

TEXAS DEPARTMENT OF MOTOR VEHICLES
MOTOR VEHICLE INDUSTRY REGULATION ADVISORY COMMITTEE
(MVIRAC)
MEETING

OPEN MEETING VIA CONFERENCE CALL

PUBLIC PHYSICAL LOCATION
Texas Department of Motor Vehicles
4000 Jackson Avenue
Building 1
Lone Star Room
Austin, Texas 78731

Thursday,
September 13, 2023
1:07 p.m.

COMMITTEE MEMBERS:

David Blassingame, Chair
Michael Bradburn, Sr.
Christopher Donnelly
Laird Doran
Thomas Durant
Phil Elam (absent)
Lloyd "Buddy" Ferguson
Julio Gonzalez (absent)
Tony Hall
Russell Hayter
Charles Hicks
William Murphy
Stephen Prather, Sr.
Michael Provost
Franklin Sims (absent)
Trey Sralla
Scott Stark (absent)
Mike Sullivan
Kalien Thomas
Jimmy Vitela (absent)

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. CALL TO ORDER	6
A. Roll Call and Establishment of Quorum	
2. DISCUSSION, BRIEFING, AND ACTION ITEMS	
A. Consider Amendments to 43 Texas Administrative Code (TAC) Chapters 206, Management; 215, Motor Vehicle Distribution; 221, Salvage Vehicle Dealers; and New 43 TAC Chapter 224, Adjudicative Practice and Procedure (BRIEFING AND DISCUSSION ONLY)	9
B. Recommendations of Advisory Committee on Amendments to 43 TAC Chapters 206, Management; 215, Motor Vehicle Distribution; 221, Salvage Vehicle Dealers; and New 43 TAC Chapter 224, Adjudicative Practice and Procedure; for Presentation to the Board - Presiding Officer (DISCUSSION AND ACTION ITEM)	22
3. PUBLIC COMMENT	none
4. ADJOURNMENT	128

P R O C E E D I N G

1
2 MR. BLASSINGAME: Good afternoon. My name is
3 David Blassingame, and I am pleased to open this meeting
4 of the Texas Motor Vehicle Industry Regulation Advisory
5 Committee.

6 For ease and reference, I will refer to this
7 Committee as MVIRAC, which is the acronym for this
8 Committee. It is 1:11 p.m., and I am now calling the
9 MVIRAC meeting for September 13, 2023, to order.

10 I want to note for the record that the public
11 notice of this meeting containing all items on the Agenda
12 was filed with the Office of the Secretary of State on
13 September 5, 2023. This meeting is being held by
14 conference call in accordance with the Texas Government
15 Code Chapter 551.125.

16 Members of the public may physically attend
17 this meeting in person at 4000 Jackson Avenue, Building 1,
18 Lone Star Room, Austin, Texas 78731, or attend this
19 meeting by calling the telephone number, which is posted
20 in our Agenda, which we filed with the Office of the
21 Secretary of State on September 5, 2023.

22 We have two members --

23 VOICE: Two.

24 MR. BLASSINGAME: -- in person -- good -- with
25 a vast majority of Advisory Committee members

1 participating remotely.

2 At this time, will all attendees please mute
3 yourself for the entire duration of this meeting. I am
4 asking our meeting host to make sure all participants'
5 phones are muted except for Advisory Committee members and
6 those who are presenting.

7 Callers will be removed for any disruption
8 including background noise. I would like to remind all
9 participants that this a conference call meeting.

10 Because this meeting is being held by
11 conference call, there are a few things that will assist
12 in making the meeting run smoother and assist the court
13 reporter in getting an accurate record. Please identify
14 yourselves before speaking. Speak clearly.

15 Remember that there may be a slight delay due
16 to the conference call format, so please wait a little
17 longer than usual before responding to participants. Do
18 not speak over others. Please ask the Presiding Officer
19 to proceed, and be sure to get recognized before speaking.

20 And for members participating in the room,
21 please remember to unmute your mic before speaking. And
22 then mute again after speaking.

23 I would also like to thank our court reporter
24 who is transcribing this meeting. To make sure we have an
25 accurate recording of this meeting, it is very important

1 that the Advisory Committee members and anyone presenting
2 today identify themselves before speaking, and speak
3 clearly and slowly.

4 If you wish to address the Advisory Committee
5 or speak on an Agenda item during today's meeting, please
6 complete a speaker's sheet at the registration table.
7 Please identify in your e-mail the specific item you are
8 interested in commenting on, your name and address, and
9 whether or not you represent anyone or are speaking for
10 yourself.

11 If your comment does not pertain to a specific
12 Agenda item, we will take your comment during the general
13 public comment portion of the meeting. When addressing
14 the Advisory Committee, please state your name and
15 affiliation for the record.

16 Before we begin today, I'd like to remind all
17 presenters and those in attendance of the rules of conduct
18 at our Advisory Committee meetings in the Department's
19 rules under Title 43, Texas Administrative Code 206.22,
20 and the Presiding Officer's given authority to supervise
21 the conduct of the meeting. This includes the authority
22 to determine when a speaker is being disruptive of the
23 meeting or is otherwise violating the timing or
24 presentation rules I have just discussed.

25 Disruptive speakers will be muted, given a

1 warning about disruptive behavior, and then removed from
2 the meeting for any continued disruption.

3 Advisory Committee, if you become disconnected
4 from the call, please rejoin as soon as possible. If you
5 encounter difficulties, please reach out to the Technical
6 Support team at jeff.templeton@txdmv.gov or
7 zack.warden@txdmv.gov.

8 Agenda Number 1, roll call and establishment of
9 a quorum. I'd like to have a roll call of Advisory
10 Committee members. Please respond verbally when I call
11 your name. Please indicate you are present.

12 First, Chairman Bradburn, Sr., are you present?

13 MR. BRADBURN: I am present, sir.

14 MR. BLASSINGAME: Member Donnelly?

15 MR. DONNELLY: Member Donnelly is present, sir.

16 MR. BLASSINGAME: Member Doran?

17 MR. DORAN: Doran is present.

18 MR. BLASSINGAME: Member Durant?

19 MR. DURANT: Member Durant is present.

20 MR. BLASSINGAME: Member Elam? Member Elam?

21 Member Elam has e-mailed and he will not be with us today.

22 Member Ferguson?

23 MR. FERGUSON: Member Ferguson is present.

24 MR. BLASSINGAME: Member Gonzalez? Member

25 Gonzalez? I show him as not being present.

1 Member Hall? Member Hayter?

2 MR. HAYTER: Member Hayter present.

3 MR. BLASSINGAME: Thank you for the
4 pronunciation correction on that, Member Hayter.

5 Member Hicks? Member Murphy? Member Murphy?

6 (No response.)

7 MR. BLASSINGAME: I show Member Murphy is not
8 with us.

9 Member Prather, Sr.? I show Member Prather is
10 not with us.

11 MR. PRATHER: Here.

12 MR. BLASSINGAME: Are you here?

13 MR. PRATHER: Prather is here. Yeah, Prather's
14 here.

15 MR. BLASSINGAME: Got it. Thank you, sir.

16 Member Provost? Member Provost?

17 MR. PROVOST: (No audible response.)

18 MR. BLASSINGAME: Thank you, sir.

19 MR. PROVOST: Member Provost is here, sir.

20 MR. BLASSINGAME: Thank you, sir.

21 Member Sims? Member Sims?

22 (No response.)

23 MR. BLASSINGAME: I'm showing Member Sims is
24 absent.

25 MR. BLASSINGAME: Member Sralla?

1 MR. SRALLA: (No audible response.)

2 MR. BLASSINGAME: Second Vice Chair Sralla, I
3 show you as here.

4 Member Stark? Member Stark?

5 (No response.)

6 MR. BLASSINGAME: I show Member Stark is not
7 with us.

8 Member Sullivan?

9 MR. SULLIVAN: Sullivan is present.

10 MR. BLASSINGAME: Thank you, sir.

11 Member Thomas?

12 MS. THOMAS: Member Thomas is present.

13 MR. BLASSINGAME: Thank you.

14 Member Vitela? Member Vitela?

15 (No response.)

16 MR. BLASSINGAME: I show Member Vitela as not
17 being here.

18 I am David Blassingame. I am present, too. We
19 have a quorum because we have more than 11 members here.

20 The purpose of this Committee is to assist the
21 Department in obtaining feedback regarding important
22 legislation, policy making, and rulemaking. Advisory
23 committees such as MVIRAC provide valuable input for the
24 Department in their advising capacity concerning issues
25 related to regulations of the motor vehicle industry.

1 MR. RICHARDS: May I have the floor? It's
2 David Richards.

3 MR. BLASSINGAME: Yes, sir.

4 MR. RICHARDS: I wanted to let the record
5 reflect that Member Murphy is present. So I want to get
6 an accurate record. He is present and is on the line.
7 Thank you.

8 MR. BLASSINGAME: Thank you, sir. Member
9 Murphy is present. Very good.

10 Members, I now move on to Agenda 2A,
11 consideration of amendment to 43 Texas Administrative
12 Code, Chapters 206, Management, Chapters 215, Motor
13 Vehicle Distribution, 221, Salvage Vehicle Dealers, and
14 224, Adjudicative Practices and Procedure.

15 I will now turn the meeting over to Associate
16 General Counsel, David Richards, for an overview of
17 Chapter 206, Management.

18 MR. RICHARDS: Thank you, Mr. Chairman.

19 Members, David Richards, Associate General
20 Counsel for the record. I'm going to start off with
21 Chapter 206, a high-level overview of what changes we have
22 made to certain subchapters under 206; 206 pertains to
23 management within the Department. And my colleagues,
24 Katie Drummond and Corrie Thompson will follow after my
25 presentation.

1 Before we get started, I wanted to remind
2 everybody about this rule review process under Government
3 Code 2001039. Each State agency is charged with reviewing
4 its rules every four years to determine whether or not the
5 reasons that were behind the rules' promulgation in the
6 first place continue to exist.

7 We focus on any legislative changes or policy
8 making or Agency practices when we're making the changes
9 to the rules. So, it's just a basic short primer on rule
10 review. And that's what we're doing with these four
11 particular rule chapters.

12 In my particular case, Subchapter A pertains to
13 organization responsibilities. Basically, members, in
14 your materials, you'll see it's generally a clean-up. And
15 we've added some statutory references that are applicable
16 under Transportation Code 1001.

17 Subchapter B, Public Hearings and Meetings,
18 also a clean-up. Subchapter C, Procedures for Petition to
19 Adopt Rules, no changes were made to that particular
20 subchapter. With regard to Subchapter D, which is
21 Procedures in Contested Cases, we are moving that to the
22 new Chapter 224.

23 Am I on? Okay. Good. Am I going to have do
24 this again?

25 And so, that'll go to the new chapter,

1 Adjudicative Practice and Procedures, that Corrie Thompson
2 will talk about shortly. We're relettering the new
3 subchapter. D is Advisory Committees. Also, some
4 clean-up language added to that, as well as adding a new
5 advisory committee, the Household Goods Rules Advisory
6 Committee.

7 Subchapter E has to do with the Fleet
8 Management, internal here to the Department. We're just
9 relettering the subchapter F. Also, renaming the chapter
10 and relettering.

11 And finally, Subchapter G sprung out of a bill
12 in the legislature which amended Transportation Code
13 520.004, which requires the Department to establish a
14 risk-based system for monitoring and preventing fraudulent
15 activity related to the vehicle registration and titling
16 in order to efficiently allocate resources.

17 There is one rule -- hopefully you can hear me
18 now -- rule in that particular subchapter, 206.151, that
19 you'll see the changes that were made to effectuate a
20 rollout, if you will, or implement the statute. So the
21 current rule does not accomplish that.

22 That is my overview for Subchapter 206. We
23 will be taking that up in the next agenda item.

24 But next, we're going to move on to Chapter
25 215, Motor Vehicle Distribution, and Katie Drummond will

1 handle that.

2 MR. BLASSINGAME: I will now turn the meeting
3 over to Motor Vehicle Division Administration Manager,
4 Katie Drummond, for an overview of Chapter 215, Motor
5 Vehicle Distribution.

6 MS. DRUMMOND: Good afternoon, everyone. May I
7 continue?

8 MR. BLASSINGAME: Yes.

9 MS. DRUMMOND: Okay. Good afternoon, everyone.
10 My name is Katie Drummond, and I serve as the
11 Administration Manager for the Motor Vehicle Division.
12 Our Division Director, Monique Johnston, is out of town.
13 So I'm speaking on her behalf today.

14 First, we are very early in the process of
15 collecting input on these rules. So, in addition to input
16 from this group, we also expect input from the CSPAC,
17 Customer Service and Protection Advisory Committee, which
18 is our consumer advisory council, and additional input
19 from within the Department. All input will be considered as
20 we continue drafting amendments for the TxDMV Board's
21 consideration.

22 My role today is to introduce the top amendment
23 highlights for Chapters 215 and 221, and then I will turn
24 it over to TxDMV's Enforcement Division Director, Carrie
25 Thompson, to discuss new Chapter 224.

1 Chapter 215 of the TxDMV Board rules is the
2 Motor Vehicle Distribution chapter, which covers licensing
3 of motor vehicle industry participants and the operations
4 of motor vehicle industry license holders. This chapter
5 includes all licenses issued under Chapter 2301 of the
6 Texas Occupations Code or Chapter 503 of the Texas
7 Transportation Code.

8 Highlights to the amendments in Chapter 215
9 include, first, the concept of a standard license plate.
10 We're introducing the concept and definition of a
11 "standard license plate" to differentiate between the
12 basic dealer and manufacturer license plates that are
13 issued to license holders by the Motor Vehicle Division
14 and the personalized prestige license plates that are
15 ordered via the tax assessor-collectors.

16 This term is included in the definitions in
17 Section 215.2 and referenced in the following rules --
18 Section 215.102, Application Requirements, Section
19 215.120, License Plates, Section 215.139, Dealer Standard
20 License Plate Allocation, and Section 215.143, Drive-a-way
21 Operator and Transit License Plates.

22 Secondly, we have amended to include a new
23 application rule for Subchapter D, which is relettered to
24 Subchapter C. New application rules in Subchapter D of
25 Chapter 215 cover franchised dealers, manufacturers,

1 distributors, and converters. Currently, Chapter 215,
2 Subchapter D does not include an application requirements
3 rule. The new rule is in Section 215.102.

4 In addition, we have Section 215.103, Service
5 Only Facility, which is found on page 51 of your
6 materials. This rule's current language appears to
7 exclude a franchise dealer from being able to offer mobile
8 warranty repair services, a highly desired service that
9 benefits the public. A review of Occupations Code Chapter
10 2301 shows that no corresponding statutory prohibition on
11 performing off-site warranty repair services exists, as
12 opposed to the prohibition on off-site sales in Section
13 2301.362.

14 Thus, rule language modifications are proposed
15 to make this warranty repair services rule consistent with
16 the statute. These proposed changes would allow a
17 licensed franchised dealer to provide mobile warranty
18 repair service, either directly or on a subcontracted
19 basis.

20 Next, we have amendments to fingerprint
21 requirements. Fingerprinting requirements for GDN holders
22 have significantly decreased fraud in the application
23 process by enabling heightened identity verification and
24 providing a more comprehensive criminal background
25 history.

1 Proposed amendments at a fingerprint
2 requirement for drive-a-way operators who own transit
3 licenses, found in Section 215.134 Sub F, as well as
4 wholesale motor vehicle GDN holders, found in Section
5 215.133.

