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**PROPOSAL OF REVISIONS TO**

**SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

**43 TAC §§223.1, 223.2 AND 223.3**

**NEW SECTION**

**SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

**§223.5**

**REPEAL OF**

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

**43 TAC §223.101**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1 - 223.3; new §223.5; and the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent Activity, §223.101.

The proposed amendments would revise the title to Chapter 223 by removing the word “Division.” The proposed amendments would also bring the rules into alignment with statute; clarify existing requirements; improve readability by using consistent terminology; update definitions, terms, and references; and more specifically describe the department’s methods and procedures. Proposed new §223.5 is necessary to update the department’s process for external risk-based monitoring regarding the external users of the department’s Registration and Title System (RTS). Proposed new §223.5 would replace Subchapter B, §223.101.

**EXPLANATION.** The department is conducting a review of its rules in Chapter 223 in compliance with Government Code, §2001.039. Notice of the department’s plan to review Chapter 223 is published in this

1 issue of the *Texas Register*. As a part of the rule review, the department is proposing necessary revisions  
2 as detailed in the following paragraphs.

3 A proposed amendment would change the title to Chapter 223 to “Compliance and Investigations”  
4 by deleting the word “Division.” In August of 2021, the department’s Compliance and Investigations  
5 Division disbanded and became a part of the department’s Enforcement Division.

6 Subchapter A. Fraud, Waste, or Abuse

7 Proposed amendments to §223.1 would clarify the purpose and scope of §223.3 and expand the  
8 scope of Subchapter A to include new §223.5 to replace §223.101, which is proposed for repeal. Section  
9 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected  
10 fraud, waste, or abuse relating to vehicle registration or titling; however, the deputies report suspected  
11 fraud, waste, or abuse to the county tax assessor-collector, who then reports it to the department. A  
12 proposed amendment to §223.1 would also delete subsection (b) because amended subsection (a)  
13 includes the necessary language regarding the purpose and scope of Subchapter A.

14 Proposed amendments to §223.2(b) would remove the definitions of “CID” and “Director”  
15 because both refer to the Compliance and Investigations Division, which has been disbanded and  
16 reorganized within the department’s Enforcement Division. A proposed amendment to the definition of  
17 “county tax assessor-collector” in §223.2(b) would clarify the definition by referring to the person who  
18 serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas  
19 Constitution. A proposed amendment to the definition of “deputy” in §223.2(b) would clarify that Chapter  
20 217 is in Title 43. A proposed amendment to the definition of “RTS” in §223.2(b) would replace the words  
21 “Texas Department of Motor Vehicle’s” with the word “department’s” because the word “department” is  
22 defined in Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in

1 Transportation Code, Chapter 501 have the same meaning when used in Chapter 223, with certain  
2 exceptions. Proposed amendments to §223.2(b) would also re-letter the subsection due to deletions.

3 A proposed amendment to §223.3(a) and (c) would delete the words “motor vehicle” from the  
4 term “motor vehicle dealer” because the word “dealer” is defined in Transportation Code, Chapter 501,  
5 but the term “motor vehicle dealer” is not defined in Chapter 501. Proposed amendments to §223.3 would  
6 replace the acronym “CID” with the word “department” to reflect the reorganization within the  
7 department. Proposed amendments to §223.3(a)–(c) would remove the words “and possible  
8 investigation” as unnecessary. In addition to improving readability, proposed amendments to §223.3(b)  
9 would clarify and specify the information that must be included in the detailed narrative that a county tax  
10 assessor-collector must submit as part of a request to the department to review suspected fraud, waste,  
11 or abuse. A proposed amendment to §223.3(c) would add the word “possible” to be consistent with  
12 subsection (a), which includes the word “possible” when referring to suspected fraud, waste, or abuse. A  
13 proposed amendment to §223.3(c) would also delete an unnecessary comma. Proposed amendments to  
14 §223.3(d) would improve readability by using consistent terminology and removing unnecessary  
15 language.

