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**ADOPTION 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) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1, 223.2, and 223.3. In conjunction with these amendments, the department adopts the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent Activity, §223.101. In addition, the department adopts new §223.5, External Risk-Based Monitoring System.

The department adopts amendments to the title of Chapter 223, §223.1, §223.2, and repeal of §223.101 without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2690) and will not be republished. The department adopts the following with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2690) and will be republished: amendments to §223.3, and new §223.5. The department did not receive any public comments on the amendments, new section and repeal.

1 **REASONED JUSTIFICATION.**

2 An adopted amendment changes the title to Chapter 223 to "Compliance and Investigations" by
3 deleting the word "Division." In August of 2021, the department's Compliance and Investigations Division
4 disbanded and became a part of the department's Enforcement Division.

5 Subchapter A. Fraud, Waste, or Abuse

6 The adopted amendments to §223.1 clarify the purpose and scope of Chapter 223 and expand the
7 scope of Subchapter A to include new §223.5 to replace §223.101, which is adopted for repeal. Section
8 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected
9 fraud, waste or abuse relating to vehicle registration or titling; however, the deputies report suspected
10 fraud, waste or abuse to the county tax assessor-collector, who then reports it to the department. An
11 adopted amendment to §223.1 also deletes subsection (b) because amended subsection (a) includes the
12 necessary language regarding the purpose and scope of Subchapter A.

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

1 Code, Chapter 501 have the same meaning when used in Chapter 223, with certain exceptions. Adopted
2 amendments to §223.2(b) also renumber the paragraphs due to deletions.

3 Adopted amendments to §223.3(a) and (c) delete the words "motor vehicle" from the term
4 "motor vehicle dealer" because the word "dealer" is defined in Transportation Code, Chapter 501, but the
5 term "motor vehicle dealer" is not defined in Chapter 501. The department adopts amendments to §223.3
6 to replace the acronym "CID" with the word "department" to reflect the reorganization within the
7 department. The department adopts amendments to §223.3(a) - (c) to remove the words "and possible
8 investigation" as being unnecessary. In addition to improving readability, adopted amendments to
9 §223.3(b) clarify and specify the information that must be included in the detailed narrative that a county
10 tax assessor-collector must submit as part of a request to the department to review suspected fraud,
11 waste, or abuse. The department adopts §223.3(b)(2)(B)(iv) with a change at adoption to add the word
12 "and" to clarify that a detailed narrative must include the information in clauses (i) through (v) at a
13 minimum. The department adopts an amendment to §223.3(c) to add the word "possible" to be
14 consistent with subsection (a), which includes the word "possible" when referring to suspected fraud,
15 waste, or abuse. An adopted amendment to §223.3(c) also deletes an unnecessary comma. Adopted
16 amendments to §223.3(d) improve readability by using consistent terminology and removing unnecessary
17 language.

18 Simultaneously with the adopted repeal of Subchapter B, §223.101, the department adopts new
19 §223.5, which rewrites, reorganizes, clarifies and specifies the department's external risk-based
20 monitoring system required by Transportation Code, §520.004(4). Adopted new §223.5 subjects all Texas
21 county tax assessor-collectors, their contractors' staff, and their deputies, which are external RTS users, to
22 periodic examination to determine whether to assign the RTS user a classification of priority or non-
23 priority. Based on the examination, the department will classify each county tax assessor-collector, each

1 of their contractors' staff, and each deputy as priority or non-priority for the purposes of prioritizing
2 reviews to determine whether there is evidence of fraud by a county tax assessor-collector, their
3 contractors' staff, or a deputy. This classification system will allow the department to determine how to
4 use its limited resources most efficiently to investigate and prevent fraud. The department adopts new
5 §223.5 with changes at adoption to change the word "contractor's" to "contractors" because a county
6 tax assessor-collector may have more than one contractor.

7 Adopted new §223.5(a) sets out the factors the department considers in classifying a county tax
8 assessor-collector, their contractors' staff, or deputy as a priority or non-priority. These adopted factors
9 reflect the department's current practices in assessing whether to investigate a particular county tax
10 assessor-collector, their contractors' staff, or deputy.

11 Adopted new §223.5(b) documents the department's goal that each county tax assessor-collector,
12 each of their contractors' staff, or each deputy who is classified as a priority will be reviewed at least once
13 per year; and if classified as a non-priority, a county tax assessor-collector, their contractors' staff person,
14 or deputy will be reviewed at least once every two years. This goal creates predictability for the
15 department, county tax assessor-collectors, their contractors' staff, and deputies; ensures that all county
16 tax assessor-collectors, their contractors' staff, and deputies are reviewed regularly; and allows the
17 department to prioritize its limited resources toward higher-priority reviews.

18 The department adopts new §223.5(c) with changes at adoption to substitute semicolons for
19 some of the commas for clarity, and to modify language in the last clause to indicate that examinations
20 could be a combination of the options, which could be more than two options. Adopted new §223.5(c)
21 specifies that the examinations under this section may be virtual, on premises at the county tax assessor-
22 collector's, their contractors' staff person's, or deputy's location, or a combination of these options.

