

1 communication and access to investigations. Some changes were made based on the comments received
2 and to further improve the rules.

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

8 The CID serves as a liaison with law enforcement entities on potential criminal law violations and
9 has no authority to independently enforce or prosecute criminal law violations. However, the CID attorney
10 may be sworn in as a special prosecutor by a District or County Attorney. If the CID were to share
11 information regarding ongoing criminal investigations, the division could jeopardize the investigations and
12 damage its working relationship with law enforcement. The CID may be under strict orders to keep
13 information confidential until a case is fully adjudicated.

14 Every person processing registration and title transactions in RTS has a duty to stop or prevent
15 fraud. One way to stop or prevent fraud is to refuse to process a transaction involving known or obvious
16 fraud. The proposed "red flag" rules provide a means to flag and report suspected fraud to the CID. The
17 proposed rules do not limit or expand the exercise of statutory authority of a TAC or the department.

18 Proposed §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the
19 policies and procedures for TACs, including TAC employees and deputies, to report suspected fraud,
20 waste, or abuse related to motor vehicle title or registration to the CID for investigation.

21 Proposed §223.2 establishes that the words and terms defined in Transportation Code Chapter
22 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise.
23 The proposed section also defines terms specific to this subchapter.

1 Proposed §223.3 establishes the process for reporting suspected fraud to the CID. The process
2 requires the TAC to submit a request for rejection of the suspected fraudulent transaction through a
3 department Regional Service Center and mail, or e-mail, certain information to the CID, including the
4 original transaction, a detailed narrative, and any supporting documentation or evidence. Proposed
5 §223.3 requires a full service deputy to report suspected fraud, waste, or abuse to the TAC. The TAC may
6 then submit the request to the CID for review and possible investigation. The proposed section also
7 establishes that the CID will provide a notification to the TAC if it determines it will not conduct an
8 investigation.

9

10 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
11 has determined that for each year of the first five years the proposed new sections will be in effect, there
12 will be no fiscal impact to state or local governments as a result of the enforcement or administration of
13 the proposal. Tim Menke, Director of the Compliance and Investigations Division, has determined that
14 there will be no measurable effect on local employment or the local economy as a result of the proposal.

15

16 **PUBLIC BENEFIT AND COST NOTE.** Mr. Menke has also determined that, for each year of the first five
17 years the proposed new sections are in effect, the public benefits include increased clarity and consistency
18 for reporting by TACs of suspected fraud, waste, or abuse to the department, leading to an improved
19 ability for the department and law enforcement authorities to coordinate, investigate, and ultimately
20 prevent and deter fraud, waste, or abuse of RTS.

21 Mr. Menke anticipates that there will be no additional costs for regulated persons to comply with
22 these rules. County tax assessor-collectors have reported suspected fraudulent transactions to the
23 department for review since the department's inception. The proposed rules formalize the existing

1 process. The requirement for deputies to report suspected fraudulent transactions to the TAC clarifies
2 that they will report to the TAC and not the department. This maintains the TAC's role in the process.

3

4 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
5 Code §2006.002, the department has determined that the proposed new sections will not have an adverse
6 economic effect on small businesses, micro-businesses, or rural communities because the rules create no
7 additional costs. Additionally, TACs and their employees are not for-profit businesses. Reporting
8 suspected fraudulent transactions will not have an adverse economic effect on rural communities.
9 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government
10 Code §2006.002.

11

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

16

17 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
18 first five years the proposed new sections are in effect, the proposed rules:

19 will not create or eliminate a government program;

20 will not require the creation of new employee positions or the elimination of existing employee
21 positions;

22 will not require an increase or decrease in future legislative appropriations to the department;

23 will not require an increase or decrease in fees paid to the department;

1 will create new regulations in §§223.1-223.3 to implement Transportation Code Chapters 501,
2 502, and 520; and more specifically, to inform the authority established in Transportation Code §520.022,
3 enacted in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019);
4 will not expand existing regulations;
5 will not repeal existing regulations;
6 will not increase or decrease the number of individuals subject to the rules' applicability; and
7 will not positively or adversely affect the Texas economy.

8

9 **REQUEST FOR PUBLIC COMMENT.**

10 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on November
11 18, 2019. A request for a public hearing must be sent separately from your written comments. Send
12 written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General
13 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
14 held, the department will consider written comments and public testimony presented at the hearing.

15

16 **STATUTORY AUTHORITY.** The department proposes new §§223.1-223.3 under Transportation Code
17 §§501.0041, 502.0021, 520.021, and 1002.001.

18 Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter
19 501.

20 Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter
21 502.

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

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

3

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

6

7 **TEXT.**

8

Subchapter A. Fraud, Waste, or Abuse

9

43 TAC §223.1-223.3

10 §223.1. Purpose and Scope.

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

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

16

17 §223.2. Definitions.

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

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

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

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

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

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

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

8

9 §223.3. Submission of Request.

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

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

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

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

20 (A) the original transaction;

21 (B) a detailed narrative, including:

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

