1 ADOPTION OF

SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

43 TAC §223.101

INTRODUCTION. The Texas Department of Motor Vehicles adopts new 43 TAC §223.101, concerning an external risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The new section is necessary to implement Transportation Code §520.004(4) as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). The department adopts §223.101 with changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 *TexReg* 5903).

This adoption addresses risk based monitoring of regulated persons, including county tax assessor-collectors, deputies, and dealers. The department has also adopted new 43 TAC §206.151 concerning the risk based monitoring of internal department operations in this issue of the *Texas Register*. **REASONED JUSTIFICATION.** New §223.101 is necessary under Transportation Code §520.004(4), as enacted in SB 604. Transportation Code §520.004(4) requires the department, by rule, to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The requirement is included within the Sunset Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with Final Results, 2018-2019, 86th Legislature (2019). The Sunset recommendation envisioned that the department develop criteria to determine varying risk levels, such as transaction volume and past violations, to strategically allocate resources and personnel. Further, monitoring and investigation would extend both to counties and their contractors, dealers, and the department's regional service centers.

To implement Transportation Code §520.004(4) in line with the Sunset recommendation, the department has developed internal and external risk-based monitoring systems. The internal system is

overseen through department management and the Internal Audit Division. The external system is overseen through the department's Compliance and Investigations Division. Each system rule is placed in its appropriate chapter based on its focus.

New §223.101 outlines the program generally, to allow flexibility for change over time and because a detailed disclosure of the means and methods of the department's system could be used to evade the monitoring. The department welcomes tax assessor-collectors to join with the department in all facets of detecting and preventing fraudulent activity; and recognizes that it is important to all county tax assessor-collectors that they be involved in any informal or formal investigation of employees relating to fraud, as it pertains to the tax assessor-collector's office, employees, and/or contractors.

The department agrees with the Tax Assessor-Collectors Association of Texas to work together in the prevention of fraudulent activity. A strong partnership between the tax assessor-collectors and the department ensures the safety and security of the motor vehicle titling and registration processes. This partnership enables both to better serve with excellence our Texas motorists.

As addressed in response to comments, the department has amended §223.101 to add "including procedures to notify county tax assessor-collectors concerning routine and periodic review and disclosure procedures concerning possible fraudulent activity." In addition, the department has added as a separate paragraph "notifying a tax assessor-collector of possible fraudulent activity in the tax assessor-collector's office as authorized by law enforcement;" and renumbered the paragraphs accordingly. To this end the department shall meet with tax assessor-collectors to develop the procedures in coordination with them. The changes do not add additional requirements or costs on any regulated person.

SUMMARY OF COMMENTS.

The department received written comments requesting a change in the proposed text from the Lubbock County Tax Assessor Collector and the Tax Assessor-Collectors Association of Texas.

Comment:

A commenter recommends that language be added to the rule that clarifies the qualifying criteria used to determine when, and how, additional monitoring will be required.

Agency Response:

The department appreciates the comment, but will not make the change for reasons stated in the preamble to the proposal and this adoption. As stated: New §223.101 outlines the program generally, to allow flexibility for change over time and because detailed disclosure of the means and methods that the department's system could be used to evade the monitoring.

Comment:

A commenter recommends that the addition of the following language to §223.101(1): "including procedures to notify county tax assessor-collectors concerning routine and periodic review and disclosure procedures concerning possible fraudulent activity."

Agency Response:

The department agrees with the proposed change. In addition, the department has added as a separate paragraph "notifying a tax assessor-collector of possible fraudulent activity in the tax assessor-collector's office as authorized by law enforcement;" and renumbered the paragraphs accordingly. The department seeks to work in partnership with county tax assessor-collectors to prevent fraudulent activity and stop such activity should it occur. In addition, the Compliance Investigation Division (CID) is working to improve transparency between the CID and our county partners. This includes updating and improving current procedures of engaging in routine periodic compliance reviews with county tax assessor-collectors through CID field service representatives. The department shall meet with tax assessor-collectors to develop disclosure procedures in coordination with them. The procedures will ensure tax assessor-collectors are aware of possible fraudulent activity in their offices, as appropriate, to help monitor and

- actively prevent fraud. For example, the department would disclose possible fraudulent activity in a tax
- 2 assessor-collector's office as authorized by law enforcement. The changes do not affect any person not
- 3 on notice of this proposal or add additional costs.
- 4 **STATUTORY AUTHORITY.** The department adopts new §223.101 under Transportation Code §§520.003,
- 5 520.004, and 1002.001.
- 6 Transportation Code §520.003 authorizes the department to adopt rules to administer
- 7 Transportation Code Chapter 520.
- 8 Transportation Code §520.004 requires the department to establish by rule a risk-based system
- 9 of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to
- 10 efficiently allocate resources and personnel.
- 11 Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and
- appropriate to implement the powers and the duties of the department.
- 13 CROSS REFERENCE TO STATUTE. Transportation Code §520.004.
- 14 **TEXT.**

15 SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

- 16 **43 TAC §223.101**
- 17 §223.101. External Risk-Based Monitoring System.
- 18 The department's Compliance and Investigations Division shall establish a risk-based system of
- 19 monitoring and preventing fraudulent activity related to vehicle registration and titling in order to
- 20 <u>efficiently allocate resources and personnel, including:</u>
- 21 (1) establishing a risk-based system of monitoring counties and their contractors,
- 22 including procedures to notify county tax assessor-collectors concerning routine and periodic review and
- 23 disclosure procedures concerning possible fraudulent activity;

1	(2) developing criteria to determine varying risk levels for the department's fraud
2	monitoring functions to strategically allocate resources and personnel;
3	(3) reviewing the department's methods for collecting and evaluating related
4	information, including the viability of incorporating more remote transaction review practices to
5	supplement periodic, but less frequent, on-site visits to counties;
6	(4) notifying a tax assessor-collector of possible fraudulent activity in the tax assessor
7	collector's office as authorized by law enforcement; and
8	(5) developing and providing training to fraud investigations staff.
9	CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be
10	within the state agency's legal authority to adopt.
11	Issued at Austin, Texas, on <u>February 8, 2021</u> .
12	/s/ Tracey Beaver
13	Tracey Beaver, General Counsel