6 And finally, we have repeals. Senate Bill 604,
7 TxDMV Sunset Bill, eliminated the Department's authority
8 to approve shows and exhibitions effective September 1,
9 2019. Thus, Section 215.112 titled Motor Home Show
10 Limitations and Restrictions is proposed for repeal.

11 The Department has also proposed for repeal the
12 subchapters that cover contested cases, Subchapters E, G,
13 and part of Subchapter J. We are also proposing
14 relettering the subchapters.

15 In Chapter 221 of the TxDMV Board rules, rules
16 for salvage vehicle dealers are covered. Salvage vehicle
17 dealers are licensed in accordance with Texas Occupations
18 Code Chapter 2302. Highlights to the amendments in
19 Chapter 221 include fingerprinting requirements, adding
20 the same one-time requirement that we have currently for
21 GDN license holders.

22 Secondly, adding flexibility, meaning adding
23 operational flexibility similar to the Chapter 215 rules.

24 For example, adding additional telephone answering
25 options in Rule Section 221.143, and the option to have a

1 temporary sign found in Rule Section 221.44.

2 Next, our premises requirements -- amendments
3 to add a few basis premises requirements in Section
4 221.45, including that an office may be virtual or
5 provided by a subscription for office space or office
6 services, that an office must have a physical address in
7 Texas with an assigned emergency services property
8 address, and finally, that the office must be equipped
9 with internet access.

10 In addition, there are also amendments to the
11 record requirements. In Section 221.73, proposals would
12 add missing record types and reference existing
13 requirements in Chapter 217 relating to rebuilt salvage
14 motor vehicles for consistency. And finally, there is a
15 proposed repeal of Subchapter E, which will become part of
16 new Chapter 224.

17 And with that, I will now turn the presentation
18 over to TxDMV Enforcement Division Director, Corrie
19 Thompson.

20 MR. BLASSINGAME: And before we do that, are
21 there any comments to Manager Drummond's overview?

22 MR. RICHARDS: Chairman Blassingame?

23 MR. BLASSINGAME: Yes?

24 MR. RICHARDS: There are no public commenters
25 here. But clearly, the members can ask if they have a

1 question.

2 MR. BLASSINGAME: Well, we received a missive
3 from Member Elam, and he asked that that rule about the
4 enforcement against fraud on people that were at shows of
5 recreational vehicles be considered as enforcement by the
6 Commission, rather than ruled out.

7 We understand that it will cost the Commission
8 money to rule over those shows, but his point was that
9 they need a rule.

10 MR. RICHARDS: Correct, Chairman Blassingame.
11 David Richards again, for the record.

12 Yes, that can be discussed in 2B after Ms.
13 Thompson's presentation is completed --

14 MR. BLASSINGAME: Very good.

15 MR. RICHARDS: -- when the Committee takes up
16 these various chapters. And that issue can definitely be
17 discussed further and fleshed out. Thank you.

18 MR. BLASSINGAME: Thank you. Now, I'd like to
19 turn the meeting over to Corrie Thompson, who is the
20 Enforcement Division Director of the TMVC.

21 MS. THOMPSON: Thank you, Mr. Blassingame. And
22 thank you, Katie.

23 Good afternoon, everyone. I am Corrie
24 Thompson. I am the Director of the Enforcement Division.

25 And I am going to briefly highlight the new

1 proposed Chapter 224, where I get to say adjudicative --
2 or try to say adjudicative practice and procedure. I'm
3 not going to say it more than that, though. We're going
4 to stop right there.

5 So as part of this new chapter and part of the
6 rule review, one of our goals was to look at ways to make
7 the rules easier to find and easier to follow. So our
8 contested case rules are currently spread out over six
9 different subchapters crossing four different chapters in
10 the Texas Administrative Code. So we are covering those
11 chapters today in part -- 206, 215 -- but also those
12 contested case rules for motor carriers and oversize
13 overweight vehicles are found in Chapter 218 and Chapter
14 219.

15 So in most cases, the rules don't really have
16 clear signposts or guides that make it easy for the reader
17 to know where to go next when we're looking at the
18 contested case process or the type of case that those
19 particular rules apply to. So to that end, the contested
20 case rules that we are proposing now are going to be
21 reorganized all into one singular chapter with seven
22 subchapters. And so I'm going to go over the details of
23 those particular subchapters with you.

24 So Subchapter A, which I'm sure all of you read
25 in great detail, applies to all of the subchapters and

1 contains an expanded list of definitions which will be
2 helpful for all the contested cases. In Subchapter B,
3 we're covering contested cases -- specifically, those that
4 Enforcement initiates against applicants or license
5 holders in the motor vehicle and salvage industries, or
6 those that should have licenses to participate in that
7 type of activity.

8 Then in Subchapter C, that subchapter contains
9 special rules that apply to statutory protest cases and
10 complaints filed by a license holder like a franchise
11 dealer against another license holder.

12 Did we lose the meeting? Or just -- okay -- or
13 the video in the room here -- or typically, another
14 franchise dealer distributor or manufacturer.

15 Then in Subchapter D, that subchapter includes
16 rules that apply to both motor carriers and persons with
17 oversize overweight loads that have federal registration
18 requirements in addition to having state requirements upon
19 them. Then in Subchapter E, that subchapter will cover
20 cases that cannot be solved informally and that are then
21 referred to the State Office of Administrative Hearings,
22 which we refer to as SOAH, for a hearing and a proposal
23 for decision issued by the SOAH Administrative Law Judge.

24 Then in Subchapter F, that includes the
25 procedures for cases where the Board is actually hearing

1 the contested case after SOAH has issued a proposal for
2 decision. Then finally, in Subchapter G, that subchapter
3 contains extensive rules that are necessary for the
4 internal Texas Department of Motor Vehicles Office of
5 Administrative Hearings. That division internal to the
6 Department has hearings examiners who hear and decide on
7 Lemon Law and warranty performance claims within the
8 Department.

9 So we will appreciate your feedback on this new
10 approach, and we will soon be opening this up for comment
11 and discussion.

12 And for that, I will pass it back over to you,
13 Chairman Blassingame.

14 MR. BLASSINGAME: So, any comments on the
15 Chapter 224?

16 (No response.)

17 MR. BLASSINGAME: Hearing none, I will move on
18 to Agenda Item 2B.

19 MR. RICHARDS: Chairman Blassingame, sorry to
20 interrupt. Member Hicks had his hand up. Is that
21 something that you want to entertain now? Or call the
22 next Agenda item?

23 MR. BLASSINGAME: No, I want to entertain that
24 now if we can. I can't see that. So, that's fine.

25 Member Hicks, you have the floor.

1 MR. HICKS: Thank you, Chairman Blassingame.
2 Yeah, as a new member, I'm not sure of the protocol. So,
3 I want to make sure I'm not offering up comments or
4 questions outside of the typical rhythm of the meeting.

5 But I do have some questions about the first
6 section that was covered, as well as some comments on the
7 section that was just covered. So do we reserve those
8 comments as a group until all the presentations have been
9 completed? Or do we get into those now?

10 MR. BLASSINGAME: I believe so. But David
11 Richards could elucidate.

12 MR. RICHARDS: Right. Right now, Chairman
13 Blassingame, you can just go ahead and call the second or
14 the next Agenda item, 2B. And we'll pick it up during
15 that item.

16 MR. BLASSINGAME: Very good. Members, I will
17 now move on to Agenda Item 2B, recommendations of Advisory
18 Committees on amendments to 43 TAC Chapter 206,
19 Management, 215, Motor Vehicle Distribution, 221, Salvage
20 Vehicle Dealers, and the new Chapter 224, Adjudicative
21 Practices and Procedures for presentation to the Board.

22 If the Advisory Committee does not have any
23 full recommendations for the Department requiring a vote
24 -- but has provided a great discussion and information for
25 the Department to consider drafting in rules -- we will

1 now move on to Item 3.

2 Is there any comment on --

3 MR. RICHARDS: Chairman, sorry. We need to
4 have the discussion now. The paragraph that you just
5 read --

6 MR. BLASSINGAME: Yes?

7 MR. RICHARDS: -- considered if it was no
8 comments or no recommendations. So, at this time,
9 members, we need to entertain any comments, questions
10 regarding Chapter 206. And then, we'll go through the
11 chapters in order of the presentation.

12 MR. BLASSINGAME: Okay. So, any comment on
13 Chapter 206?

14 (No response.)

15 MR. BLASSINGAME: I see none. Any comment on
16 Chapter 215, Motor Vehicle Distribution?

17 FEMALE: Member Hicks has his hand up.

18 MR. BLASSINGAME: Member Hicks, you have the
19 floor.

20 MR. HICKS: Thank you. Directing everyone's
21 attention to page 30, 215, Section 215.2, number 2, it
22 says "days worked." They refer to a calendar day. This
23 may just a semantics issue, but I'm concerned that in the
24 event that the electronic submission process is down for
25 whatever reason, I'm concerned that that's not a business

1 day versus calendar day.

2 I would offer up a solution to be either
3 changing that to business days to make sure we're clear,
4 or extending it from a 10-day period to a 14-day period
5 for calendar days just to guide and help a dealer that
6 might need to be submitting information over a holiday
7 weekend and/or Sundays given that we're not open on
8 Sundays.

9 MR. RICHARDS: Member Hicks, are you making
10 that a form of a motion?

11 MR. HICKS: I would. Yes, sir. I motion to
12 change the wording to business days. I mean, it's
13 obviously one of two.

14 It depends on your staff and what they'd be
15 most comfortable with, either extending the number of
16 calendar days, or changing it to business days. I can
17 frame the motion either way you want.

18 MR. RICHARDS: Chairman Blassingame, rather
19 than entertain a motion at this time, if the other members
20 would like to discuss Member Hicks' proposal, this would
21 be the time to do it.

22 MR. BLASSINGAME: Does anyone on the Committee
23 have any discussion about Member Hicks' motion?

24 VOICE: And Chairman, if I may, members could
25 also offer other amendments they might have to this

1 particular chapter -- other suggestions, so we could
2 incorporate it into one motion that would be your motion
3 for recommendation to the Board.

4 MR. BLASSINGAME: Thank you. Does anyone have
5 any discussion on this?

6 MR. HALL: This is Member Hall. So, just to be
7 clear, what we're talking about is on page 30, the
8 definition of "day." And the commentary was changing it
9 from calendar day to business day. Is that correct?
10 Okay.

11 The feedback that I'll provide there is
12 calendar days are very matter of fact to calculate.
13 Business days are not. When you start getting into
14 Federal holidays, State holidays, skeleton crew days,
15 those sorts of things -- so, I don't think changing the
16 definition is the solution.

17 If there's a particular concern about a period
18 of time, then I think it would be better just to account
19 for that. And that --

20 MR. HICKS: Yeah, that's why I offered the
21 alternative to -- I'm sorry. That's why I offered the
22 alternative to extend it.

23 Can you reference the section where it talks
24 about the number of days -- the period inside the Chapter?
25 I thought I read it to say 10 calendar days.

1 I would ask that that be extended to 14 or 15.
2 I can change the motion.

3 MR. RICHARDS: Chairman Blassingame?

4 MR. BLASSINGAME: Yes, sir?

5 MR. RICHARDS: David Richards, for the record.
6 Members, please identify yourself each time you're going
7 to speak so we get an accurate record, please. Thank you.

8 MR. BLASSINGAME: Do we have any further
9 discussion on the motion?

10 MR. HICKS: This is Member Hicks. I would
11 recommend that we change the calendar day -- leave the
12 calendar days, but change the period to 14 days.

13 MR. HALL: This is Member Hall. Can we clarify
14 where we're talking about changing the dates because I --
15 we were talking about page 30, and there's no date
16 references on page 30.

17 MR. RICHARDS: Members, if you could cite to
18 the specific rule and section, that would help.

19 MR. BLASSINGAME: Member Hicks, can you cite a
20 particular rule or date?

21 MR. HICKS: Yes, sir. I believe it's on
22 page -- this is Member Hicks. I believe it's on page 36
23 that alludes to the number of days -- Subsection (k), page
24 36, Sufficient License Renewal Application in accordance
25 with Subsection (d) in the bottom part of that line 20:

1 within 10 days the Department issues notice.

2 My motion would be to extend that to 14
3 calendar days.

4 MR. BLASSINGAME: Any further discussion?

5 MR. DORAN: Could you just repeat that one more
6 time? I think I may have missed some of what you're
7 saying?

8 MR. HICKS: Yeah, this is Member Hicks. I was
9 recommending that we stay with calendar days as a
10 definition because I do agree that the definition of
11 business days can be somewhat complicated.

12 Referencing page 36, line 20, currently, the
13 rule is proposed as a 10-day amount of time. I'm asking
14 for an extension of that to 14 days. That would
15 incorporate any kind of weekends or holidays and give
16 dealers ample time to submit their information.

17 MS. MORIATY: Chairman, if I may, this is Laura
18 Moriatty with the DMV. I believe we're talking about
19 Section 215(E) (3) (k), if that clarifies for the rest of
20 the members.

21 MR. HALL: Member Hall here. Just to clarify,
22 we've got two dates on our pages. There's the blue -- or
23 sorry -- two page numbers.

24 There's the blue page number, and then the
25 black page number. So we probably need to figure out from

1 a consistency standpoint which one we're referring to.

2 MS. MORIATY: So this is page 36 in blue, or
3 page 8 of 161 in black.

4 MR. HICKS: Subsection (k).

5 MS. BLASSINGAME: Does anyone else have any
6 comment on that?

7 MR. DORAN: This is Member Doran. I apologize.
8 I am having a hard time locating what we're referring to
9 here.

10 My apologies, but when we're talking about the
11 extension of time, what are we talking about? The time to
12 file a license? Or the time -- if somebody could just
13 kind of give us the -- because again, I apologize. I
14 can't find what we're talking about in the packet.

15 MR. BLASSINGAME: Mr. Richards?

16 MR. RICHARDS: Member Doran, I'm looking at my
17 packet. And on page 7 of 173 -- is that what everybody
18 has?

19 MS. MORIATY: I just -- if I may, Chairman --
20 this is Laura Moriatty again. I just shared my screen, and
21 I believe I have up the language that we're talking about.
22 Is that correct? I believe it was Member Hicks that made
23 the suggestion.

24 MR. HICKS: This is Member Hicks. Yes, that is
25 the section that you've got highlighted on the screen

1 there.

2 MS. MORIATY: Well, that is Section 215.83,
3 Subsection (k).

4 MR. RICHARDS: Member Doran, 215.83, Subsection
5 (k), line 22 is what I have.

6 MR. DORAN: Thank you.

7 MR. RICHARDS: You're welcome.

8 MR. HALL: This is Member Hall. Can the
9 Department just clarify that the 10 days is actually not
10 changing? It has always been 10?

11 Or if the current rule is 10 calendar days,
12 it's going to remain 10 calendars. And actually changing
13 it to 14 would be an increase. I think it's also worth
14 noting here that this is 10 days from the time the
15 Department notifies the dealer that they haven't received
16 their license.

17 So the dealer's already had plenty of time to
18 renew their license since the Department notifying the
19 dealer -- and then, giving them an extra 10 days to do
20 what they need to do. So I don't know that changing
21 anything from the current rule process is necessary if
22 it's not broke and it's already that way.

