration issued to a motor carrier under Transportation Code, Chapter 643, or to place on probation a motor carrier whose registration is suspended, the department will only revoke the registration of a motor carrier under Transportation Code, §643.252(b). The department's current system is not programmed to suspend a motor carrier's registration, so revocation is the only option.

Also, the DPS rule regarding DPS's request to the department under Transportation Code, §643.252(b) only refers to a revocation of the motor carrier's registration. See 37 TAC §4.19(a). Transportation Code, §644.051(b) states that a DPS

rule adopted under Transportation Code, Chapter 644 must be consistent with federal regulations. Section 4.19(a), which was adopted under the DPS rulemaking authority in Transportation Code, §644.051, is consistent with 49 C.F.R. §385.13(e), which states that if an interstate motor carrier has a final unsatisfactory safety rating, FMCSA will provide notice to the motor carrier and issue an order revoking the motor carrier's interstate registration, which is also known as operating authority to operate as a motor carrier in interstate transportation. Because DPS does not administer Transportation Code, Chapter 643, DPS must request the department to revoke a motor carrier's registration for intrastate transportation.

Adopted new §224.121(a) also states that the department will not take action under Transportation Code, §643.252(b) until FMCSA or DPS, as applicable, issues an order regarding the laws referenced in §643.252(b). This requirement is necessary to help protect the person's due process rights because Transportation Code, §643.2526 authorizes the department to take action against the person prior to providing notice and an opportunity for a hearing. FMCSA and DPS are required to comply with the due process requirements under the laws that govern their actions when issuing an order under the laws referenced in Transportation Code, §643.252(b). The process set out in adopted new §224.121(a) ensures that while a motor carrier may not receive notice and an opportunity for a hearing from the department before the department revokes the motor carrier's registration, the motor carrier should have received full due process on the same factual and legal allegations from either FMCSA or DPS.

The FMCSA order under 49 C.F.R. §385.13(d)(1) is called an out-of-service order, which prohibits the motor carrier from engaging in interstate transportation. See 49 U.S.C. §31144(c) and 49 C.F.R. §385.1(a) and §385.13(d)(1). The FMCSA procedures and proceedings regarding an out-of-service order are governed by 49 U.S.C. §31144, 49 C.F.R. Part 385 (Safety Fitness Procedures), and 49 C.F.R. Part 386 (Rules of Practice for FMCSA Proceedings).

The DPS order under Transportation Code, §644.155 and 37 TAC §4.15 is called an order to cease, which prohibits the motor carrier from operating a commercial motor vehicle in intrastate transportation. The DPS proceedings regarding an order to cease are governed by 37 TAC §4.15 and §4.18. The DPS order to cease tells the motor carrier that it must immediately cease all intrastate transportation until such time as DPS determines the motor carrier's safety rating is no longer unsatisfactory.

Adopted new §224.121(b) states that the department will issue notice of the department's action under Transportation Code, §643.2526 to the person by email and first-class mail using the person's last known address in the department's records. The notice requirements under Government Code, §2001.054(c) do not apply to the department's notice regarding the department's action under Transportation Code, §643.2526 because Transportation Code, §643.2526(a) says that the department's action under Transportation Code, §643.252(b) is not required to be preceded by notice and an opportunity for hearing, notwithstanding other law. Also, the motor carrier should have already received due process under the DPS or FMCSA proceeding that resulted in an order to cease or out-of-service order, respectively.

Adopted amendments to §224.124 implement HB 1672 by modifying the title of the section to refer to an appeal of a department action. Adopted amendments to §224.124 delete subsection (a), and amend existing subsections (b) and (c) to expand

the scope of the rule to be consistent with the expanded scope of Transportation Code, §643.2526, as amended by HB 1672. An adopted amendment to existing subsection (b) clarifies that Subchapter E of Chapter 224 of this title is not the only subchapter in Chapter 224 that would apply to an appeal to the department under Transportation Code, §643.2526. Adopted amendments re-letter existing subsections (b), (c), and (d) due to the deletion of subsection (a).