1 Allowing virtual examinations will save the department resources and will be more convenient for county
2 tax assessor-collectors.

3 Adopted new §223.5(d) provides that the department may notify the county tax assessor-
4 collector of possible fraudulent activity in the county tax assessor-collector’s office when the department
5 is authorized by law enforcement. This language clarifies the limitations on the department’s ability to
6 update a county tax assessor-collector about a department investigation of their office.

7

8 Subchapter B. Risk-Based Monitoring and Preventing Fraudulent Activity

9 The department adopts the repeal of Subchapter B, including §223.101 because the risk-based
10 system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls
11 within the scope of Subchapter A, which is titled “Fraud, Waste, or Abuse.” Also, the definitions in §223.2
12 apply to the entire Chapter 223, even though Section 223.2 is contained in Subchapter A. Simultaneously
13 with the repeal of Subchapter B and §223.101, the department adopts new §223.5, which rewrites,
14 reorganizes, clarifies and specifies the department’s external risk-based system of monitoring and
15 preventing fraudulent activity relating to vehicle registration and titling.

16 **SUMMARY OF COMMENTS.**

17 The department received no comments.

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

2 **43 TAC §§223.1, 223.2, 223.3 and 223.5**

3 **STATUTORY AUTHORITY.** The amendments and new section are adopted under Transportation Code,
4 §520.004, which requires the department by rule to establish a risk-based system of monitoring and
5 preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate
6 resources and personnel; Transportation Code, §520.010, which authorizes the department to perform
7 an audit and investigation related to registration and titling services; and Transportation Code, §1002.001,
8 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
9 that are necessary and appropriate to implement the powers and the duties of the department.

10 **CROSS REFERENCE TO STATUTE.** The adopted amendments and new section would implement
11 Transportation Code, §§520.004, 520.010 and 1002.001.

12

13 **CHAPTER 223 - COMPLIANCE AND INVESTIGATIONS**

14 Text.

15 §223.1. Purpose and Scope.

16 The purpose of this subchapter is to establish the following:

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

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

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2 §223.2. Definitions.

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

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

8 (1) County tax assessor-collector--the person who serves as the assessor-collector of
9 taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as an employee of a
10 county tax assessor-collector.

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

13 (3) RTS--the department's registration and title system.

14

15 §223.3. Submission of Request.

16 (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee,
17 dealer, deputy, or any person transacting motor vehicle-related business for or with the county may
18 submit a request to the department for review. The department may forward a submission to an
19 appropriate law enforcement entity.

20 (b) To submit a request to the department for review, the county tax assessor-collector must:

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

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

5 (A) the original transaction;

6 (B) a detailed narrative, including:

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

9 (ii) the name of the employee submitting the request;

10 (iii) a statement as to why the transaction is suspect;

11 (iv) information about the employee or deputy suspected of committing
12 fraud, waste, or abuse; and

13 (v) any statements made by the customer submitting the suspect
14 transaction;

15 (C) any available video surveillance footage; and

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

17 (c) If a deputy suspects possible fraud, waste, or abuse by an employee, dealer, or any person
18 transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected
19 fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then
20 submit a request to the department for review in accordance with subsection (b) of this section.

1 (d) If the department determines it will not open an investigation after reviewing a submitted
2 request, the department will notify the submitting county tax assessor-collector.

3
4 §223.5. External Risk-Based Monitoring System.

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

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

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

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

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

17 (5) previous compliance review designations;

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

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

4 (b) It is the department's goal to review each county tax assessor-collector, each of their
5 contractors' staff, and each deputy as follows:

6 (1) if the county tax assessor-collector, their contractors' staff person, or deputy is
7 classified as a priority, they will be reviewed at least once per year; or

8 (2) if the county tax assessor-collector, their contractors' staff person, or deputy is
9 classified as a non-priority, they will be reviewed at least once every two years.

10 (c) Examinations under this section may be virtual; on premises at the county tax assessor-
11 collector's, their contractors' staff person's, or deputy's location; or some combination of these options.

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

14

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

16

43 TAC §223.101

17 **STATUTORY AUTHORITY.** The repeal is adopted under Transportation Code, §520.004, which requires
18 the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity
19 related to vehicle registration and titling in order to efficiently allocate resources and personnel;
20 Transportation Code, §520.010, which authorizes the department to perform an audit and investigation
21 related to registration and titling services; and Transportation Code, §1002.001, which provides the board

1 of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and
2 appropriate to implement the powers and the duties of the department.

3 **CROSS REFERENCE TO STATUTE.** The adopted repeal would implement Transportation Code, §§520.004,
4 520.010 and 1002.001.

5
6 Text.

7 [~~§223.101. External Risk-Based Monitoring System.~~]

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

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

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

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

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

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