23 This particular section is not new. All
24 they're doing is striking the word "calendar" from the
25 existing rule.

1 MS. DRUMMOND: This is Katie Drummond, for the
2 record. Yes, that's correct. All it's doing is striking
3 the word "calendar" from the rule, which is how it
4 currently is.

5 MR. BLASSINGAME: Any further comment?

6 (No response.)

7 MR. RICHARDS: Is there any further discussion,
8 Chairman Blassingame, on this one?

9 MR. BLASSINGAME: No, sir.

10 MR. RICHARDS: Do you want to take a vote?
11 Let's go ahead and take a vote on this one, then.

12 Member Hicks, if you would make your motion.

13 MR. HICKS: This is Member Hicks. I would make
14 a motion that the Committee consider changing the number
15 of days from 10 to 14 for purposes of dealers' renewal
16 past the notice date that they received from the
17 Department of Motor Vehicles.

18 MR. RICHARDS: Okay. So, 14 -- did you also
19 want to delete "calendar"?

20 MR. HICKS: No, we decided earlier in the
21 discussion -- this is Member Hicks. We decided earlier in
22 the discussion that the measurement of business days is
23 difficult. So, it's not the removal of calendar days.
24 It's leaving calendar days in, and incorporating the extra
25 days to account for holidays and weekends.

1 MR. RICHARDS: Thank you.

2 MS. MORIATY: Chairman, if I may, just to
3 clarify -- day is now defined as calendar day. So, this
4 amendment is actually not changing the meaning of the
5 definition of day means calendar days. That was just to
6 clean up to keep the redundant language out.

7 MR. BLASSINGAME: I understand.

8 MR. HICKS: Member Hicks. Do I need to clarify
9 the motion? Or is it clear?

10 MR. RICHARDS: I think we're good.

11 Mr. Chairman, we need a second to the motion,
12 if anybody would like to second?

13 MR. BLASSINGAME: Yeah, do we have a second to
14 the motion?

15 MR. DONNELLY: Member Donnelly seconds the
16 motion.

17 MR. BLASSINGAME: Member Donnelly seconded the
18 motion. All in favor, please vote starting with Chair
19 Bradburn.

20 MR. BRADBURN: Opposes.

21 MR. BLASSINGAME: Member Donnelly?

22 MR. DONNELLY: Member Donnelly votes yes.

23 MR. BLASSINGAME: Member Doran?

24 MR. DORAN: Member Doran votes yes.

25 MR. BLASSINGAME: Member Durant?

1 MR. DURANT: Member Durant votes yes.

2 MR. BLASSINGAME: Member Elam is not present.

3 Member Ferguson?

4 MR. FERGUSON: Member Ferguson votes yes.

5 MR. BLASSINGAME: Member Gonzalez is not

6 present.

7 Member Hall?

8 MR. HALL: Member Hall, no.

9 MR. BLASSINGAME: Member Hayter?

10 MR. HAYTER: (No audible response.)

11 MR. BLASSINGAME: Thank you, sir. Member

12 Hicks?

13 MR. HICKS: Member Hicks, yes.

14 MR. BLASSINGAME: Member Murphy?

15 (No response.)

16 MR. BLASSINGAME: Member Murphy is having

17 trouble. Member Murphy?

18 Member Prather, Sr.?

19 MR. PRATHER: Yes.

20 MR. BLASSINGAME: Member Provost?

21 MR. PROVOST: (No audible response.)

22 MR. BLASSINGAME: Member Sims? Member Sims is

23 not here. Member Sralla?

24 MR. SRALLA: Member Sralla, yes.

25 MR. BLASSINGAME: Member Stark? Not here.

1 Member Sullivan?

2 MR. SULLIVAN: Yes. Sullivan, yes, thank you.

3 MR. BLASSINGAME: Member Thomas?

4 MS. THOMAS: (No audible response.)

5 MR. BLASSINGAME: Member Vitela is not here.

6 The motion is carried.

7 MR. RICHARDS: Mr. Chairman?

8 MR. BLASSINGAME: Yes, sir?

9 MR. RICHARDS: David Richards, for the record.

10

11 Members, are there other sections that you'd

12 like to discuss at this time in Chapter 215?

13 MR. HALL: This is Member Hall. Can I have the
14 floor?

15 MR. RICHARDS: Member Hall, you have the floor.

16 MR. HALL: Thank you. Looking at Section
17 215.87, which starts on the bottom of blue page 40 -- my
18 reading of it -- and I'm going to ask the Department just
19 to clarify if I'm possibly misreading it. But looking at
20 A and B, A and B seem to be sort of conflict with each
21 other.

22 Section A stipulates two years, yet B
23 stipulates based on license expiration, which could be
24 shorter than two years if the plates are issued at some
25 point after the license is issued. So I don't know if the

1 Department feels it's necessary to make some clarification
2 such as specifying the lesser of or something along those
3 lines.

4 Again, I could be misreading, as well.

5 MS. DRUMMOND: Member Hall, this is Katie
6 Drummond. So just to clarify, you see the potential
7 conflict between Sub A and Sub B?

8 MR. HALL: Member Hall. That is correct.

9 MS. DRUMMOND: Okay.

10 MR. HALL: Yes. So, A says the terms of all
11 those things are two years, and then B specifically calls
12 out the standard license plate. And it stipulates that it
13 expires on the date that the license expires, which could
14 be less than two years. But the license plate is included
15 in Sub A saying it's two years.

16 So is it two years? Or is it when the license
17 expires? Because if the plates are issued, let's say, six
18 months after the two-year license is issued, then the
19 plates are not good for two years. The plates are good
20 for 18 months.

21 MS. DRUMMOND: I see what you're saying. So,
22 yes, the term of the plate should be tied to the term of
23 the license. I definitely think that's something that we
24 can take back for Department discussion or however we need
25 to move from here just to kind of tighten that language

1 up.

2 MR. RICHARDS: Is there any discussion on
3 Member Hall's comment?

4 (No response.)

5 MR. BLASSINGAME: If no other discussion,
6 Member Hall, do you want to place a motion on that? Or do
7 you want to let them talk about it first?

8 MR. HALL: No, I don't feel a need to make a
9 motion on it. But I do have a -- sorry -- Member Hall.
10 No, I do not feel I need to make a motion on that.

11 But I do have a further comment on that same
12 section further down, if I can proceed to that.

13 MR. BLASSINGAME: Go ahead.

14 MR. HALL: On Sub D, there's a proposal to
15 require that the dealer has to provide a copy of the
16 Department-issued license. I don't know that the dealer
17 having to provide a copy of their Department-issued
18 license is necessary when the Department publishes the
19 list of active licenses online.

20 And that's going to be more accurate than a
21 copy of something physical -- that if the license has been
22 surrendered or revoked, the Department's website's going
23 to reflect that as not being an active license where
24 that's not apparent on the paper. So I just don't see the
25 need to require a dealer to provide a copy of something

1 that is already verifiable online. It would be more
2 accurate anyway.

3 So the motion that I would make on that one is
4 to strike the words "providing a copy of the
5 Department-issued license," unless there is some concern
6 or objection that I'm not aware of that the Department may
7 have about that.

8 MR. BLASSINGAME: So, your motion would be to
9 strike the "providing a copy of the Department-issued
10 license" from Subsection (d)?

11 MR. HALL: Member Hall. That's correct.

12 MR. BLASSINGAME: Do we have a motion on the
13 floor? Do we want to have a vote on that? Or do you guys
14 want to go back to the drawing board first?

15 MR. DONNELLY: Member Donnelly. I second the
16 motion.

17 MR. BLASSINGAME: All right. We have a motion
18 and a second.

19 Vice Chair Bradburn, Sr., how do you vote?

20 MR. BRADBURN: I had my hand up to try to make
21 a comment on that.

22 MR. BLASSINGAME: I'm sorry. Go ahead.

23 MR. BRADBURN: The only concern I have on this
24 will be if a dealer's committing a criminal offense by
25 going in there to apply for something and showing that

1 paper, the Form 130U that they fill out is a third-degree
2 felony.

3 And if they're submitting a fraudulent license
4 that's been revoked, that would actually help with a
5 criminal case if there was one. So I think we might want
6 to leave that alone.

7 MR. BLASSINGAME: Vice Chair Bradburn, that's
8 duly noted. Any other comment?

9 MR. SRALLA: Member Sralla.

10 MR. BLASSINGAME: Member Sralla?

11 MR. SRALLA: This policy needs the website
12 updated to reflect licenses and how correct are they.

13 MS. DRUMMOND: Katie Drummond here. I believe
14 that the dealer list that's available on the TxDMV.gov
15 website is updated every night by IT.

16 MR. BLASSINGAME: Does that answer your
17 question, Second Vice Chair Sralla?

18 MR. SRALLA: Yes, it does.

19 MR. BLASSINGAME: We have a motion. Any other
20 comment on the motion?

21 (No response.)

22 MR. BLASSINGAME: First Vice Chair Bradburn,
23 how do you vote?

24 MR. BRADBURN: Member Bradburn, no.

25 MR. BLASSINGAME: Member Donnelly?

1 MR. DONNELLY: Member Donnelly, no.

2 MR. BLASSINGAME: Member Doran? Member Doran?

3 MR. DORAN: Abstain.

4 MR. BLASSINGAME: Member Durant?

5 MR. DURANT: Member Durant, no.

6 MR. BLASSINGAME: Member Ferguson?

7 MR. FERGUSON: Member Ferguson, no.

8 MR. BLASSINGAME: Member Gonzalez? I'm sorry.

9

10 Member Hall?

11 MR. HALL: Member Hall, yes.

12 MR. BLASSINGAME: Member Hayter?

13 MR. HAYTER: Member Hayter, no.

14 MR. BLASSINGAME: Thank you, sir.

15 Member Hicks?

16 MR. HICKS: Member Hicks, yes.

17 MR. BLASSINGAME: Member Murphy? No. Member

18 Murphy, try again.

19 Member Prather?

20 MR. PRATHER: No.

21 MR. BLASSINGAME: Member Provost?

22 MR. PROVOST: No.

23 MR. BLASSINGAME: Thank you, sir. Member

24 Sralla?

25 MR. SRALLA: Member Sralla, no.

1 MR. BLASSINGAME: Member Stark?

2 (No response.)

3 MR. BLASSINGAME: Member Sullivan?

4 MR. SULLIVAN: Sullivan, abstain. Thank you.

5 MR. BLASSINGAME: Member Thomas?

6 MS. THOMAS: Member Thomas, no.

7 MR. BLASSINGAME: I'm counting. As a voting
8 member, I am present and I vote no, and that stops that.

9 MR. RICHARDS: Mr. Chairman, David Richards,
10 for the record. Did we get a vote for Member Vitela? I
11 didn't hear it.

12 MR. BLASSINGAME: He is not with us on the
13 phone.

14 MR. RICHARDS: Oh, he's not with us? I'm
15 sorry.

16 MR. BLASSINGAME: Yes, sir. Any other comment?

17 (No response.)

18 MR. RICHARDS: Mr. Chairman?

19 MR. BLASSINGAME: Yes, sir?

20 MR. RICHARDS: David Richards, for the record.

21

22 Members, are there other sections or
23 subsections within 215 that you would like to discuss and
24 maybe vote on? I know that we -- earlier, the Chairman
25 mentioned Member Elam's submission to the members on the

1 motor home shows, if you want to discuss that or any
2 other.

3 MR. HICKS: This is Member Hicks. I'd like to
4 have some discussion on Section 215.102, Subsection (I).
5 It's on blue page 49 or proposal page 21 of 161.

6 MR. BLASSINGAME: All right. Go ahead, sir.
7 You have the floor.

8 MR. HICKS: This is Member Hicks. In reference
9 to dealer licensing, it looks like there's an ultimate path
10 for a manufacturer and distributor to acquire or conduct
11 business as a dealer in Texas.

12 And it offers here -- the language of concern
13 is if the manufacturer or distributor offers for sale or
14 sales of motor vehicles in Texas solely over the internet,
15 a list of each out-of-state franchise dealer authorized by
16 the manufacturer and distributor could sell a product
17 online to Texas citizens, including a dealer's name,
18 address, and dealer license in which the dealer is
19 located.

20 It appears, if I'm reading that correctly --
21 it's further down on Section E, page 49.

22 MS. DRUMMOND: Member Hicks, this is Katie
23 Drummond. Would you mind repeating the citation of the
24 specific rule that you're looking at? It's 215.102 --

25 MR. HICKS: 215.102, I guess it's paragraph E

1 and paragraph 2 in Subsection (e), letter (I). Is that
2 proper reference?

3 MS. DRUMMOND: We're all slipping. If you can
4 bear with us.

5 MS. MORIATY: Member Hicks, do I have the right
6 Texas plate on the screen?

7 MR. HICKS: That is correct.

8 MS. MORIATY: Okay. Thank you.

9 MR. HICKS: Yes, this is Member Hicks. That is
10 correct.

11 So, again, this is licensing. Section E refers
12 to the buying a manufacturer or distributor license. And
13 the concern of the language is that is it offers the
14 ultimate path, if a manufacturer or distributor is
15 attempting to be licensed in Texas, they don't have to be
16 held to the licensing standards of Texas dealers.

17 They can allow -- or they're being allowed to
18 conduct business in Texas if they sell only online via the
19 internet -- that they can simply provide the name of their
20 franchise or authorized licenses from other states that
21 will be accepted by Texas. Am I reading that correctly?

22 MS. VANNOY: Sir, this is Terry Vannoy with the
23 Office of General Counsel. May I speak?

24 MR. BLASSINGAME: Please.

25 MS. VANNOY: Thank you. The reason for this

1 rule is because companies -- direct sale manufacturers
2 like Tesla, for example, Lucid, other manufacturers like
3 that are selling over the internet today using
4 out-of-state dealerships. And that's allowed under Texas
5 law in the Texas Uniform Commercial Code.

6 So this provision was added as a way to allow
7 us to understand what out-of-state dealerships they're
8 using to sell these vehicles so, in fact, we could look
9 out for the citizens who buy those vehicles from them in
10 that regard. So it's really a reaction to the current
11 selling model that's allowed in Texas law.

12 MR. HICKS: This is Member Hicks. Are direct
13 sales allowed in Texas?

14 MS. VANNOY: Direct sales manufacturers like
15 Tesla and Lucid cannot sell directly in Texas through a
16 dealership unless they have a franchise dealership. But
17 they are allowed to sell over the internet from an out-of-
18 state dealership. And in some states like California, for
19 example, they can own a dealership. They're allowed to do
20 that under state law.

21 MR. HICKS: This is Member Hicks. Is there any
22 litigation with Lucid specifically regarding that topic?

23 MS. VANNOY: Yes, sir. There is a case.
24 They're winning a license to be able to sell directly from
25 a location in Texas, which today they cannot do.

1 MR.HICKS: Member Hicks. So would it be
2 prudent for us to be discussing modifying the language of
3 this at this time? Or should we let that litigation play
4 out before we address that topic?

5 MS. VANNOY: If I might offer one other
6 comment, sir? Again, this is Terry Vannoy with the Office
7 of General Counsel.

8 MR. HICKS: Yes.

9 MS. VANNOY: This language was added in
10 reaction to sales that are allowed today under Texas law.
11 So there's no change of law necessary. This is really to
12 protect Texas citizens by allowing us to check to make
13 sure that these out-of-state dealers are properly licensed
14 in the state in which they're located.