16 Simultaneously with the proposed repeal of Subchapter B and §223.101, the department  
17 proposes new §223.5, which would rewrite, reorganize, clarify and specify the department’s external risk-  
18 based monitoring system required by Transportation Code, §520.004(4). Proposed new §223.5 would  
19 subject all Texas county tax assessor-collectors, their contractors’ staff, and their deputies, which are  
20 external RTS users, to periodic examination to determine whether to assign the RTS user a classification  
21 of priority or non-priority. Based on the examination, the department will classify each county tax  
22 assessor-collector, each of their contractor’s staff, and each deputy as priority or non-priority for the  
23 purposes of prioritizing reviews to determine whether there is evidence of fraud by a county tax assessor-

1 collector, their contractor’s staff, or a deputy. This classification system will allow the department to  
2 determine how to use its limited resources most efficiently to investigate and prevent fraud.

3 Proposed new §223.5(a) would set out the factors the department considers in classifying a tax  
4 assessor-collector, their contractor’s staff, or deputy as a priority or non-priority. These proposed factors  
5 would reflect the department’s current practices in assessing whether to investigate a particular county  
6 tax assessor-collector, their contractor’s staff, or deputy.

7 Proposed new §223.5(b) would document the department’s goal that each county tax assessor-  
8 collector, each of their contractor’s staff, or each deputy who is classified as a priority will be reviewed at  
9 least once per year; and if classified as a non-priority, a county tax assessor-collector, their contractor’s  
10 staff person, or deputy will be reviewed at least once every two years. This goal would create predictability  
11 for the department, county tax assessor-collectors, their contractor’s staff, and deputies; ensure that all  
12 county tax assessor-collectors, their contractor’s staff, and deputies are reviewed regularly; and allow the  
13 department to prioritize its limited resources toward higher-priority reviews.

14 Proposed new §223.5(c) specifies that the examinations under this section may be virtual, on  
15 premises at the county tax assessor-collector’s, their contractor’s staff person’s, or deputy’s location, or a  
16 combination of both. Allowing virtual examinations would save the department resources and would be  
17 more convenient for county tax assessor-collectors.

18 Proposed new §223.5(d) would provide that the department may notify the county tax assessor-  
19 collector of possible fraudulent activity in the county tax assessor-collector’s office when the department  
20 is authorized by law enforcement. This would clarify the limitations on the department’s ability to update  
21 a county tax assessor-collector about a department investigation of their office.

22

23 Subchapter B. External Risk-Based Monitoring System

1           The department proposes the repeal of Subchapter B, including §223.101, because the risk-based  
2 system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls  
3 within the scope of Subchapter A, which is titled “Fraud, Waste, or Abuse.” Also, the definitions in §223.2  
4 apply to the entire Chapter 223, even though §223.2 is contained in Subchapter A. Simultaneously with  
5 the repeal of Subchapter B and §223.101, the department proposes new §223.5, which would rewrite,  
6 reorganize, clarify, and specify the department’s external risk-based system of monitoring and preventing  
7 fraudulent activity relating to vehicle registration and titling.

8           **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
9 has determined that for each year of the first five years the proposed amendments, new section, and  
10 repeal are in effect, there will be no significant fiscal impact to state or local governments as a result of  
11 the enforcement or administration of the proposal. Enforcement Division Director Corrie Thompson has  
12 determined that there will be no significant impact on local employment or the local economy as a result  
13 of the proposal.

14           **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that for each year of the first five  
15 years the proposed amendments, new section, and repeal are in effect, the anticipated public benefit as  
16 a result of enforcing or administering the proposal will be the simplification, clarification, and streamlining  
17 of agency rules.

18           Anticipated Cost to Comply with the Proposal. Ms. Thompson anticipates that there will be no  
19 costs to comply with the proposed amendments, new section, and repeal.

20           **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
21 Code, §2006.002, the department has determined that the proposed amendments will not have an  
22 adverse economic impact on small businesses, micro-businesses, and rural communities because there

1 are no anticipated economic costs for persons required to comply with the proposed amendments, new  
2 section, and repeal. Therefore, the department is not required to prepare a regulatory flexibility analysis  
3 under Government Code, §2006.002.

4 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
5 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
6 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
7 taking or require a takings impact assessment under Government Code, §2007.043.

