

1 **ADOPTION OF**

2 **SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM**

3 **43 TAC §§217.76 - 217.78**

4
5 **INTRODUCTION.** The Texas Department of Motor Vehicles adopts new sections to 43 TAC Subchapter C,
6 Registration and Title Systems, §§217.76 - 217.78, concerning access to the department's automated
7 registration and titling system (RTS), including suspension and denial. The new sections are necessary to
8 implement Transportation Code, §520.021 and §520.022, as added by Senate Bill (SB) 604, 86th
9 Legislature, Regular Session (2019). Transportation Code, §520.021, authorizes the department to adopt
10 rules and policies for the maintenance and use of the RTS and Transportation Code, §520.022, provides
11 that the department has sole authority to determine access to RTS. The department adopts the new
12 sections with changes to the proposed text as published in the October 18, 2019, issue of the *Texas*
13 *Register* (44 TexReg 6018). The department has revised typographical errors in §§217.76 - 217.78. These
14 rules will be republished.

15 The department has also adopted new 43 TAC §§223.1 - 223.3, concerning the department's "red
16 flag" fraud reporting system in this issue of the *Texas Register*.

17
18 **REASONED JUSTIFICATION.** Transportation Code, §520.022, provides that the department has sole
19 authority to determine access to RTS. The department interprets SB 604, Section 4.07, as requiring the
20 department to identify the types of suspected activity that will result in suspension or denial. The types
21 of suspected activity are stated in proposed §217.76. Suspension and denial are addressed in proposed
22 §217.77. Reinstatement is addressed in §217.78.

23 Section 217.76 is also necessary to implement SB 604, Section 4.07, which requires the
24 department, not later than March 1, 2020, in coordination with county tax assessor-collectors, and in
25 accordance with Subchapter C, Chapter 520, Transportation Code, as added, to develop, adopt, and
26 implement rules that create clear criteria for the suspension or denial of access to RTS if a county tax
27 assessor-collector suspects fraud, waste, or abuse relating to RTS by a county tax assessor-collector
28 employee or a person deputized under Transportation Code, §520.0071. As part of the coordination
29 process with county tax assessor-collectors, on August 20, 2019, the department provided draft language
30 for proposed §217.76 to the Tax Assessor-Collectors Association of Texas (TACA) and the TxDMV county
31 tax assessor-collector Liaison. The proposal incorporated comments received.

32 Proposed §217.76(a) establishes that §§217.76 - 217.78 apply to individuals, other than
33 department employees, and entities, with RTS access. The sections do not apply to department employees
34 because their access, and denial of access, is at the will of the department. Stating that the sections do
35 not apply to them clarifies that the sections do not create procedures or requirements related to RTS
36 access, suspension, or denial, for a department employee. The reference to entities includes only entities
37 with RTS access.

38 Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS.
39 As stated, prior to proposal the department provided draft criteria to TACA and county tax assessor-
40 collectors as part of the SB 604, Section 4.07, coordination process. After reviewing comments received
41 from TACA and county tax assessor-collectors, the department modified the draft text to require a
42 reasonable suspicion and added the sources of information that could validate that suspicion. A
43 reasonable suspicion standard is consistent with the "suspects" language in SB 604, Section 4.07.
44 Requiring a final determination or knowing conduct would not be consistent with the legislative
45 instruction.

46 In addition, the department's draft of the criteria for the suspension or denial of access to RTS
47 provided to TACA and county tax assessor-collectors for review listed "a crime of moral turpitude." The
48 draft further defined "a crime of moral turpitude" to include reasonable suspicion of misappropriation of
49 money, falsification of government records, or a crime involving fraud, theft, deceit, dishonesty,
50 misrepresentation, or that otherwise reflects poorly on the person's honesty or trustworthiness. Based
51 on feedback received from TACA and the county tax assessor-collector commenters, the department kept
52 the listed types of criminal activity and removed the term "a crime of moral turpitude."