15 It gives us that information. It improves our
16 ability to check that information and make sure that the
17 sales that are taking place today are, in fact, valid and
18 should be authorized under Texas law.

19 MR. HICKS: This is Member Hicks. So I know
20 the standard by which you hold Texas licensed franchise
21 dealers. We hold them up to a GDN. I'm just curious to
22 know how -- I've had personal experience with a direct
23 sales situation with the manufacturer you referenced.

24 They don't follow Blue Law. They're open on
25 Sundays. They have direct sales agents.

1 So I'm just not sure if this topic, which I
2 know is a fairly large, broad-reaching topic -- that the
3 language here is -- it appears to be offering an alternate
4 path for them. I'm not sure that it cleans up statutory
5 regulations already in place.

6 Because they are selling directly, but they're
7 not selling through franchise dealers in Texas, nor are
8 they licensed to sell in Texas. So they're transacting
9 those transactions online out of state. So that's where
10 my concern lies.

11 MS. VANNOY: Terry Vannoy, for the record.
12 Yes, sir, you're correct. But I will tell you they have a
13 manufacturer's license in Texas.

14 So they are licensed in Texas. And therefore,
15 we have regulatory authority over them in that regard.
16 Thank you.

17 MR. HICKS: Mr. Chairman, this is Member Hicks.
18 Mr. Chairman, I'm not sure that I want to enter this as a
19 motion. Maybe I need to, but I think the discussion
20 should be -- unless the Committee -- do we want to allow
21 manufacturers to operate by simply presenting a license
22 from another state and not be held to the same standards
23 that Texas dealers are held to?

24 MR. BLASSINGAME: I understand completely.

25 MR. SRALLA: Member Sralla.

1 MR. BLASSINGAME: Member Sralla, you have the
2 floor.

3 MR. SRALLA: And so, in response to what
4 Counsel just said there, you say because they have a
5 manufacturer's license in Texas, they're held to the same
6 standard. But this is applying -- this is talking about
7 dealers, not manufacturers. Am I correct on that?

8 MS. BLASSINGAME: No, I believe it's
9 manufacturers.

10 MR. SRALLA: But they're selling from a
11 dealership, though. Is that correct?

12 MR. BLASSINGAME: Out of state.

13 MR. SRALLA: Yeah, I understand. But the
14 manufacturer's not selling according to -- what I heard in
15 discussion earlier was that out-of-state dealers are
16 selling into Texas, not out-of-state manufacturers selling
17 to Texas. Is that correct?

18 MR. BLASSINGAME: I believe, and I stand to be
19 corrected. But I believe that if a manufacturer wants to
20 sell in Texas, he has to go through a franchise dealer out
21 of state to sell to a consumer in Texas.

22 MR. SRALLA: So, therefore, that's what we were
23 talking about all day. You said holding the manufacturer
24 accountable. This is addressing dealers, not
25 manufacturers in that sense.

1 MR. HICKS: This is Member Hicks.

2 MR. BLASSINGAME: Go ahead, Member Hicks.

3 MR. HICKS: What they're allowed to do is
4 they're using a licensed location outside of Texas to be
5 able to transact and sell vehicles in Texas because
6 they're conducting the business online while in the state,
7 which takes them outside the standards and the
8 requirements that Texas franchise dealers are held to,
9 including all consumer protections that are applied to
10 dealers as we conduct business in the state.

11 MR. BRADBURN: May I comment, please?

12 MR. BLASSINGAME: Member Bradburn, you have the
13 floor.

14 MR. BRADBURN: Thank you. I just wanted to
15 support Mr. Hicks.

16 One of the things that Tesla does that
17 specifically targets Texas consumers is they're not a
18 direct dealer, so they cannot issue a buyer tag. So when
19 you go to the Tesla store in Austin or wherever you go and
20 however they do your transaction, they give you two 60-day
21 permits. Permits and tags have to be mounted on different
22 plates on vehicles.

23 So what happens is consumers buy the car. They
24 honestly don't know they're doing anything -- they're not
25 doing anything wrong. But they are getting pulled over by

1 law enforcement because it looks like they have the
2 improper tag or the tag's not mounted properly.

3 So that is something that does need to be
4 addressed at some point.

5 MR. RICHARDS: Mr. Chairman?

6 MR. BLASSINGAME: Yes, sir.

7 MR. RICHARDS: David Richards, for the record.

8 Member Sullivan has his hand up and would like to
9 comment.

10 MR. BLASSINGAME: Member Sullivan, go ahead.

11 MR. SULLIVAN: Thank you. Thank you, Mr.
12 Richards. Thank you, Chair. I appreciate it.

13 I'd like to ask General Counsel to clarify the
14 statement that General Counsel's Office made that said
15 these manufacturers are licensed in Texas. That's a broad
16 statement and implies that all manufacturers are licensed
17 in Texas. This item would apply to everyone outside of
18 Texas. It just sounds inconsistent.

19 And I also share the concerns of Member Hicks
20 and others with respect to holding everyone accountable by
21 the same franchise laws that Texas franchise dealers
22 currently operate under. And I'd like for General Counsel
23 to respond. Thank you.

24 MR. BLASSINGAME: General Counsel?

25 MS. MORIATY: They're asking me to give it a

1 shot. Terry's the specialist here, so I may have to turn
2 it over to her.

3 But manufacturers are licensed in Texas
4 separately from dealers. These are two separate licenses,
5 two separate issues. So this provision is just about the
6 manufacturer license.

7 It's not dealing with the question of the
8 separate franchise dealers that a manufacturer needs to
9 work with to actually sell in Texas, which is why I'm
10 wondering maybe if we added after the phrase, "solely be
11 over the internet" -- if we added, "with a dealership
12 outside of Texas," would that clarify this and address the
13 members' concern?

14 MR. SULLIVAN: Member Sullivan. If I may
15 respond --

16 MR. BLASSINGAME: Member Sullivan, yes.

17 MR. SULLIVAN: Yeah, thank you -- since I had
18 asked the question. Really, what I was asking for was the
19 clarification, because it was made as a statement that
20 manufacturers -- or have made to me it that
21 over-the-internet sellers currently are manufacturers
22 licensed in Texas. That sounded to me as though it would
23 include Lucid, Tesla, and others.

24 So did I misunderstand the statement?

25 MS. MORIATY: No, I believe Tesla is a licensed

1 manufacturer in Texas.

2 MR. SULLIVAN: Okay.

3 MS. MORIATY: It's not a --

4 MR. SULLIVAN: It sounded --

5 MS. MORIATY: -- dealer.

6 MR. SULLIVAN: It sounded to me as though it
7 was that General Counsel's Office said that the
8 manufacturers were licensed, implying all manufacturers,
9 not Tesla only. Could we clarify that?

10 MS. MORIATY: I don't understand the question,
11 sir. I'm sorry. When manufacturers apply for licenses in
12 Texas, they are not prohibited by virtue of their sales
13 structure from getting a manufacturer's license.

14 So we have electric vehicle manufacturers who
15 are licensed as manufacturers. Now, they are not allowed
16 to sell in Texas because they don't have dealerships. But
17 the dealership license is separate from the manufacturer
18 license.

19 MR. SULLIVAN: I understand and I'm glad that
20 you said that you have others than Tesla. So that's what
21 I was getting at. Thank you.

22 MR. BLASSINGAME: Member --

23 MR. HICKS: The question she asked was adding
24 additional language. The concern I have is that is a
25 manufacturer to be licensed to sell vehicles in the State

1 of Texas?

2 I can understand them having a manufacturing
3 license. And if they're going to conduct a transaction
4 with a Texas consumer, it would only be fair that those
5 transactions are held to the same standard of the existing
6 dealers in Texas, which are completely integrated with
7 consumer protection laws to make sure our consumers are
8 protected.

9 MS. MORIATY: Right. So, if I may, sir -- we
10 aren't licensing the manufacturers to sell in Texas. This
11 is the dividing line.

12 As Terry points out, there are parts of federal
13 law that are a loophole that allow these sales that we
14 cannot regulate around. That loophole exists and it has
15 nothing to do with us licensing them as manufacturers.
16 That's about sales.

17 So, again, when we license a manufacturer, we
18 do not license them to sell through -- they would need a
19 dealership in order to sell. We simply allow them to be a
20 licensed manufacturer.

21 MR. HICKS: This is Member Hicks. Well, I
22 mean, they're existing today in Texas -- some of the
23 brands you referenced -- by using galleries. They're not
24 dealerships, but they sure look a lot like dealerships and
25 they act like dealerships.

1 They perform warranty repairs and other things.

2 But they're doing that without being held to the same
3 franchise dealer standards that Texas dealers are held to.

4 I mean, back to the language of this specific section
5 that we're discussing -- this just looks like an
6 opportunity for them to simply say, we're licensed outside
7 of Texas. That should be good enough for Texas to accept
8 us and treat us the same.

9 And I have a problem with that because I think
10 they -- that's a federal loophole, as you referenced. I
11 think our job is to make sure Texas doesn't fall victim to
12 federal loopholes. We have to tighten our laws up to make
13 sure they protect us, not only the business operator, but
14 the citizens of the state.

15 MS. MORIATY: If I may, sir. The intent behind
16 this provision is to get more information from the
17 applicant so that we can investigate them and discover if
18 they are doing wrong in their sales -- whether those sales
19 are through franchised dealers in Texas or through out-of-
20 state dealers that they're selling these cars on the
21 internet.

22 We're not seeking to bless any of those
23 transactions. In fact, the goal here is to get
24 information so that we can look into them and find out if
25 something has gone wrong or fraudulently in those

1 transactions so that we could deny the license on that
2 basis.

3 MR. HICKS: This is Member Hicks. Can I
4 reference something? I know there's a Transportation Code
5 section that deals specifically with that -- 503.024,
6 Subsection (c). And I don't know if that's beyond the
7 scope of this Committee and what we can talk about.

8 But you've already got some statutes on the
9 books that address that and should be able to provide you
10 that information. I'm not sure how this language is going
11 to afford you additional visibility in the transactions
12 you might be concerned about.

13 MS. MORIATY: This would require the
14 manufacturer to identify where they are selling and how
15 they're selling so that we could then investigate.

16 MR. HICKS: This is Member Hicks. If you track
17 the registration of those vehicles, they'll tell you where
18 they're selling from. That's public information.

19 Chairman Blassingame, would you want me to
20 place a motion to vote on --

21 MR. BLASSINGAME: Yes.

22 MR. HICKS: -- just for --

23 MR. BLASSINGAME: Member Hicks, please make a
24 motion.

25 MR. HICKS: Yeah. I would say my motion --

1 this is Member Hicks.

2 I would say that we eliminate the language of
3 Subsection (e) given the alternate path. Have it include
4 a list of each franchise dealer in Texas, including
5 dealer's name and physical address. I would ask that the
6 language beyond that be removed from the proposal.

7 MR. BLASSINGAME: Could you be more specific
8 with what you want removed?

9 MR. HICKS: Yes, sir. Chairman, this is Member
10 Hicks.

11 I would ask that Subsection (e), Subsection (I)
12 to (e), would read a list of each franchise dealer in
13 Texas, including the dealer's name and physical address,
14 period, eliminating the language of "or if it offers for
15 sale or sales of motor vehicle in Texas will solely be
16 over the internet, a list of each of out-of-state
17 franchise dealer authorized by the manufacturer or
18 distributor to sell product online to a Texas citizen,
19 including the dealer's name, physical address, and dealer
20 license number issued by the state in which the dealer is
21 located."

22 That language is what I'd ask to be eliminated.

23 MR. BLASSINGAME: Do we have a second to the
24 motion?

25 VOICE: Can I ask a question? Sorry.

1 MR. BLASSINGAME: Go ahead.

2 VOICE: Can I ask a quick question on this,
3 probably towards Counsel? By removing this language as
4 proposed, does that make it illegal for them to sell cars
5 in the state of Texas from outside the state of Texas?

6 MS. MORIATY: No, sir. It will not change that
7 at all.

8 VOICE: That's all I had.

9 MR. BLASSINGAME: Do we have any other comment?

10 MS. MORIATY: If I may clarify the motion --
11 are we cutting the language from the comma after "address"
12 down the word "including"? Or are we cutting the whole
13 last clause of Subsection (I) after the comma following
14 "address"?

15 MR. BLASSINGAME: Member Hicks?

16 MR. HICKS: I would assume it would be
17 eliminating all language after the comma after the word
18 "address," unless Counsel believes there's more
19 information in there not related to the online sales
20 reference.

21 MS. MORIATY: No, that should be fine. Okay.
22 I get it -- after the comma.

23 I understand now. Thank you.

24 MR. HICKS: Thank you.

25 MR. BLASSINGAME: Do we have a second to Member

1 Hicks' motion?

2 MR. RICHARDS: Mr. Chairman, I think Member
3 Doran seconded the motion.

4 MR. BLASSINGAME: Okay.

5 MR. RICHARDS: Correct me if I'm wrong.

6 MR. DORAN: Yes, that's accurate. This is
7 Member Doran. I second.

8 MR. BLASSINGAME: First Vice Chair Member
9 Bradburn, how do you vote?

10 MR. BRADBURN: (No audible response.)

11 MR. BLASSINGAME: Member Donnelly?

12 MR. DONNELLY: Member Donnelly, no.

13 MR. BLASSINGAME: Member Doran?

14 MR. DORAN: Yes.

15 MR. BLASSINGAME: Member Durant?

16 MR. DURANT: Yes.

17 MR. BLASSINGAME: Member Ferguson?

18 MR. FERGUSON: (No audible response.)

19 MR. BLASSINGAME: Member Hall?

20 MR. HALL: Member Hall, no.

21 MR. BLASSINGAME: Member Hayter?

22 MR. HAYTER: (No audible response.)

23 MR. BLASSINGAME: Member Hicks, I assume you
24 voted yes?

25 MR. HICKS: Member Hicks, yes.

1 MR. BLASSINGAME: Member Murphy?
2 MR. MURPHY: (No audible response.)
3 MR. BLASSINGAME: Member Prather, Sr.? Member
4 Prather?
5 MR. PRATHER: Yes.
6 MR. BLASSINGAME: Member Provost?
7 MR. PROVOST: (No audible response.)
8 MR. BLASSINGAME: Member Sralla, Second Vice
9 Chair?
10 MR. SRALLA: (No audible response.)
11 MR. BLASSINGAME: Member Sralla, I can't hear
12 you. We'll come back to him.
13 Member Sullivan?
14 MR. SULLIVAN: Sullivan, yes, thank you.
15 MR. BLASSINGAME: Member Thomas?
16 MS. THOMAS: Member Thomas, yes.
17 MR. BLASSINGAME: Member Sralla?
18 (No response.)
19 MR. RICHARDS: Mr. Chairman?
20 MR. BLASSINGAME: Yes?
21 MR. RICHARDS: David Richards, for the record.
22 Member Sralla voted yes.
23 MR. BLASSINGAME: Oh, very good. Then the
24 motion carries.
25 MR. FERGUSON: This is Member Ferguson.

1 MR. BLASSINGAME: Yes, sir?

2 MR. FERGUSON: I guess I'll direct this to the
3 General Counsel or any other staff that wants to address
4 this, but the proposed language that we just took out of
5 that rule -- I understand, I think, what the intent was,
6 which was to get sales information from these
7 manufacturers who are making sales to Texas residents.

8 And those sales are occurring from a legal
9 standpoint outside the state of Texas. But the proposed
10 language that we just took out talked about sales in Texas
11 and then tried to modify by that by saying but over the
12 internet, or over the internet.