8 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
9 first five years the proposed amendments, new section, and repeal are in effect, no government program  
10 would be created or eliminated. Implementation of the proposed revisions would not require the creation  
11 of new employee positions or elimination of existing employee positions. The proposed revisions would  
12 not require an increase or decrease in future legislative appropriations to the department or an increase  
13 or decrease of fees paid to the department. The proposed revisions do not create a new regulation;  
14 however, they expand an existing regulation regarding the department's external risk-based monitoring  
15 system of external users of RTS. The proposed revisions do not increase or decrease the number of  
16 individuals subject to the rule's applicability. Lastly, the proposed revisions do not affect this state's  
17 economy.

18 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written  
19 comments by 5:00 p.m. CDT on MM, DD, YYYY. A request for a public hearing must be sent separately  
20 from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov*  
21 or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue,

1 Austin, Texas 78731. If a hearing is held, the department will consider written comments and public  
2 testimony presented at the hearing.

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**CHAPTER 223 – COMPLIANCE AND INVESTIGATIONS DIVISION**

5

**SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

6

**43 TAC §§223.1, 223.2, 223.3 and 223.5**

7 **STATUTORY AUTHORITY.** The proposed amendments are proposed under Transportation Code,  
8 §520.004, which requires the department by rule to establish a risk-based system of monitoring and  
9 preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate  
10 resources and personnel; Transportation Code, §520.010, which authorizes the department to perform  
11 an audit and investigation related to registration and titling services; and Transportation Code, §1002.001,  
12 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules  
13 that are necessary and appropriate to implement the powers and the duties of the department.

14 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Transportation Code,  
15 §520.004, §520.010 and Chapter 1002.

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17 Text.

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19

**CHAPTER 223 – COMPLIANCE AND INVESTIGATIONS [~~DIVISION~~]**

20

21 §223.1. Purpose and Scope.

22

~~(a)~~ The purpose of this subchapter is to establish the following:

1            (1) procedures for county tax assessor-collectors and deputies to report suspected fraud, waste,  
2            or abuse to the department relating to vehicle registration or titling; and[-]

3            (2) a risk-based monitoring system for the department to monitor county tax assessor-collectors  
4            and their deputies who use RTS .

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

8

9            §223.2. Definitions.

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

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

15                    ~~[(1) CID--the Compliance and Investigations Division of the Texas Department of Motor~~  
16                    ~~Vehicles.]~~

17                    (1) [(2)] County tax assessor-collector--the person who serves as the assessor-collector  
18                    of taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as [includes] an  
19                    employee of a county tax assessor-collector.



1                   (2) [(3)] Deputy--a full service deputy under Chapter 217, Subchapter H of this title  
2 (relating to Vehicle Titles and Registration).

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

4                   (3) [(5)] RTS--the department's [Texas Department of Motor Vehicle's] registration and  
5 title system.

6  
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 department [CID] for review [and possible investigation]. The  
11 department [CID] may forward a submission to an appropriate law enforcement entity.

12                   (b) To submit a request to the department [CID] for review [and possible investigation], the  
13 county tax assessor-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  
17 department [CID] in an envelope or e-mail message marked "Red Flag":

18                   (A) the original transaction;

19                   (B) a detailed narrative, including:

1 (i) the name of a contact person with the county tax assessor-collector,  
2 including email address and phone number;

3 (ii) the name of the employee submitting the request ~~[transaction to the~~  
4 ~~CID]~~;

5 (iii) a statement as to why the transaction is suspect ~~[was flagged]~~;

6 (iv) information about the employee or deputy ~~[if the employee or~~  
7 ~~deputy is]~~ suspected of committing fraud, waste, or abuse;

8 (v) any statements made by the customer submitting the suspect  
9 transaction;

10 (C) any available video surveillance footage; and

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

12 (c) If a deputy suspects possible fraud, waste, or abuse~~[,]~~ by an employee, ~~[motor vehicle]~~  
13 dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must  
14 report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-  
15 collector may then submit a request to the department ~~[CID]~~ for review ~~[and possible investigation]~~ in  
16 accordance with subsection (b) of this section.