Adopted new §224.124(d) states that on appeal under Transportation Code, §643.2526, the department will not rescind a revocation under Transportation Code, §643.252(b), based on the motor carrier taking corrective action that results in an upgrade to its unsatisfactory safety rating after the department issued notice to the motor carrier that it revoked the motor carrier's registration. DPS wants the department to immediately revoke a motor carrier's registration under Transportation Code, Chapter 643 once DPS requests the department to revoke under Transportation Code, §643.252(b). The department will not wait to see if the motor carrier takes either of the following actions prior to revoking the motor carrier's registration: 1) requests DPS or FMCSA, as applicable, to change the final safety rating or to conduct a review regarding the final safety rating; or 2) appeals their final safety rating to a court under the laws that govern the DPS or FMCSA order, as applicable.

FMCSA's regulation states that a motor carrier that has taken action to correct the deficiencies that resulted in a final rating of "unsatisfactory" may request a rating change at any time. See 49 C.F.R. §385.17(a). Another FMCSA regulation states as follows: 1) that a motor carrier may request FMCSA to conduct an administrative review if it believes that FMCSA committed an error in assigning the final safety rating; 2) that FMCSA's decision under the administrative review constitutes the final agency action; and 3) that a motor carrier may request a rating change under the provisions of 49 C.F.R. §385.17. See 49 C.F.R. §385.15. In addition, federal law authorizes the motor carrier to appeal FMCSA's final order to the applicable United States Court of Appeals under 49 U.S.C. §521(b)(9) and 49 C.F.R. §386.67. Therefore, it is possible that FMCSA could change a motor carrier's safety rating from unsatisfactory to satisfactory or conditional after FMCSA issued the out-of-service order to the motor carrier and after the department revoked the motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b).

The DPS administrative rule states that a motor carrier that has taken action to correct the deficiencies that resulted in a final rating of "unsatisfactory" may request a rating change at any time. See 37 TAC §4.15(b)(3)(G). The DPS rule also states that the motor carrier may request DPS to conduct a departmental review if the motor carrier believes that DPS has committed error in assigning the final safety rating, that the final safety rating under the DPS departmental review constitutes a final agency decision, and that any judicial review of the DPS final agency decision is subject to Government Code, Chapter 2001. See 37 TAC §4.15(b)(3)(H) and (I). Therefore, it is possible that DPS could change a motor carrier's safety rating from unsatisfactory to satisfactory or conditional after DPS issued the order to cease to the motor carrier and after the department revoked the motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b).

Once the department issues a revocation under Transportation Code, §643.2526, the revocation is effective and cannot be rescinded unless the motor carrier submits a timely appeal under §643.2526. If the motor carrier timely submits an appeal

under Transportation Code, §643.2526, if the underlying order from DPS or FMCSA was issued in compliance with the motor carrier's due process rights, and if the requirements under Transportation Code, §643.252(b) were met at the time DPS requested the department to revoke the motor carrier's registration, the department's revocation will not be rescinded on appeal to the department. If the motor carrier resolves its unsatisfactory safety rating and is no longer subject to the order to cease or out-of-service order after the department revokes the motor carrier's registration, the evidence on appeal will not show any error regarding the department's revocation. However, an appeal of a revocation under Transportation Code, §643.2526 may result in a rescission of the revocation if the underlying order from DPS or FMCSA, as applicable, was issued in violation of the motor carrier's due process rights or was issued to the motor carrier in error.

When determining whether to request the department to revoke the motor carrier's registration under Transportation Code, §643.252(b), it is within DPS's discretion to consider whether the motor carrier's unsatisfactory safety rating might change to a satisfactory or conditional safety rating after the issuance of an order to cease or an out-of-service order. Once the department receives the request from DPS to revoke the motor carrier's registration under Transportation Code, §643.252(b), the department will immediately revoke the registration. If the department revoked a motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b), and the motor carrier later improves its safety rating and is no longer subject to an out-of-service order or an order to cease, the department will take this fact into consideration when reviewing the motor carrier's application for reregistration under Transportation Code, §643.0585 or the motor carrier's application for registration under Transportation Code, §643.052.

Adopted new §224.124(e) requires the person who submits an appeal to the department under Transportation Code, §643.2526 to state why the person claims the department's action is erroneous, as well as the legal and factual basis for the claimed error. This information is necessary to enable the department to comply with a requirement to docket the contested case with the State Office of Administrative Hearings under 1 TAC §155.53(a)(1), which requires the Request to Docket Case form to be submitted together with the complaint or other pertinent documents describing the agency action giving rise to the contested case.