13 I, just -- as a matter of record, aren't these
14 sales -- as far as the Agency is concerned, aren't these
15 sales allowed because they are sales happening outside of
16 Texas?

17 MS. MORIATY: Yes, sir. You're correct,
18 because they're occurring technically in other states.
19 And that's what I was trying to ask about with my
20 recommendation to reword it rather than strike it.

21 MR. FERGUSON: Just for the record, I wouldn't
22 be opposed to asking for that information if we could
23 clarify that language so it doesn't look like they are --
24 I think there was some confusion over that they're allowed
25 to make sales in Texas. But those sales, even though

1 they're over the internet, they're legally outside the
2 state.

3 Thank you, Mr. Chairman.

4 MR. BLASSINGAME: You're welcome.

5 MR. PRATHER: This is Steve Prather. Could I
6 ask a question?

7 MR. BLASSINGAME: Yes, sir. You've got the
8 floor.

9 MR. PRATHER: Thank you. I've never driven a
10 Tesla. I've never been in a Tesla facility.

11 But I know they have these service centers, and
12 I have been told they sell used cars there. Are they
13 licensed as used car dealers in Texas?

14 MR. BLASSINGAME: Counsel?

15 MS. DRUMMOND: This is Katie Drummond, for the
16 record. No, Tesla does not hold any dealer licenses
17 issued by TxDMV.

18 MR. PRATHER: Okay. Well, I know one person
19 that was up in the Dallas area and went to the Tesla
20 location and purchased a car. If they didn't purchase the
21 car there, they sure think they did because they told me
22 they bought the car at the Dallas Tesla service center.

23 And if that is not a dealership, but it's
24 facilitating a sale through another state, how is that
25 allowed?

1 MR. BLASSINGAME: Counsel?

2 MS. MORIATY: I'm sorry, sir. I don't have
3 enough information to be able to understand what's
4 happening there. But I recommend that you contact our
5 Enforcement Division and that we investigate that and
6 figure out what it happening. Because that does sound not
7 okay.

8 MR. PRATHER: Is Enforcement on the line with
9 us? This is Prather.

10 MR. BLASSINGAME: Yes.

11 MS. THOMPSON: Yes, Member Prather. This is
12 Corrie Thompson, Director of the Enforcement Division.

13 If you have any concerns about any activity
14 that appears to be unlicensed dealer activity in the State
15 of Texas, you should file that as a complaint to the
16 Enforcement Division.

17 Tesla does hold a license as a dealer, so they
18 are just like any other out-of-state dealer. This is
19 separately from their Texas manufacturer license. So just
20 as an Oklahoma dealer could conduct business, Tesla as a
21 licensed California dealer can conduct business.

22 But as General Counsel Moriatty just stated, we
23 would need specific facts of the situation that you're
24 referring to in the form of a complaint in order to look
25 into that information.

1 MR. PRATHER: Well, this is Prather again. If
2 you know that they're licensed in California or wherever,
3 how do they get about delivering the cars here? Don't you
4 all have the right as Enforcement to look into how those
5 sales are being transacted and where they're officially
6 considered sold -- where they signed up?

7 You know, this is just an off of our discussion
8 deal. But we've all sat here and listened to these
9 different -- what I would call the abortion deal in
10 different states. And some states have outlawed abortion
11 in their state, but their residents still can go to
12 another state and physically have the abortion and come
13 back to our state.

14 I'm not saying buying a car is the same as an
15 abortion. But do they have to go to the other state and
16 buy the car? Or can they have FedEx send them the
17 paperwork and them sign it? And really, it's a sale over
18 there when they really signed the buyer's order in Texas.

19
20 I mean, that gets kind of cloudy to me. Does
21 it to you all?

22 MS. MORIATY: No, sir. Federal law makes it
23 very clear that if the contract is developed in another
24 state -- and the way that my understanding is, when a
25 buyer wants to buy something from one of these

1 manufacturers, they get in contact with someone physically
2 located in another state and their paperwork is done via
3 online resources, but with the other state on the other
4 state's terms.

5 So, under those conditions, the law about
6 contracts says that that contract is happening in another
7 state and that's the law we have to abide by. Again,
8 that's not something that we regulate. That's just how
9 the contract laws work.

10 MR. PRATHER: Well, Prather again. Does the
11 out-of-state dealer -- don't they have to comply with the
12 Transportation Code?

13 MS. THOMPSON: Sir, I don't think I understand
14 the question. Member Prather, this is Corrie Thompson,
15 Director of the Enforcement Division.

16 Again, if you have any concerns about a
17 specific situation or transaction, we would have to look
18 at the details of that and the paperwork surrounding that
19 particular transaction in order to make a determination
20 about whether it violated state law.

21 MR. PRATHER: Okay. Well, once again, one more
22 question, if you will. This is Prather again.

23 So for the Motor Vehicle Board to go
24 investigate something just to see if everything's on the
25 up and up, you have to physically have a formal complaint

1 filed? You all can't just go out to be sure the rules and
2 regulations are being complied with, no?

3 MS. THOMPSON: Corrie Thompson, Director of the
4 Enforcement Division.

5 Member Prather, the Department would love to
6 proactively investigate any number of complaints that are
7 possibly occurring or any situations that are occurring in
8 the State. Unfortunately, we do not have the resources to
9 do that at this time. So, unfortunately, we are in a
10 position where we do rely on complaints in order to focus
11 our resources and our efforts toward resolution of those
12 for affected consumers.

13 MR. PRATHER: Okay, well, I said one last
14 thing. I'm going to go back on my word. This is Prather
15 again.

16 I've got one last thing. If I know of somebody
17 that went to Dallas and bought a car, a Tesla -- if I get
18 them to give me the specifics, can I file the complaint
19 even though I'm not the purchaser?

20 MS. THOMPSON: Corrie Thompson, Director of the
21 Enforcement Division.

22 Anybody can file a complaint as long as you
23 have the paperwork necessary. There might be instances
24 where if the complaint were to proceed towards a hearing,
25 that we would need additional evidence or testimony from

1 the person involved in the transaction. But again, that
2 would depend on the facts of the specific case.

3 MS. MORIATY: And Mr. Chairman, if I may --
4 this is Laura Moriatty.

5 I'm concerned that we're getting a little far
6 away from our posted topic of the rules here today. So,
7 if we could, we're happy to address all these questions,
8 but we can do it outside of this meeting, if that would
9 work better?

10 MR. BLASSINGAME: Yeah, that would work better.

11 Any other comment on the --

12 MR. DURANT: Member Durant. I'd like to be
13 recognized.

14 MR. BLASSINGAME: Member Durant, you have the
15 floor.

16 MR. DURANT: Yes, before we moved off this
17 topic, I did want to register my objection to the
18 paragraph in particular. But drilling down, my objection
19 is to the words "solely over the internet."

20 Just to explain where that comes from -- during
21 COVID, several county judges all over Texas decided that
22 car sales would be allowed solely over the internet, and
23 created a precedence of what solely over the internet
24 meant. I think before we go out and use this undefined
25 term and leave it there, we need to give a better

1 definition.

2 During COVID, solely over the internet included
3 anything from a phone call to a website lead. All you had
4 to do was go on the internet, call up the dealer. It was
5 considered solely over the internet, you were allowed to
6 conduct business.

7 Of course, we've already talked about the
8 electric manufacturer precedence we've seen with solely
9 over the internet. I know they've claimed that their
10 sales are solely over the internet several times.

11 There's also a concern about car shows, whether
12 they can have -- you can have people at car shows where
13 sales are illegal, but have internet kiosk where sales are
14 allowed. I think we need to define this term.

15 First of all, if I were to recommend a
16 definition, "solely over the internet" to me means it's
17 actually over the internet. There can't be a local
18 component to it. There can't be a demonstration ride.
19 There can't be a test drive.

20 You can't have a display in Texas if you're
21 selling these out of California. You can't haggle over
22 the price in Texas if these are truly sold by a dealer in
23 California.

24 I believe the entire contract should be
25 electronically contracted, or at the very least FedEx'd

1 where e-contracting isn't possible. And I think, also, if
2 it's truly solely over the internet, advertising in Texas
3 shouldn't be allowed because that's more than just solely
4 over the internet.

5 I am concerned here because when we introduce
6 language like "solely over the internet" into our Code
7 without defining it, we've opened a loophole. And we need
8 to be wary of the loopholes we opened. My concern of
9 using this term is, say, we have a dealer in Texas. No,
10 we'll go off the top of electric.

11 But if we have a dealer in Texas that the
12 Department has determined should not be doing business in
13 Texas, and we allow this solely over the internet term to
14 continue, and he's allowed to sell into Texas over the
15 internet because he hires an IT department in Florida.
16 Well, we may allow someone to continue selling in Texas
17 that we've determined should not sell in Texas anymore.

18 So my motion to the Board is that this term
19 "solely over the internet" be reviewed and defined more
20 thoroughly to avoid all these problems.

21 MR. BLASSINGAME: So, we have -- are you making
22 that an official motion?

23 MR. DURANT: If anyone would like to comment,
24 I'd welcome.

25 MR. RICHARDS: We need a second first.

1 MR. BLASSINGAME: Is there a second to the
2 motion?

3 MR. DURANT: We have order to second for
4 comment?

5 MR. RICHARDS: No.

6 MR. DURANT: No?

7 MR. RICHARDS: Well, discussion will occur
8 afterwards.

9 MR. DONNELLY: Member Donnelly seconds the
10 motion.

11 MR. BLASSINGAME: All right. We have a first
12 and a second.

13 First Vice Chair Bradburn, how do you vote?

14 MR. RICHARDS: Mr. Chairman?

15 MR. BLASSINGAME: Yes, sir?

16 MR. RICHARDS: Please ask for discussion after
17 a motion.

18 MR. BLASSINGAME: Oh, sorry.

19 MR. RICHARDS: Thank you.

20 MR. BLASSINGAME: Any further discussion?

21 MR. DORAN: Yes, this is Member Doran. May I
22 be recognized?

23 MR. BLASSINGAME: Certainly. Member Doran, you
24 have the floor.

25 MR. DORAN: Thank you. So, I understand that

1 we just struck the language from E that we were looking at
2 here that including the terminology "solely over the
3 internet." So the question for staff is, does that
4 terminology appear anywhere else in these proposed rules?

5

6 And if it does, could you direct our attention
7 to that? Because I think that will inform how we may want
8 to vote on this motion.

9

MR. BLASSINGAME: Question for staff.

10

MR. MORIATY: I am searching right now, but I
11 do not see it so far. No, it does not appear that it
12 does.

13

MR. DORAN: So, to follow up on that -- again,
14 this is Member Doran. So I'm not really commenting on the
15 pros or cons of the motion per se. But my observation is
16 that since we've, as a group, already voted to remove the
17 language that contained the terminology "solely over the
18 internet," my personal belief, I guess, is that we sort of
19 send a message to staff about how the group feels about
20 that language.

21

So I'm trying to understand with this motion
22 what impact or effect it might actually have if the term
23 has already been erased from the proposed rules.

24

MR. DURANT: Member Durant here.

25

MR. BLASSINGAME: Member Durant, you have the

1 floor.

2 MR. DURANT: My understanding of our role here
3 is to offer advice to the DMV. Yes, we have recommended
4 the striking of this entire paragraph, but we're not the
5 legislative body here. We don't make the law here.

6 So, we've recommended to the DMV that this
7 entire paragraph be thrown out, in my understanding. So
8 my motion is to recommend to the DMV a way -- go back to
9 the drawing board to redraft this provision, which they,
10 in my opinion, will likely do.

11 MR. DORAN: I think I understand your motion
12 now. Thanks.

13 MR. BLASSINGAME: We have a first and a second
14 motion.

15 First Vice Chair Bradburn, how do you vote?
16

17 MR. BRADBURN: Member Bradburn, yes.

18 MR. BLASSINGAME: Member Donnelly?

19 MR. DONNELLY: Member Donnelly, yes.

20 MR. BLASSINGAME: Member Doran?

21 MR. DORAN: (No audible response.)

22 MR. BLASSINGAME: Member Durant?

23 MR. DURANT: Yes.

24 MR. BLASSINGAME: Member Ferguson?

25 MR. FERGUSON: (No audible response.)

1 MR. BLASSINGAME: Member Hall?
2 MR. FERGUSON: Hall abstains.
3 MR. BLASSINGAME: Member Hayter?
4 MR. HAYTER: Member Hayter, yes.
5 MR. BLASSINGAME: Member Hicks?
6 MR. HICKS: Member Hicks abstains.
7 MR. BLASSINGAME: Member Murphy?
8 (No response.)
9 MR. RICHARDS: What's that?
10 MR. BLASSINGAME: Member Murphy?
11 (No response.)
12 MR. BLASSINGAME: Member Prather?
13 MR. PRATHER: Yes.
14 MR. BLASSINGAME: Member Provost?
15 MR. PROVOST: (No audible response.)
16 MR. BLASSINGAME: Member Sralla?
17 (No response.)
18 MR. BLASSINGAME: Member Sralla's having a lot
19 of trouble.
20 Member Sullivan?
21 MR. SULLIVAN: Yes, thank you.
22 MR. BLASSINGAME: Member Thomas?
23 MS. THOMAS: Member Thomas, yes.
24 MR. BLASSINGAME: We have 11 votes yes. I vote
25 yes, so we have 11 votes yes, and the motion carries.

1 What chapter are we on, guys?

2 MR. RICHARDS: 215.

3 MR. BLASSINGAME: That's where I was thinking.

4

5 MR. RICHARDS: Now, members, are there any
6 other chapters or subchapters or sections that you'd like
7 addressed in 215 at this time?

8 MR. DORAN: May I be recognized?

9 MR. BLASSINGAME: Yes, sir. You have the
10 floor.

11 MR. DORAN: Thank you. I had a question for
12 staff, sticking in the same page that we were just looking
13 at.

14 Letter G looks like you're proposing that
15 distributors would be required to submit a copy of their
16 distributor agreement between the manufacturer and the
17 distributor for the Department. What's the rationale
18 behind that?

19 MR. BLASSINGAME: Staff?

20 MS. DRUMMOND: Katie Drummond, for the record.

21 I believe the rationale is just to -- just more
22 information gathering to ensure that there actually is an
23 agreement between the manufacturer and the distributor.
24 And it's --

25 MR. DORAN: [inaudible]. Sorry. Go ahead.

1 MS. DRUMMOND: I would just say just to have
2 that information on file. Just -- again, it gives us
3 another tool to ensure that things are on the up and up.

4 MR. DORAN: This is Member Doran. Thank for
5 the explanation. I'd like to just share a little bit of
6 commentary and concern here. This would make Texas the
7 only state of our five states that would have such a
8 requirement.

9 And many distributors take the position, as do
10 manufacturers, that the terms and conditions of the
11 distributor agreement -- it's a contract between two
12 private parties that often contains confidential and
13 proprietary information. So there are other ways to
14 establish that the distributor has the authority from the
15 manufacturer to be the distributor of products, whether
16 that's a letter or something of a different nature from
17 the manufacturer.

18 So I'm going to want to go ahead and object to
19 G in its totality. And I'd actually like to make a motion
20 on that, because I think there are other ways to provide
21 information to the Department short of submitting --
22 having as a requirement for the license to be a submission
23 of the distributor agreement.