53 Section 217.76(b)(2) also provides that the department may suspend or deny access to RTS based
54 on a demonstration of non-compliance with applicable statutes and rules, including Texas Administrative
55 Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section 217.76(c) lists the
56 types of acceptable forms of information that can be used to support a reasonable suspicion.

57 Proposed §217.77(a) clarifies that the executive director or the executive director's designee has
58 sole authority to determine access to RTS, determine if information exists to support a reasonable
59 suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on
60 Transportation Code, §520.022. Proposed §217.77(b) provides that a county tax assessor-collector may
61 request the executive director or the executive director's designee immediately suspend a county
62 employee or full service deputy's access to RTS based on the same criteria. Although not a criterion, TACA
63 and county tax assessor-collector commenters in the SB 604, Section 4.07, coordination process suggested
64 including a notice, such as the notice set forth in the current §217.163 addendum. Proposed §217.77(c)
65 incorporates the existing notice provision from the addendum into the rule, with modifications to refer
66 to an exception for federal law enforcement, a request for immediate termination by the county tax
67 assessor-collector, and for differences in style between the proposal and the addendum.

68 The department has changed §217.77(b) to correct a typographical error by changing the word
69 "employee" to "employee's" for consistency with other uses in the text. The change does not add
70 additional costs or affect persons not on notice of the proposed rules.

71 TACA and county tax assessor-collector commenters in the coordination process also suggested
72 the need for a reinstatement process. Proposed §217.78(a) incorporates the addendum reinstatement
73 process which was agreed upon after negotiation between the county tax assessor-collectors and the
74 department. The process has been modified to reflect that it applies to individuals in addition to entities,
75 and to correct differences in style between the rule and the addendum. Proposed §217.78(b) provides
76 that access to RTS may be reinstated if the person whose access has been suspended is not the subject of
77 a pending criminal investigation by a law enforcement entity. Access may be reinstated if the department
78 determines no fraud, waste, or abuse was committed; the matter has been remedied to the satisfaction
79 of the department; or the person is in compliance with applicable statutes or rules.

80 The department has changed §217.78(b) to correct a typographical error by changing the word
81 "individual" to "individual's" for consistency with other uses in the text. The change does not add
82 additional costs or affect persons not on notice of the proposed rules.

83

84 **SUMMARY OF COMMENTS.**

85 The department received written comments on the proposal from the Tax Assessor-Collectors
86 Association of Texas (TACA), on behalf of its board and 254 county tax assessor-collector members.

87

88 **General Comments**

89 The commenter supports the rules provided that a county tax assessor-collector retains the
90 ability to manage their employees and full service deputies pursuant to both department rules and
91 county policies/provisions.

92

93 **Response.** The department agrees with the comment. The rules address only suspension of employees
94 and full service deputies from RTS system access based on suspicion of fraud, waste, or abuse as
95 provided in the adopted sections.

96

97 The commenter also asks for confirmation that a county tax assessor-collector may submit a
98 request to the department to deny an employee or full service deputy access to the RTS system if the
99 county tax assessor-collector believes, suspects, or finds that the employee or full service deputy is in
100 violation of or acting against the statutes, rules or procedures set forth by the department or by the tax
101 assessor collector.

102

103 **Response.** The department agrees with the comment. The adopted sections do not impose a duty on a
104 county tax assessor-collector to allow, or continue to allow, an employee or full service deputy to have
105 access to the RTS system. A county tax assessor-collector may submit a request to the department to deny
106 an employee or full service deputy access to the RTS system for any reason, including reasons of fraud,
107 waste, and abuse set forth in §217.76. The purpose of the rules is to provide criteria and a procedure for
108 the department to suspend a county tax assessor-collector employee's or full service deputy's access to
109 the RTS system based on reasons of fraud, waste, and abuse.

110

111 **STATUTORY AUTHORITY.** The department adopts new §§217.76 - 217.78 under SB 604, Section 4.06, and
112 Transportation Code, §520.021 and §1002.001.