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.2526(d), which requires the department to adopt rules as necessary to implement §643.2526, including rules governing the requirements and procedures under §643.2526; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, Chapter 2001; and Transportation Code, §§643.252(b), 643.2526, and 1002.001.

§224.116. Administrative Proceedings, Excluding Proceedings Under Transportation Code, §643.2526.

(a) If the department decides to take an enforcement action under §218.16 of this title (relating to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for False Information on Certificate by a Shipper), the department shall mail a Notice of Department Decision to the person by first-class [first class] mail to the last known address as shown in department records. If the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department Decision to the person by first-class [first class] mail to the last known address as shown in FMCSA's records.

(b) The Notice of Department Decision shall include:

(1) a brief summary of the alleged violation or enforcement action being proposed;

(2) a statement describing each sanction, penalty, or enforcement action proposed;

(3) a statement informing the person of the right to request a hearing;

(4) a statement of the procedure a person must use to request a hearing, including the deadline for filing a request with the department and the acceptable methods to request a hearing; and

(5) a statement that a proposed penalty, sanction, or enforcement action will become final and take effect on a specific date if the person fails to request a hearing.

(c) A person must submit to the department a written request for a hearing to the address provided in the Notice of Department Decision not later than the 26th day after the date the notice is mailed by the department; however, this requirement does not apply to a contested case that falls under §218.64 and Transportation Code, §643.154.

(d) If a person submits a timely written request for a hearing or the contested case that falls under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt to informally resolve the contested case. If the person and the department cannot informally resolve the contested case, the department will refer the contested case to SOAH to set a hearing date and will give notice of the time and place of the hearing to the person.

(e) Except as provided by Transportation Code, §643.154, if the person does not make a timely request for a hearing or agree to settle a contested case within 26 days of the date the Notice of Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order including sanctions and penalties may be issued by the final order authority.

(f) Except as provided by statute and the applicable provisions of this chapter, any SOAH proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the authority of the department to informally dispose of the contested case by stipulation, agreed settlement, consent order, or default. The department will follow the process set forth in Transportation Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws

and regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

(g) The department and the person may informally resolve the contested case by entering into a settlement agreement or agreeing to stipulations at any time before the director issues a final order. However, the person must pay any penalty in full prior to the execution of a settlement agreement.

(h) This section does not apply to a department action under Transportation Code, §643.2526.

§224.121. Administrative Proceedings under Transportation Code, §643.2526.

(a) The department will only revoke the registration of a motor carrier under Transportation Code, §643.2526 pursuant to a request from the Texas Department of Public Safety under Transportation Code, §643.252(b) after the issuance of an order by the following, as applicable:

(1) the Federal Motor Carrier Safety Administration regarding an unsatisfactory safety rating under 49 C.F.R. Part 385; or

(2) the Texas Department of Public Safety regarding multiple violations of the following:

(A) Transportation Code, Chapter 644;

(B) a rule adopted under Transportation Code, Chapter 644; or

(C) Subtitle C of Title 7 of the Transportation Code.

(b) The department will issue notice of the department's action under Transportation Code, §643.2526 to the person by email and first-class mail using the person's last known address in the department's records.

§224.124. Appeal of Department Action [of Denial] Under Transportation Code, §643.2526.

~~{(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643.}~~

~~(a) [(b)] An [The] appeal to the department under Transportation Code, §643.2526 will be governed by Chapter 224[; Subchapter E] of this title (relating to Adjudicative Practice and Procedure). [Contested Cases Referred to SOAH].~~

~~(b) [(c)] An [The applicant's] appeal will be considered untimely if it is not filed with the department by the 26th day after the date of the department's issuance of notice of the department's action. [denial of the application.] The department will not consider an untimely appeal.~~

~~(c) [(d)] An application that is withdrawn under Transportation Code, §643.055 is not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.~~

~~(d) On appeal, the department will not rescind a revocation under Transportation Code, §643.252(b) based on the motor carrier taking corrective action that results in an upgrade to its unsatisfactory safety rating after the department issued notice to the motor carrier that the department revoked the motor carrier's registration.~~

~~(e) An appeal under Transportation Code, §643.2526 must state why the person claims the department's action is erroneous, as well as the legal and factual basis for the claimed error.~~

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

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