24 MS. DRUMMOND: Member Doran, if I may, there
25 actually is currently a requirement in the Occupations

1 Code -- I believe it's 2301.260 where we are -- that
2 information is required to be provided to the Department.

3 I don't know if you want to take a quick look at that.
4 But just want to throw it out there as part of the
5 discussion.

6 MR. DORAN: Thank you. This is Member Doran.
7 I'll take a look at that.

8 I was not aware that there was a submission of
9 that actual agreement because just -- to share for
10 context -- in litigation, that is always treated as
11 confidential and proprietary. It's subject to the seal of
12 the court. And so the idea that it would just be
13 something that anybody could submit an open record request
14 on to the Agency and get hold of just seems highly
15 inappropriate.

16 MR. BLASSINGAME: Member Doran, do you wish to
17 make a motion?

18 MR. DORAN: Yes, my motion would be to strike
19 letter G, which is lines 18 and 19 here, which requires
20 the submission of the distributor agreement as part of the
21 distributor's license application.

22 MR. SULLIVAN: Member Sullivan, second.

23 MR. BLASSINGAME: Thank you, Member Sullivan.

24 We have a motion and a second on that motion.

25 Chief Vice Chair Bradburn, how do you vote?

1 MR. BRADBURN: Can we call for discussion
2 please?

3 MR. BLASSINGAME: Yes, certainly.

4 MR. BRADBURN: I thought I saw Member Hicks'
5 hand up. I'm not moderating the meeting -- just an
6 observation.

7 MR. HICKS: Of the section -- we can let this
8 topic play out.

9 MR. BRADBURN: Okay. Thank you. Question.

10 MR. BLASSINGAME: Yes, sir. You have the
11 floor.

12 MR. BRADBURN: Thank you. I do have a question
13 related to the Code that Counsel was talking about. Can
14 somebody verify? Because we can't really overrule
15 statute.

16 MR. DORAN: This is Member Doran. I'm looking
17 at 2301.260, and maybe staff could point me to the
18 explicit language that calls for the submission of the
19 distributor agreement in its totality itself.

20 It does reference in 2301.260(a)(4) that the
21 terms of the contract under which the distributor will act
22 for the manufacturer needs to be provided to the
23 Department. But as I read it, I'm not seeing where it
24 calls for the actual submission of the agreement itself.

25 MR. BLASSINGAME: Does that clarify for you,

1 Chair Bradburn?

2 MR. BRADBURN: Not really. That's kind of like
3 a matter of words there where it kind of sounds like it
4 does and it kind of sounds like it doesn't. Above my pay
5 grade, I guess.

6 MR. DORAN: This is Member Doran. So, if I may
7 be recognized. I'm sorry.

8 MR, BLASSINGAME: Go ahead, Member Doran. You
9 have the floor.

10 MR. DORAN: So it would be my opinion that the
11 requirements of 2301.260, which is existing law as it
12 relates to the application for distributor license, could
13 be satisfied by providing information about the terms of
14 the contract under which the distributor is authorized to
15 act for the manufacturer. That could be a letter from the
16 manufacturer simply stating this is our distributor and
17 they authorized to act on our behalf in the state of Texas
18 and should be given a distributor license. And that would
19 be a one-page letter, as opposed to a confidential and
20 proprietary contract between two parties.

21 It's just -- I don't understand why the State
22 would need to have a copy of that. And it would certainly
23 make Texas an outlier among other states.

24 MR. DURANT: Member Durant.

25 MR. BLASSINGAME: Member Durant, you have the

1 floor.

2 MR. DURANT: Would this be analogous to the
3 evidence of franchise that a dealer would send the
4 Department, Member Doran?

5 MR. BLASSINGAME: Member Doran?

6 MR. DORAN: Yes. This is Member Doran. Yes,
7 that is a great analogy, actually -- very similar to an
8 evidence of franchise.

9 MS. DRUMMOND: And this is Katie Drummond. And
10 just for clarification purposes so we're on the same page,
11 the evidence of franchise form is just a form that the
12 Department produces wherein it has the information about
13 either the manufacturer and the distributor and their
14 franchised dealer. And it basically proves up to the
15 Department that there is a franchise agreement between the
16 dealer and their manufacturer and distributor.

17 MR. FERGUSON: Mr. Chair, this is Member
18 Ferguson.

19 MR. BLASSINGAME: Member Ferguson, go ahead.
20 You have the floor.

21 MR. FERGUSON: Thank you. Member Ferguson.
22 And in response to that last comment, I agree that you
23 ultimately have to provide your dealer agreement.

24 You're looking at a statute that specifically
25 regulates that relationship. In fact, it says at times

1 notwithstanding what's in your dealer agreement. So the
2 dealer agreement is a part of what's being regulated
3 heavily here.

4 I don't believe that there is a regulation of
5 the relationship between a distributor and a manufacturer
6 to the same degree. Plus, the statute 2301 that we were
7 looking at talks about the terms of the contract.

8 I have seen instances where the contract
9 between the manufacturer and the distributor is not
10 written. It's an oral contract. And it is -- they go on
11 for years.

12 And then, when I ask for that, they're like, we
13 don't have anything in writing. So, I think we're asking
14 them to, then, create something that they don't have.
15 Like Member Doran's suggestion of a letter or something
16 saying, Yes, they're authorized to be our distributor.

17 We just need to clean that up. Thank you.

18 MR. BLASSINGAME: Thank you, Member Ferguson.

19 Does anyone else have any comment?

20 MR. DORAN: This is Member Doran again. May I
21 be recognized?

22 MR. BLASSINGAME: Member Doran, you have the
23 floor.

24 MR. DORAN: So, we've been the private
25 distributor, Gulf States Toyota has, for Toyota for over

1 half a century. And honestly, I'm not aware of us ever
2 having providing to the Texas DMV in full a copy of the
3 distributor agreement, whether it was to comply with
4 2301.260 or any other provision in the Code.

5 So this would be, in my mind, a very new and
6 onerous requirement imposed upon distributors -- and
7 manufacturers, for that matter -- since it calls for terms
8 that have negotiated that are confidential and proprietary
9 to both parties. Thank you.

10 MR. BLASSINGAME: Thank you, Member Doran.
11 Any further comment?

12 (No response.)

13 MR. BLASSINGAME: Member Doran has proposed a
14 motion. Do I have a second?

15 MR. DONNELLY: Member Donnelly seconds the
16 motion.

17 MR. BLASSINGAME: Member Donnelly second.
18 First Vice Chair Bradburn, how do you vote?

19 MR. BRADBURN: Member Bradburn, abstain.

20 MR. BLASSINGAME: Member Donnelly?

21 MR. DONNELLY: Member Donnelly votes -- is for
22 the motion -- votes yes.

23 MR. BLASSINGAME: Member Doran?

24 MR. DORAN: The motion, aye.

25 MR. BLASSINGAME: Member Durant?

1 MR. DURANT: For clarification, can we restate
2 the motion?

3 MR. BLASSINGAME: Yes. Member Doran, do you
4 want to restate it?

5 MR. DORAN: Sure. The motion is simply to
6 strike letter G, which was found on page -- I guess it's
7 21 of the proposed rules. But this is within the proposed
8 changes to 215.102.

9 It's the same page of the rules we were looking
10 at a short while ago when we were talking about the
11 "solely over the internet" discussion.

12 MR. DURANT: Thank you. Member Durant votes
13 yes.

14 MR. BLASSINGAME: Member Ferguson?

15 MR. FERGUSON: (No audible response.)

16 MR. BLASSINGAME: Member Hall?

17 MR. HALL: Abstains.

18 MR. BLASSINGAME: Member Hayter?

19 MR. HAYTER: Member Hayter votes yes.

20 MR. BLASSINGAME: Member Hicks?

21 MR. HICKS: Member Hicks votes yes.

22 MR. BLASSINGAME: Member Murphy?

23 MR. MURPHY: Member Murphy votes yes.

24 MR. BLASSINGAME: Member Prather, Sr.?

25 MR. PRATHER: Prather, yes.

1 MR. BLASSINGAME: Member Provost?

2 MR. PROVOST: Provost, yes.

3 MR. BLASSINGAME: Member Sims? I'm sorry.

4 Member Sralla?

5 MR. SRALLA: (No audible response.)

6 MR. BLASSINGAME: Member Sullivan?

7 MR. SULLIVAN: Thank you.

8 MR. BLASSINGAME: Member Thomas?

9 MS. THOMAS: Member Thomas, yes.

10 MR. BLASSINGAME: Twelve votes -- as a
11 presiding officer, I vote yes. That will make 13 votes
12 for and it's carried.

13 MR. RICHARDS: Mr. Chairman, members, David
14 Richards for the record. Are there other suggested edits
15 or recommendations regarding Chapter 215 provisions?

16 MR. HICKS: May I be recognized?

17 MR. BLASSINGAME: Member Hicks, you have the
18 floor.

19 MR. HICKS: Section 215.103, Service-Only
20 Facility. On page 23 of the proposed rule at 161, page 51
21 of the deck, reading that language, it appears that it's
22 now eliminating the ability for non-warranty work to be
23 performed at a service-only facility in the way the
24 wording has been recommended to be changed.

25 I'm not sure -- I certainly understand the need

1 to add the "and not new motor vehicles" to be specific and
2 call it out. But the other appears to have eliminated a
3 dealer's ability to provide maintenance or non-warranty
4 repairs at a service-only facility.

5 MS. DRUMMOND: This is Katie Drummond, for the
6 record.

7 The reason that we suggested eliminating that
8 is just because it's superfluous. We don't regulate
9 non-warranty work. So, it was just -- it's kind of
10 cleaning up the language kind of thing.

11 MR. HICKS: This is Member Hicks. Is there any
12 risk to leaving non-warranty in there?

13 MS. DRUMMOND: I mean, we simply just don't
14 have authority over non-warranty repair services. As far
15 as the risk to leaving it in -- anyone?

16 MS. MORIATY: This is the General Counsel who
17 can't sign a rule for which we don't have authority.

18 So one of our main goals in doing this was to
19 remove the sections that we don't have statutory authority
20 for. And this falls within that rubric. But we can't
21 tell you when and how to do non-warranty repair services.

22
23 MR. HICKS: Again, this is Member Hicks. I
24 understand that wouldn't be within your purview to enforce
25 that. But my concern was if someone read this in a

1 liberal sense, a dealer would be in violation at a
2 service-only facility if they perform non-warranty work.

3 That's the way I read it. I may not be
4 interpreting it as intended.

5 MR. BLASSINGAME: Counsel?

6 MS. MORIATY: We could remove all the modifiers
7 before repair services, I suppose. Would that address the
8 issue? So, remove both warranty and non-warranty?

9 MR. HICKS: Yes. This is Member Hicks. Remove
10 those specific references.

11 MS. MORIATY: So, my counsel, who is a
12 specialist on this, is saying very adamantly that we need
13 to limit it to warranty, and getting vaguer is not going
14 to help my case. I'm sorry, you all.

15 Because I have to sign this thing and I have to
16 vouch that we have legal authority for it, that's a change
17 that we're going to have a lot of trouble with.

18 MR. DURANT: This is Member Durant.

19 MR. BLASSINGAME: Member Durant, you have the
20 floor.

21 MR. DURANT: So I understand that dealers,
22 quick lube places, and everyone has an inherent right to
23 perform service, non-warranty service on vehicles. Can
24 you at least reassure us that in the record of these
25 reviews, that anyone who read this change as saying that

1 dealers would no longer have authority to perform
2 customer-paying, non-warranty service, the courts would
3 see this record and not read it that same way?

4 MS. MORIATY: We can certainly drop a sentence
5 that says this does not impact dealers' abilities to do
6 non-warranty service because we don't have authority over
7 that topic. Would that address the issue?

8 MR. DURANT: I'm okay with it if Member Hicks
9 is okay with it.

10 MR. HICKS: This is Member Hicks. I would
11 support that additional language, yes.

12 MR. BLASSINGAME: This solve the problem, guys?

13 MR. HICKS: Member Hicks. I think so. Mr.
14 Chairman, this is Member Hicks.

15 Mr. Chairman, do you need that in the form of a
16 motion? Or is that just a simple staff edit that can be
17 done without a motion?

18 MR. BLASSINGAME: I think it's a staff edit,
19 but I'll yield to Ms. Thompson [sic] on that.

20 MS. MORIATY: Yes, sir. We can make that
21 change. It'll just be a part of the preamble to the
22 adoption, so it won't even be a change to the real
23 language. Thank you.

24 MR. BLASSINGAME: Does that satisfy you, Member
25 Hicks?

1 MR. HICKS: Member Hicks. Yes, sir.

2 MR. BLASSINGAME: Very good. Does anyone have
3 anything else with Chapter 215 that they want to address?

4 MR. PRATHER: This is Steve Prather. May I
5 speak a minute?

6 MR. BLASSINGAME: You have the floor, Member
7 Prather.

8 MR. PRATHER: Thank you. Does this have any
9 effect on people like Cummins that are doing warranty work
10 on engines? Warranty work, I'm talking about on engines
11 that dealers ought to be doing.

12 You know, a manufacturer can't sell a car in
13 this state. But can a manufacturer repair a car under
14 warranty in this state?

15 MS. MORIATY: This is Laura Moriatty, General
16 Counsel. So, no, sir. This particular rule is only about
17 what franchise dealers can do.

18 MR. PRATHER: Okay. So, there's nothing in
19 there that addresses the deal Cummins is doing, repairing
20 their own engines under warranty, at this point?

21 MS. MORIATY: No, sir.

22 MR. PRATHER: Okay. Thank you.

23 MR. BLASSINGAME: Does anyone else have
24 anything with Chapter 215 that they want to talk about?

25 MR. HALL: Member Hall.

1 MR. BLASSINGAME: Member Hall, you have the
2 floor.

3 MR. HALL: This is just a point of
4 clarification. In 215.140, there is all the sudden
5 introduction of a term of retail dealers, and retail
6 dealers isn't defined. I don't necessarily know if the
7 Department wants to either define that term, or just
8 remove retail, because I don't know that saying retail is
9 substantive to the issue there.

10 But it just kind of stood out to me as I was
11 reading it. And that's on page 95 of the packet, or 67 of
12 161 is where it starts. And nothing that I necessarily
13 feel like needs to take a motion, but just something for
14 the Department to take a look at.

15 One other point that I would make is there
16 seems to be an author, like multiple voices of authors
17 where in some places the term actually is used as
18 e-licensing. And then, at other places, the term is a
19 lengthy description, basically an electronic system that's
20 used for licensing.

21 Just for nomenclature purposes, I think just
22 pick one or the other and be consistent throughout the
23 rules and not just interchange those. And that was kind
24 of throughout 215.

25 MS. DRUMMOND: This is Katie Drummond, for the

1 record. As far as the retail piece of it, I think that we
2 went with that because it's in the premises rules and it
3 was to make the differentiation between a retail dealer
4 and wholesale dealer.

5 But to your point about defining and that kind
6 of thing, that's definitely something we can take back and
7 consider. As well, just making sure that it's only one
8 voice with the electronic filing as well. And thank you
9 for those comments.

10 MS. VANNOY: Terry Vannoy, for the record, if I
11 could. General Counsel's Office.

12 Retail dealers are defined in Chapter -- I
13 believe it's 211, in Criminal History. We've defined that
14 there because of the way we were trying in looking at
15 different types of crimes from different types of
16 licenses. So you find the definition there.