17 (d) If the department ~~[CID]~~ determines it will not open ~~[conduct]~~ an investigation after reviewing  
18 a submitted request ~~[submitted by a county tax assessor-collector]~~, the department ~~[CID]~~ will notify  
19 ~~[provide a notification to]~~ the submitting county tax assessor-collector.

20

1 §223.5. External Risk-Based Monitoring System.

2 (a) All county tax assessor-collectors, their contractor’s staff, and the deputies who use RTS are  
3 subject to periodic examination by the department. As a result of the examination, the department will  
4 classify each county tax assessor-collector, each of their contractor’s staff, and each deputy as priority or  
5 non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by  
6 the county tax assessor-collector, their contractor’s staff, or a deputy. In classifying a county tax  
7 assessor-collector, their contractor’s staff, or a deputy, the department may consider factors, including,  
8 but not limited to:

9 (1) referrals or complaints received from partner state agencies;

10 (2) referrals or complaints received from public safety agencies;

11 (3) the retirement, resignation, or impeachment of the county tax assessor-collector;

12 (4) a contingency that disrupted county motor vehicle title and registration operations,  
13 such as a natural disaster or the theft or the burglary of a county tax assessor-collector’s premises;

14 (5) previous compliance review designations;

15 (6) previous instances of non-compliance; and

16 (7) a complaint filed through an internal reporting mechanism, such as a Red Flag  
17 referral, telephone call, or an email received by the department’s Consumer Relations Division (CRD), or  
18 any other means of communication with the department.

19 (b) It is the department’s goal to review each county tax assessor-collector, each of their  
20 contractor’s staff, and each deputy as follows:

1                   (1) if the county tax assessor-collector, their contractor’s staff person, or deputy is  
2 classified as a priority, they will be reviewed at least once per year; or

3                   (2) if the county tax assessor-collector, their contractor’s staff person, or deputy is  
4 classified as a non-priority, they will be reviewed at least once every two years.

5                   (c) Examinations under this section may be virtual, on premises at the county tax assessor-  
6 collector’s, their contractor’s staff person’s, or deputy’s location, or a combination of both.

7                   (d) The department may notify the county tax assessor-collector of possible fraudulent activity  
8 in the county tax assessor-collector’s office when the department is authorized by law enforcement.

9

10                   **SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

11   **43 TAC §223.101**

12                   **STATUTORY AUTHORITY.** The repeal is proposed under Transportation Code, §520.004, which requires  
13 the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity  
14 related to vehicle registration and titling in order to efficiently allocate resources and personnel;  
15 Transportation Code, §520.010, which authorizes the department to perform an audit and investigation  
16 related to registration and titling services; and Transportation Code, §1002.001, which provides the board  
17 of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and  
18 appropriate to implement the powers and the duties of the department.

19                   **CROSS REFERENCE TO STATUTE.** The proposed repeal would implement Transportation Code, §520.004,  
20 §520.010 and Chapter 1002.

21

22                   Text.

1            ~~**[SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY]**~~

2

3    ~~[\$223.101. External Risk-Based Monitoring System.]~~

4            ~~[The department's Compliance and Investigations Division shall establish a risk-based system of~~  
5 ~~monitoring and preventing fraudulent activity related to vehicle registration and titling in order to~~  
6 ~~efficiently allocate resources and personnel, including:]~~

7                    ~~[(1) establishing a risk-based system of monitoring counties and their contractors,~~  
8 ~~including procedures to notify county tax assessor-collectors concerning routine and periodic review and~~  
9 ~~disclosure procedures concerning possible fraudulent activity;]~~

10                    ~~[(2) developing criteria to determine varying risk levels for the department's fraud~~  
11 ~~monitoring functions to strategically allocate resources and personnel;]~~

12                    ~~[(3) reviewing the department's methods for collecting and evaluating related~~  
13 ~~information, including the viability of incorporating more remote transaction review practices to~~  
14 ~~supplement periodic, but less frequent, on-site visits to counties;]~~

15                    ~~[(4) notifying a tax assessor-collector of possible fraudulent activity in the tax assessor-~~  
16 ~~collector's office as authorized by law enforcement; and]~~

17                    ~~[(5) developing and providing training to fraud investigations staff.]~~

18