113 Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than
114 March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in
115 accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt,
116 and implement rules that create clear criteria for the suspension or denial of access to the department's
117 automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse
118 relating to the system by an employee of the tax assessor-collector's or a person deputized under
119 Transportation Code, §520.0071.

120 Transportation Code, §520.021, authorizes the department to adopt rules and policies for the
121 maintenance and use of the department's automated registration and titling system.

122 Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and
123 appropriate to implement the powers and the duties of the department.

124

125 **CROSS REFERENCE TO STATUTE.** Transportation Code, §520.021.

126 **TEXT.**

127 **SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM**

128 **43 TAC §§217.76 - §217.78**

129 **§217.76. Criteria for Suspension or Denial of Access to RTS.**

130 (a) Sections 217.77, 217.78, and this section apply to individuals, other than department
131 employees, and entities, with RTS access.

132 (b) The department may suspend or deny any individual user's or entity's access to RTS if:

133 (1) information exists to support a reasonable suspicion that the individual or entity is

134 committing fraud, waste, or abuse related to RTS, including:

135 (A) misappropriation of money;

136 (B) falsification of government records; or

137 (C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that

138 otherwise reflects poorly on the individual's honesty or trustworthiness; or

139 (2) the individual or entity demonstrates non-compliance with applicable statutes and

140 rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504,

141 or 520.

142 (c) Acceptable forms of information that can support a reasonable suspicion include:

143 (1) information gathered in an audit under Transportation Code, §520.010 or §520.011;

144 (2) a request to suspend or deny the individual or entity access from a county tax assessor-

145 collector;

146 (3) review of transactions processed by the individual or entity; and

147 (4) oral or written information or complaints from:

148 (A) a law enforcement agency;

149 (B) another government agency;

150 (C) an association or trade group;

151 (D) an entity; or

152 (E) an identifiable individual.

153 §217.77. Process for Suspension or Denial of Access to RTS.

154 (a) The executive director or the executive director's designee has sole authority to:

155 (1) determine access to RTS;

156 (2) determine that information exists to support a reasonable suspicion that the individual

157 or entity is committing fraud, waste, or abuse related to RTS; and

158 (3) suspend or deny the individual's or entity's access to RTS, based on the criteria in
159 §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

160 (b) A county tax assessor-collector may request the executive director or the executive director's
161 designee immediately suspend a county employee's or full service deputy's access to RTS based on the
162 criteria in §217.76 of this title.

163 (c) The department shall inform the county tax assessor-collector before taking action to suspend
164 or deny the individual's or entity's access to RTS under subsection (a) of this section, unless:

165 (1) the action is as a result of a court order;

166 (2) time is of the essence;

167 (3) revealing this action would detrimentally interfere with or compromise an active
168 investigation by the department or an enforcement agency of this state or the federal government; or

169 (4) the action is based on the county tax collector-assessor's request in subsection (b) of
170 this section.

171

172 §217.78. Reinstatement of Access to RTS.

173 (a) A county tax assessor-collector may request a review of a decision to suspend or terminate
174 RTS access by submitting a request for reinstatement in writing to the department.

175 (1) The request for reinstatement should include all supporting information that is relevant to
176 support reinstatement.

177 (2) A county tax assessor-collector may submit information in support of or relevant to a
178 request for reinstatement to the department.

179 (3) The executive director shall make a final determination on reinstatement within 21

180 calendar days from the date the department receives the request for reinstatement. If the department
181 requests additional information from the individual, entity, or county tax assessor-collector, the deadline
182 for determination of the request for reinstatement is tolled until the additional information is received.

183 (b) Unless an individual or entity is the subject of a pending criminal investigation by a law
184 enforcement entity, the individual's or entity's access to RTS will be reinstated if the department
185 determines that:

186 (1) no fraud, waste, or abuse was committed;

187 (2) the matter has been remedied to the satisfaction of the department; or

188 (3) the individual or entity is in compliance with applicable statutes and rules.

189

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

192 Issued at Austin, Texas, on February 10, 2020.

193

194

/s/ Tracey Beaver
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