17 MR. BLASSINGAME: Does anyone else have
18 anything else with 215?

19 MR. HALL: This is Member Hall again.

20 Just a question on the storage lot
21 introduction, where dealers have to report the storage
22 lots that are not contiguous. The rule doesn't
23 necessarily speak to this. So this is kind of question
24 for the Department.

25 Is the Department also proposing that the

1 storage lots can be used, even though sales activity does
2 not occur there? That those facilities could be used, for
3 example, to store dealer plates or issue temporary tags?
4 Or in the future issue the metal license plates, when that
5 comes, in a couple of years -- that those can actually be
6 stored at those storage lots?

7 MR. BLASSINGAME: Staff?

8 MR. HALL: And what I'm referring to
9 specifically, I think it's introduced on page 103 of the
10 packet, or page 75 of 161 at the very bottom.

11 MS. DRUMMOND: This is Katie Drummond, for the
12 record. The only -- for as far as the storage lot is
13 concerned, all that is contemplated there is storage of
14 just additional inventory vehicles. We haven't
15 contemplated anything related to plates and storage of
16 plates.

17 MR. BLASSINGAME: Does that answer your
18 question?

19 MR. HALL: Member Hall. Just a point that I
20 would make there is not in terms of a motion, but I'd like
21 the Department to just kind of consider what the
22 allowances are of those storage lots and be clear. And be
23 forward thinking, particularly with the metal plate bill
24 coming in a little over a year, and what the impact of
25 that is going to be to dealers that have storage lots.

1 Speaking for us, we certainly have facilities
2 that will probably fall under that definition of a storage
3 lot. And while we do not conduct sales activity there,
4 they are often used as an origination point for delivery
5 of vehicles. So having access and allowance to store
6 plates there would certainly be beneficial.

7 And the fact the Department has record of that
8 location, I think, makes it an even easier argument for
9 dealers to be allowed to keep plates at those locations,
10 even if the location itself is not licensed, is associated
11 with the license.

12 Again, not making a motion on that. I would
13 just like the Department just to consider that as they
14 continue to move the rules through the process.

15 MS. DRUMMOND: Katie Drummond, for the record.

16 Thank you for that. And it's definitely something that
17 we can take back and just be having those internal
18 discussions here at the Department.

19 MR. BLASSINGAME: Is there anything else with
20 Section 215, Chapter 215, that bears discussion?

21 MR. DURANT: Member Durant.

22 MR. BLASSINGAME: Member Durant, you have the
23 floor.

24 MR. DURANT: I'd like to turn your attention to
25 page, blue page 56, Section 215.106. It is about notice

1 of protest. I'll give you a moment.

2 MR. BLASSINGAME: Go ahead, sir.

3 MR. DURANT: 215.106, Section A, subsection (1)
4 has not been changed. It is still a 15 days from the date
5 that the Department mails the notification that a dealer
6 has a protest.

7 I have been on both sides of this. I have
8 protested dealers, and I have been protested by dealers.
9 I appreciate the quick turnaround.

10 But my concern is, we learned during COVID that
11 the U.S. mail doesn't always run on time or as fast as we
12 would like. And certainly, with the election ballot
13 debacle and all the stuff we have seen, it may be
14 worthwhile revisiting this.

15 In subsection (2) we do have the change, and
16 that is where I would recommend that the Department
17 revisit this. We are moving toward electronic systems for
18 filing our protest.

19 And I would recommend to the Board that they
20 consider electronic notification of protests as well. I
21 would reflect that enforcement has been using electronic
22 notification of requests very successfully. And in my
23 experience, it has been very good.

24 I would also note that the Department maintains
25 email lists of all the motor vehicle dealers. So perhaps

1 in addition to regular mail, we could rely on an email
2 system to get that word out to dealers more rapidly.

3 Part two of my concern, and this hasn't been
4 raised, because it is not really this section. But there
5 is no real section. I approve of you all switching to an
6 electronic system. I love your electronic systems.

7 My biggest concern is, what happens if the
8 internet breaks, and these systems go down. What about
9 our deadlines? What about our ability to timely respond?
10 Have you all considered a means to address that?

11 Thank you.

12 MR. BLASSINGAME: Staff?

13 MS. DRUMMOND: Yes. Yes, we have.

14 MS. PIERCE: Heather Pierce from the
15 Department.

16 MR. BLASSINGAME: Ms. Pierce, you are
17 recognized.

18 MS. PIERCE: Hi, this is Heather Pierce. I am
19 a lead Enforcement attorney. And I wanted to expand on a
20 comment that he was talking about in regards to service,
21 and maybe incorporate the Texas Rules of Civil Procedure,
22 Section 21(a), when it defines methods of service. It
23 broadens it.

24 It allows for service in person by mail,
25 commercial delivery service, by fax, and by email. And

1 doesn't just limit it to certified mail, return receipt
2 requested.

3 MR. BLASSINGAME: Does that answer your
4 question, sir?

5 MR. DURANT: It certainly helps my argument.

6 MS. DRUMMOND: Mr. Durant, just for a point of
7 clarification, were you asking that the Department, in
8 notifying someone that they have the opportunity to
9 protest, ensure that, you know, we are making use of all
10 of the means: via email, via mail, certified mail?

11 MR. DURANT: Yes. I recommend, as my advice to
12 the Board that you, instead of just mail, also use an
13 email notification for that 15-day window, since it is so
14 short.

15 MS. DRUMMOND: Sure. Absolutely. I believe
16 that that is our current practice. But it is something
17 that we can definitely come back internally and just make
18 sure that that is something that we are doing currently.

19 MS. PIERCE: This is Heather Pierce. I would
20 like to make another comment.

21 MR. BLASSINGAME: Go ahead.

22 MS. PIERCE: If we could just also excuse -- if
23 we could just also expand this to incorporate the rules of
24 21(a), Texas Rules of Civil Procedure. That way, it could
25 also include something like, for example, Federal Express

1 or some type of commercial delivery service, if we are not
2 able to be able to provide evidence that we have noticed
3 the Respondent.

4 In addition, sometimes, licensees don't always
5 have current email addresses. And so this would also
6 cover that. So we could be able to also do commercial
7 delivery service.

8 And also, excuse me. This is Heather Pierce
9 again. And it would be in alignment with the standard
10 practices across Texas. So it would not be changing
11 anything substantially, just expanding service.

12 MR. BLASSINGAME: Does that answer your
13 question, Member Durant?

14 MR. DURANT: I agree. I make such a motion.

15 MR. BLASSINGAME: We have a motion from Member
16 Durant. Do we have a second?

17 MR. HICKS: Second.

18 MR. BLASSINGAME: Member Hicks has seconded.
19 First Vice Chair Bradburn, how do you vote?

20 MR. BRADBURN: Member Bradburn, yes.

21 MR. BLASSINGAME: Member Donnelly.

22 MR. DONNELLY: We should discuss this first.

23 MR. BLASSINGAME: Yes. Certainly. Go ahead.

24 MR. DONNELLY: So, Member Donnelly. Can I be
25 recognized?

1 MR. BLASSINGAME: Member Donnelly, you have got
2 the floor.

3 MR. DONNELLY: I am confused as to exactly what
4 the motion says. Does it incorporate Texas 21(a)
5 specifically, or does it allow for just selected forms of
6 communication? If you could just read the motion, I would
7 be more comfortable.

8 MR. BLASSINGAME: Yes. Member Durant, do you
9 want to read the motion?

10 MR. DURANT: I am sorry. I forgot your name.
11 I yield to Ms. Pierce.

12 MR. BLASSINGAME: Certainly. Ms. Pierce.

13 MS. PIERCE: This is Heather Pierce. Excuse
14 me. Sorry about the volume.

15 I was just asking to include and incorporate
16 Texas Rules of Civil Procedure 21(a) where it expands the
17 definition of service. It does not just limit it to
18 certified mail, return receipt requested, and via email.

19 It expands it to commercial delivery, in-
20 person, by mail, by fax, and by email. So you would get a
21 broader ability to notice the Respondent, and have it be
22 acknowledged.

23 MR. BLASSINGAME: Does that explain the motion?

24 MR. DONNELLY: So, Member Donnelly.

25 MR. BLASSINGAME: Member Donnelly.

1 MR. DONNELLY: So are we voting to include the
2 Texas Rules of Civil Procedure, Section 21(a) into this
3 verbiage?

4 MR. BLASSINGAME: Is that correct, staff?

5 MR. DONNELLY: And can we do that?

6 MS. MORIATY: So, I believe we are talking --
7 not necessarily about a very specific rule, but about a
8 general group of rules. And we want to say that the
9 notice requirements for the notice of protest will happen
10 in accordance with Texas Rules of Civil Procedure 21(a).
11 Does that sound accurate?

12 MR. DURANT: Yes.

13 MS. MORIATY: Okay. So, therefore, I think we
14 can get away from having to specify which rule. As long
15 as we -- because that is the understanding of where we are
16 trying to go with this.

17 MR. BLASSINGAME: Does that answer your
18 question, Member Donnelly?

19 MR. DONNELLY: Yes, it does. I am
20 understanding that we have a motion to include the Texas
21 Rules of Civil Procedure Section 21(a) as part of the
22 formal notice.

23 MR. BLASSINGAME: Correct. And we have a
24 motion by Vice Chair Bradburn. And we have a second.

25 MR. DURANT: Second. Member Donnelly seconds

1 the motion.

2 MR. BLASSINGAME: I have got it.

3 Member Bradburn.

4 MR. BRADBURN: Member Bradburn. Yes.

5 MR. BLASSINGAME: Member Donnelly.

6 MR. DONNELLY: Member Donnelly. Yes.

7 MR. BLASSINGAME: Member Durant.

8 (No response.)

9 MR. BLASSINGAME: Member Durant, pardon me.

10 Member Durant.

11 MR. DURANT: (No audible response.)

12 MR. BLASSINGAME: Member Ferguson.

13 MR. FERGUSON: Member Ferguson, yes.

14 MR. BLASSINGAME: Member Hall.

15 MR. HALL: Member Hall, yes.

16 MR. BLASSINGAME: Member Hayter.

17 MR. HAYTER: Member Hayter, yes.

18 MR. BLASSINGAME: Member Hicks.

19 MR. HICKS: (No audible response.)

20 MR. BLASSINGAME: Member Murphy.

21 (No response.)

22 MR. BLASSINGAME: Member Murphy.

23 MR. MURPHY: (No audible response.)

24 MR. BLASSINGAME: Member Prather.

25 MR. PRATHER: Prather, yes.

1 MR. BLASSINGAME: Member Provost.

2 MR. PROVOST: Yes.

3 MR. BLASSINGAME: Member Sims.

4 (No response.)

5 MR. BLASSINGAME: Second Chair Sralla.

6 MR. SRALLA: (No audible response.)

7 MR. BLASSINGAME: Member Stark.

8 (No response.)

9 MR. BLASSINGAME: Member Sullivan.

10 MR. SULLIVAN: Sullivan. Yes, thank you.

11 MR. BLASSINGAME: Member Thomas.

12 MS. THOMAS: Member Thomas, yes.

13 MR. BLASSINGAME: And we have twelve votes for,
14 so it is passed.

15 Is there anything else with Chapter 215 that
16 people wish to discuss?

17 MR. HALL: This is Member Hall. Can I be
18 recognized?

19 MR. BLASSINGAME: Yes, sir, Mr. Hall.

20 MR. HALL: The Section 215.144(f)(3)(A) which
21 is on page 120, or page 92 of 161. It specifies that
22 dealers have 20 working days from the date of sale to file
23 transfer.

24 Transportation Code 501.145 specifies that it
25 is 30 calendar days. That law was changed probably 14 or

1 15 years ago. So I would just advise that that also be
2 changed.

3 I don't know if that requires a motion or not.

4 I will defer to staff, if they want a motion to make
5 that, or if they just make that on their own.

6 MR. BLASSINGAME: Staff?

7 MS. THOMPSON: Corrie Thompson with the
8 Enforcement Division. So I am seeing that the
9 recommendation for page, what did we say we are on, 120.
10 In the record rule, would be to change 20 working days to
11 30 days, which we are now defining as calendar days.

12 Is that correct?

13 MR. HALL: This is Member Hall. Yes, ma'am.
14 That is correct.

15 MS. THOMPSON: I believe we can do that without
16 a motion. Just looking at the ability to change that
17 language. Yes.

18 MR. BLASSINGAME: Does that satisfy your demand
19 or your wishes, Member Hall?

20 MR. HALL: Yes, sir. Thank you.

21 MR. BLASSINGAME: Does anyone else have any
22 recommendations on Chapter 215?

23 MR. HALL: Sorry. This is Member Hall again.
24 One more thing.

25 The subsequent page has another reference to 20

1 working days as well. It is under (g)(1). I just want to
2 make sure that didn't get missed. I apologize.

3 MS. THOMPSON: Corrie Thompson with the
4 Enforcement Division. I see that. Again, on page 121,
5 line 3, referencing the 20 working days as well.

6 MR. HALL: Yes, ma'am. And the subsequent
7 page, it is also listed there. So I think there is a few
8 pages there that list 20 days.

9 Not to belabor the point, but I think you get
10 it. There is a couple of references there to 20 working
11 days that just need to be aligned to say 30 calendar days,
12 or 30 days.

13 MS. THOMPSON: Sure. Corrie Thompson,
14 Enforcement Division.

15 Again, I do believe that we can look back
16 through this, which references to the days, knowing that
17 we are updating the change to days in the definition
18 section as well. We can take a look at the document
19 holistically.

20 MR. BLASSINGAME: Does that satisfy your wish,
21 Member Hall?

22 MR. HALL: This is Member Hall. Yes, sir. It
23 does. Thank you.

24 MR. BLASSINGAME: Thank you. Does anyone else
25 have any recommendations for Chapter 215?

1 MR. DURANT: Member Durant.

2 MR. BLASSINGAME: Member Durant. You have the
3 floor.

4 MR. DURANT: Thank you. At this time, I would
5 like to, since he could not be here, raise Member Elam's
6 concerns about the motor home show rule section being
7 repealed.

8 I believe we all have his comments. And I just
9 want to open discussion for that.

10 MR. BLASSINGAME: Discussion is now open.

11 (Pause.)

12 MR. DURANT: If the staff has any comments on
13 it, I'd be interested. Otherwise, I will make a motion.

14 MS. DRUMMOND: Sure. This is Katie Drummond
15 for the record.

16 So, in 2019, in the 2019 legislative session,
17 the statute was changed, 2301.358. It was changed to
18 basically make it into a notice-only requirement.

19 So previously, the Department had to issue an
20 approval for a license holder to be able to display at an
21 offsite motor home show, motor vehicle show, or
22 exhibition. In 2019, that law was changed to basically
23 make it to where that license holder just has to issue us
24 notice that they are going to be displaying their vehicles
25 offsite at a different location from their licensed

1 physical location.

2 And so, the reason that we are suggesting
3 repealing this particular rule is because it is not
4 enforceable anymore. Because the way that the rule was
5 written, it contemplates needing to get approval from the
6 Department for participation in a show, and that is not
7 something that is required anymore.

8 Terry, did I capture that correctly?

9 MS. VANNOY: (No audible response.)

10 MS. DRUMMOND: She is nodding. For the record,
11 she is nodding. So that is the Department perspective on
12 it.

13 MS. MORIATY: And this is Laura Moriaty,
14 General Counsel. So, this falls in the bucket of things
15 that we no longer have statutory authority for, that I
16 don't want to have to sign for. So we are eliminating
17 those.

