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ADOPTION OF

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1-223.3

INTRODUCTION. The Texas Department of Motor Vehicles adopts new Chapter 223, Compliance and Investigations Division, Subchapter A., Fraud, Waste, or Abuse, 43 TAC §§223.1 - 223.3, concerning the department's "red flag" fraud reporting system. The new sections are necessary to formalize the department's current "red flag" fraud reporting system and implement a management action within the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The department adopts new Chapter 223 without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 6021). These rules will not be republished.

The department also adopts new 43 TAC §§217.76-217.78, concerning access to the department's automated registration and title system (RTS) in this issue of the *Texas Register*.

REASONED JUSTIFICATION. The department originally proposed new Chapter 223 in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1114) and received comments from the Tax Assessor-Collector Association of Texas (TACA). The department did not adopt the proposal and it was withdrawn in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5387). The department incorporated the prior comments received on the March 1, 2019, published proposal in the October 18, 2019, proposal.

Because the adopted sections were developed over two proposals, the department refers to comments received on each proposal in this Reasoned Justification section. Only comments received on the October 18, 2019, proposal are listed, addressed, and responded to in the Summary of Comments section.

1 The Tax Assessor-Collectors Association of Texas (TACA) commented that the March 1, 2019,
2 proposal was inconsistent with the Sunset recommendation. TACA also suggested that the department's
3 CID investigation and notification process mirror the dealer enforcement complaint process, because that
4 process works well with cross communication and access to investigations. Some changes were made
5 based on the comments received and to further improve the rules.

6 However, the adopted rules do not mirror the department's dealer enforcement complaint
7 process. Throughout the dealer investigation and enforcement process, investigators and enforcement
8 attorneys communicate with the complainant and respondent as necessary to work through allegations
9 to either resolve the issues or assess civil penalties. The CID, on the other hand, is a unique division with
10 no authority or duty to determine administrative violations or assess civil penalties.

11 As addressed in the response to comments, the CID will try to work in partnership with county tax
12 assessor-collectors. However, the CID may not be able to provide status updates for ongoing
13 investigations. The CID serves as a liaison with law enforcement entities on potential criminal law
14 violations and has no authority to independently enforce or prosecute criminal law violations. Sharing
15 information regarding an ongoing criminal investigation could jeopardize the investigation and damage
16 the CID's working relationship with law enforcement.

17 Every person processing registration and title transactions in RTS has a duty to stop or prevent
18 fraud, waste, or abuse. The adopted "red flag" rules provide a means for county tax assessor-collectors to
19 flag and report suspected fraud, waste, or abuse to the CID. As addressed in the response to comments,
20 the adopted sections are based on the county tax assessor-collectors having continued management and
21 control of county employees and deputies, and do not limit or expand the exercise of statutory authority
22 of a county tax assessor-collector or the department.

1 Adopted §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the
2 policies and procedures for county tax assessor-collectors, including county tax assessor-collector
3 employees and deputies, to report suspected fraud, waste, or abuse, related to motor vehicle titling and
4 registration to the CID for investigation.

5 Adopted §223.2 establishes that the words and terms defined in Transportation Code, Chapter
6 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise.
7 The adopted section also defines terms specific to this subchapter.

8 Adopted §223.3 establishes the process for requesting rejection of a possible fraudulent
9 transaction and reporting suspected possible fraud, waste, or abuse to the CID. The section does not
10 require the county tax assessor-collector to make a request or submit information. However, submitting
11 information to the CID is a means to work in partnership with the CID to stop or prevent fraud, waste, or
12 abuse, and serve the motoring public.

13 Under §223.3, a county tax assessor-collector who suspects possible fraud, waste, or abuse by an
14 employee, motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or
15 with the county, may submit a request for rejection of the suspected fraudulent transaction. The county
16 tax assessor-collector must submit the request through a department Regional Service Center and mail,
17 or e-mail, certain information to the CID, including the original transaction, a detailed narrative, and any
18 supporting documentation or evidence. Adopted §223.3 requires a full service deputy to report suspected
19 fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then
20 submit the full service deputy's information to the CID using the process in §223.3.

21 Section 223.3 also establishes that the CID will provide notification to the county tax assessor-
22 collector if it determines it will not conduct an investigation. As addressed in response to comments and
23 this Reasoned Justification section, the CID may not be able to provide additional information.

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2 **SUMMARY OF COMMENTS.** The department received written comments on the proposal from the Tax
3 Assessor-Collectors Association of Texas (TACA), on behalf of its board and 254 county tax assessor-
4 collector members.

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6 **General Comment**

7 The commenter strongly supports all measures to ensure the motoring public is protected while
8 ensuring the county tax assessor-collectors have management control of their employees and full
9 service deputies.

10 **Response.** The department appreciates the commenter's support. The purpose of the adopted section is
11 to provide a process for county tax assessor collectors to report suspected fraud, waste, or abuse to the
12 CID so that county tax assessor-collectors and the CID can work together to stop or prevent it. The adopted
13 sections are based on the county tax assessor-collector having continued management and control of
14 their employees and deputies. It is the county tax assessor-collector's decision to make the report. The
15 adopted sections do not limit or expand the exercise of statutory authority of a county tax assessor-
16 collector or the department.

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18 **Section 223.3 Comments**

19 The commenter requests confirmation that §223.3 does not require a county tax assessor
20 collector to submit a request to the CID that a suspected fraudulent transaction be rejected or otherwise
21 report on suspected fraud, waste, or abuse to the CID.

22 **Response.** The department agrees with the comment. Section 223.3 establishes the process for
23 requesting rejection of a possible fraudulent transaction and reporting suspected possible fraud, waste,

1 or abuse, to the CID. The section does not require the county tax assessor-collector to make a request or
2 report information. Submitting information to the CID is a means to work in partnership with the CID to
3 stop or prevent fraud, waste, or abuse, and serve the motoring public as emphasized by the commenter.
4

5 The commenter requests that the CID provide county tax assessor-collectors updated status on
6 investigations every 60 days in order to combat the possibility of issuing titles erroneously.

7 **Response.** The department agrees with the comment. The CID will try to work in partnership with county
8 tax assessor-collectors. However, the CID may not be able to provide status updates for ongoing
9 investigations. The CID serves as a liaison with law enforcement entities on potential criminal law
10 violations and has no authority to independently enforce or prosecute criminal law violations. Sharing
11 information regarding an ongoing criminal investigation could jeopardize the investigation and damage
12 the CIDs working relationship with law enforcement.
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14 **STATUTORY AUTHORITY.** The department adopts new §§223.1-223.3 under Transportation Code,
15 §§501.0041, 502.0021, 520.021, and 1002.001.

16 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
17 Chapter 501.

18 Transportation Code, §502.0021 authorizes the department to adopt rules to administer
19 Chapter 502.

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

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

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CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 501, 502, and 520; and more specifically, Transportation Code, §501.003 and §520.022.

TEXT.

Subchapter A. Fraud, Waste, or Abuse

43 TAC §§223.1 - 223.3

§223.1. Purpose and Scope.

(a) The purpose of this subchapter is to establish procedures for county tax assessor-collectors to report suspected fraud, waste, or abuse to the department.

(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas Department of Motor Vehicles.

§223.2. Definitions.

(a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in this chapter, except as otherwise provided by this chapter, unless the context clearly indicates otherwise.

(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) CID--the Compliance and Investigations Division of the Texas Department of Motor Vehicles.

1 (2) County tax assessor-collector--includes an employee of a county tax assessor-
2 collector.

3 (3) Deputy--a full service deputy under Chapter 217, Subchapter H.

4 (4) Director--the director of the Compliance and Investigations Division.

5 (5) RTS--the Texas Department of Motor Vehicle's registration and title system.

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7 §223.3. Submission of Request.

8 (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee,
9 motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or with the
10 county may submit a request to the CID for review and possible investigation. The CID may forward a
11 submission to an appropriate law enforcement entity.

12 (b) To submit a request to the CID for review and possible investigation, the county tax assessor-
13 collector must:

14 (1) request a rejection of the suspected transaction through a department regional
15 service center; and

16 (2) mail or e-mail the following documents and information, as applicable, to the CID in
17 an envelope or e-mail message marked "Red Flag":

18 (A) the original transaction;

19 (B) a detailed narrative, including:

20 (i) a contact with the tax assessor-collector, including email address and
21 phone number;

22 (ii) the name of the employee submitting the transaction to the CID;

23 (iii) a statement as to why the transaction was flagged;

1 (iv) information about the employee or deputy if the employee or deputy
2 is suspected of committing fraud, waste, or abuse;

3 (v) any statements made by the customer submitting the transaction;

4 (C) any available video surveillance footage; and

5 (D) any other relevant evidence or information pertaining to the transaction.

6 (c) If a deputy suspects fraud, waste, or abuse, by an employee, motor vehicle dealer, or any
7 person transacting motor vehicle-related business for or with the deputy, the deputy must report the
8 suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector
9 may then submit a request to the CID for review and possible investigation in accordance with subsection
10 (b) of this section.

11 (d) If the CID determines it will not conduct an investigation after reviewing a request submitted
12 by a county tax assessor-collector, the CID will provide a notification to the county tax assessor-collector.

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14 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be a
15 valid exercise of the agency's legal authority.

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

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18

/s/ Tracey Beaver
Tracey Beaver, General Counsel