18 Now, we are open. If somebody wants to propose
19 language that fits within this statute we have, which says
20 that we cannot approve, all we do is get notice. We are
21 interested in seeing that language, and thinking about it.

22 But again, our statute has changed. And it was
23 a very clear and deliberate change for the Legislature to
24 take away our authority to approve these things. So we
25 can't reinvent that.

1 The change in the statute, and the meaning
2 behind it is real clear. So if somebody has a new way to
3 thread that needle, we are very open to hearing it. But
4 from our perspective, the Legislature has told us that all
5 we can do is receive notice.

6 The statute says that. We don't have to make a
7 rule to do that. So that is why we are repealing this
8 one.

9 MR. DURANT: This is Member Durant. And if
10 anyone has read these comments and knows them better,
11 please speak up now.

12 But my understanding of Mr. Elam's comments was
13 that he was concerned that without these provisions, you
14 all would not have notice of these shows. You all would
15 not be able to enforce the enforceable sections of your
16 code, and prevent the bad acts that you normally look out
17 for in this sector.

18 MS. MORIATY: So our rule is premised entirely
19 on our ability to permit these shows. And that was where
20 our enforcement mechanism was. We don't really have
21 another enforcement mechanism.

22 And that is the challenge in trying to craft a
23 new rule, once the Legislature has taken away our
24 authority to approve. We haven't come up with another way
25 to do that. But we are open to brainstorming that stays

1 within this new statutory provision.

2 MR. DURANT: This is Durant. You mentioned a
3 notice provision. Would it still be within your statutory
4 authority to require notice of these events?

5 MS. MORIATY: The statute requires notice of
6 these events. We have to get notice. But that is all we
7 can do, is hear that they are happening.

8 MR. DURANT: This is Durant. I yield the
9 floor.

10 MR. BLASSINGAME: Any further comment?

11 MR. PRATHER: This is Steve Prather. May I
12 speak?

13 MR. BLASSINGAME: Mr. Prather, you have the
14 floor.

15 MR. PRATHER: Thank you much. In the past,
16 this state has allowed auto shows and that type of stuff.
17 But they haven't allowed off-premise sales.

18 Well, if you all aren't approving this, what
19 happens to the rules that we can't sell on the site, and
20 things like that? How does that get enforced? You just
21 basically -- send you all a note. By the way, we are
22 having a car show over here.

23 MS. MORIATY: Yes, sir. The statute still says
24 that you cannot sell at a car show. So that part of it is
25 still enforceable.

1 The other provisions that we had tied to notice
2 are not, and that is the challenge. So the statute still
3 holds. You still cannot sell at a car show.

4 MR. PRATHER: Okay. Thank you for that. This
5 is Prather again.

6 If you can't sell at a car show, do you all
7 have enforcement ability to go out there and verify? Or
8 is it, once again, like the Tesla comment I made earlier,
9 somebody has to file a complaint.

10 MS. THOMPSON: Corrie Thompson, Enforcement
11 Division. Again, with something like this, we would be
12 looking to receive a complaint.

13 And generally, in these situations, it would be
14 like an advertising complaint, where it is dealers
15 policing other dealers. So, that is how these things
16 happen.

17 If somebody noted that somebody was conducting
18 sales unlawfully through one of these shows or
19 exhibitions, then you could report that to the Department
20 in the form of a complaint that we would handle. But no,
21 the Department does not attend all of the shows that we
22 are noticed of and then look for dealers who might be
23 selling.

24 MR. PRATHER: Okay. This is Prather again.

25 Car show is three or four or five days. If I

1 went out there and started selling cars on the premises,
2 against the rules of the state, by the time you got the
3 complaint, the deal is done. The show is over, and
4 everybody has packed up and gone home.

5 How is that stopping anybody, if they don't
6 think there is -- you know. The police don't wait until
7 somebody calls them and tells them I was speeding before
8 they write me a ticket. They have got people over there
9 on the highway to be sure if I am speeding. The cop might
10 pull me over, and write me a nice little \$500 ticket.

11 MS. THOMPSON: We aren't --

12 MR. PRATHER: I mean, I am not trying to be
13 argumentative. I am just trying to be sure people follow
14 the rules. And without some kind of presence, it looks to
15 me like the rules get violated pretty easy.

16 MS. THOMPSON: Again, the Department does not
17 have the resources, unfortunately, to be at all of the
18 shows that might be taking place on any given day. We do
19 look at the complaints that are received.

20 And complaints oftentimes happen after the
21 fact. And I don't think that this is the venue for us to
22 discuss investigative processes. As we were just going
23 to --

24 MR. PRATHER: Okay.

25 MS. THOMPSON: -- amend the rule language that

1 is before us. But yes, looking at items that occur as a
2 violation at an earlier date is often how investigations
3 proceed.

4 MR. PRATHER: Thank you.

5 MR. BLASSINGAME: Member Prather, is that all?

6 MR. PRATHER: Yes. Thank you.

7 MR. RICHARDS: Mr. Chairman?

8 MR. BLASSINGAME: Yes, sir.

9 MR. RICHARDS: David Richards, for the record.
10 Member Hicks has his hands up.

11 MR. BLASSINGAME: I am sorry. Member Hicks,
12 you have the floor.

13 MR. HICKS: Mr. Chairman, thank you. This is
14 Member Hicks.

15 It looks like by revealing this and eliminating
16 this section of the Code, am I reading this correctly?
17 That someone now can have a show for a period of up to
18 seven years? I guess that's a staff question.

19 MR. BLASSINGAME: Yes. Staff?

20 MS. DRUMMOND: This is Katie Drummond, for the
21 record. There is not any sort of time frame prohibition
22 or mandate, or anything like that, as far as the shows and
23 exhibitions statute.

24 MR. HICKS: This is Member Hicks. It just
25 seems like the language included in this might -- it

1 appears -- I am sensing that it is being removed because
2 of the statute. You no longer have the ability to
3 enforce.

4 But the process of having someone apply for a
5 license and be approved certainly seems to have value,
6 whether it is in the motor home space or the motor vehicle
7 space. From a regulatory -- you know, from a regulation
8 standpoint, just to know they are being held accountable
9 with certain rules, that it can't exceed six consecutive
10 days, not conducted within 90 days of a previous show.

11 There is a lot of elements here that seem to be
12 critically important to controlling that space and not
13 opening up the landscape for people to just randomly --
14 and especially given your constraints on being able to
15 enforce this, because of your fiscal restraints, that this
16 could happen and be a detriment to not only the consumer,
17 but also local business owners.

18 MS. DRUMMOND: Member Hicks, was that just a
19 general comment or seeking a response?

20 MR. HICKS: Yes. This is Member Hicks. Not
21 seeking a response, but I think we are going to hear a
22 motion from Member Durant, and I would probably support
23 that motion. But I will wait for him to complete the
24 presentation.

25 MS. DRUMMOND: Okay.

1 MR. HICKS: Thank you.

2 MS. DRUMMOND: Thank you.

3 MR. BLASSINGAME: Member Durant.

4 MR. DURANT: I am sorry. I was reading another
5 section, and not following along.

6 MR. BLASSINGAME: Member Hicks said that you
7 had a motion.

8 MR. DURANT: I am not sure I do have a motion.
9 I was hoping that someone could assist me. And I guess,
10 what I mentioned earlier, is yes.

11 I would move to enter Member Elam's comments
12 into the record, and recommend consideration around
13 finding a way that we can retain any motor home oversight
14 possible. Is that close enough to a motion?

15 MR. BLASSINGAME: Close enough. Member Durant
16 has made a motion. Do I have a second?

17 MR. HICKS: This is Member Hicks. I second it.

18 MR. BLASSINGAME: We have a motion. We have a
19 second.

20 MR. DONNELLY: I have a question. Member
21 Donnelly.

22 MR. BLASSINGAME: Yes, sir. Member Donnelly.

23 MR. DONNELLY: Directing it towards General
24 Counsel. Is that something you can sign off on?

25 MS. MORIATY: I appreciate the vagueness of the

1 motion. Sorry, this is Laura Moriaty, General Counsel.
2 Yes. The vagueness of the motion helps.

3 I don't know how much we can salvage, if
4 anything we can salvage, without a mechanism for
5 enforcement. And that is our challenge. We don't have
6 authority to create a license for these shows, right.

7 We don't have authority to approve them
8 anymore. So I am not sure what the enforcement mechanism
9 in -- but again, this is an opportunity for everyone to
10 creatively brainstorm through the next several months.

11 So, if -- we will think on it. And we will
12 take the guidance that you are giving through this motion.

13 And if any of you or your associations that you represent
14 come up with a way that we could have -- bring some of
15 these back in a way that we could enforce them, we would
16 be definitely interested in seeing that.

17 Especially if it was accompanied by rule
18 language, that would be great. So we are definitely open
19 to it. But we are very cognizant of our constraints, due
20 to our change in statutory authority.

21 MR. HALL: This is Member Hall.

22 MR. BLASSINGAME: Member Hall. You have the
23 floor.

24 MR. HALL: I have got a question for counsel.
25 What is -- can we split this motion into two separate

1 motions? Like, do I have to make a motion to split the
2 motion into two motions, or what --

3 MS. MORIATY: Sir, you could move to amend, or
4 you could move to substitute a new motion if you would
5 prefer.

6 MR. DURANT: Member Durant [inaudible] consent.

7 MR. BLASSINGAME: Member Durant, so noted.
8 Member Hall?

9 MR. HALL: Yes. I am sorry. I missed the
10 conversation that was occurring there in the room. Yes.

11 I would like to amend the motion just to split
12 these off as two separate motions for two separate votes:
13 one to introduce Mr. Elam's comments into the record, and
14 the other to have staff further investigate.

15 MR. BLASSINGAME: We have a motion to introduce
16 Mr. Elam's letters into the record. Do I have a second?

17

18 MR. DONNELLY: Member Donnelly. I second it.

19 MR. BLASSINGAME: All right. Member Bradburn,
20 do you maintain your motion?

21 MR. BRADBURN: I've not made a motion, yet.

22 MR. BLASSINGAME: I am sorry. I have lost
23 track.

24 MR. BRADBURN: That is okay.

25 MR. BLASSINGAME: So, we have -- who made the

1 motion?

2 (No response.)

3 MR. BLASSINGAME: All right. Member Hall has a
4 motion to include Mr. Elam's letters to the record. Do I
5 have a second?

6 MR. HICKS: Member Hicks. Second.

7 MR. BLASSINGAME: All right.

8 First Vice Chair Bradburn, how do you vote?

9 MR. BRADBURN: Member Bradburn. Yes.

10 MR. BLASSINGAME: Member Doran?

11 MR. DORAN: Member Doran. Yes.

12 MR. BLASSINGAME: Member Durant?

13 MR. DURANT: Member Durant. Yes.

14 MR. BLASSINGAME: Member Ferguson?

15 MR. FERGUSON: Member Ferguson. Yes.

16 MR. BLASSINGAME: Member Hall?

17 MR. HALL: (No audible response.)

18 MR. BLASSINGAME: Member Hayter?

19 MR. HAYTER: Member Hayter. Yes.

20 MR. BLASSINGAME: Member Hicks?

21 MR. HICKS: Hicks. Yes.

22 MR. BLASSINGAME: Member Murphy?

23 MR. MURPHY: (No audible response.)

24 MR. BLASSINGAME: Member Prather?

25 MR. PRATHER: Yes.

1 MR. BLASSINGAME: Member Provost?

2 MR. PROVOST: Member Provost. Yes.

3 MR. BLASSINGAME: Member Sims?

4 (No response.)

5 MR. BLASSINGAME: Second Chair Sralla?

6 MR. SRALLA: (No audible response.)

7 MR. BLASSINGAME: Member Stark?

8 (No response.)

9 MR. BLASSINGAME: Member Sullivan?

10 MR. SULLIVAN: Sullivan. Yes, thank you.

11 MR. BLASSINGAME: Member Thomas?

12 MS. THOMAS: Member Thomas. Yes.

13 MR. BLASSINGAME: We do not have a negative
14 vote on that, so the motion is carried to include Mr.
15 Elam's letters to the staff.

16 And what was the second? Have staff do what?

17 Member Hall. I am sorry. What was the second
18 motion?

19 MR. HALL: The original motion -- sorry. This
20 is Member Hall.

21 The original motion that was made by one of the
22 other members was to have the Department further
23 investigate their ability to regulate something they have
24 already expressed they cannot regulate. I do not wish to
25 reintroduce that motion, but if the original member wants

1 to introduce it, they are welcome to.

2 MR. BLASSINGAME: All right. That was Member
3 Durant.

4 MR. DURANT: This is Member Durant. I am not
5 sure why we split it, but I think the Department
6 understands what they need to do and we don't require a
7 further motion here at this time.

8 MR. BLASSINGAME: All right. Very good. Does
9 anyone else have any comment or problems with Chapter 215?

10 MR. DONNELLY: Member Donnelly.

11 MR. BLASSINGAME: Member Donnelly, you have the
12 floor.

13 MR. DONNELLY: Thank you. In the interest of
14 the small independent dealers which are a group of my
15 peers, 215.140, Section B -- and the whole center of
16 Section B.

17 Is it appropriate for me to request that we
18 change the telephones being answered from 8:00 a.m. to
19 5:00 p.m. on business days to a terminology that would be
20 consistent with the posted hours of the dealer?

21 MR. BLASSINGAME: Staff?

22 MS. THOMPSON: Corrie Thompson, Enforcement. I
23 have no issue with the group taking it up for discussion.

24 And I would like to note that it is not a proposed
25 change. This is existing rule language that has been

1 around.

2 MR. DONNELLY: That is why I was asking. Is it
3 appropriate to even have this conversation now, Director
4 Thompson?

5 MS. THOMPSON: I mean, anything that is within
6 the Chapters is open for discussion by the group.

7 MR. BRADBURN: I --

8 MR. BLASSINGAME: Member Bradburn, you have the
9 floor.

10 MR. BRADBURN: Thank you. The only concern I
11 would have is when you have dealers that don't post their
12 hours as required, and we're investigating them. We need
13 to make sure we have a mechanism that falls back to the
14 hours in the code or the rule.

15 MR. DONNELLY: Member Donnelly.

16 MR. BLASSINGAME: Member Donnelly, you have the
17 floor.

18 MR. DONNELLY: It's been mentioned that 8:00
19 a.m. is considered a bit early for the independent auto
20 dealers, especially the mom and pop. The one man band who
21 is going to be there until 9:00 that night, maybe 8:00
22 that night.

23 Perhaps we could consider amending it to where
24 the hours are more consistent with the small business
25 dealer. Maybe go from 10:00 to 5:00 rather than 8:00 to

1 5:00. Because to comply with this, they are pretty much
2 having somebody sit there available.

3 MS. THOMPSON: Corrie Thompson, Enforcement
4 Division. Can you reference the page of the rule that you
5 are looking on?

6 MR. DONNELLY: Page 86 of 161, blue 96.

7 MS. THOMPSON: Ninety-six. Because I did just
8 want to look back at the language. Because I do believe
9 it says that you can have a voice mail that answers the
10 phone during that time as well.

11 So I would say that most voice mail services
12 are going to, you know, be 24 hours a day, seven days a
13 week. So you would be covered by that within the 8:00 to
14 5:00. And so, for our purposes in enforcement and citing
15 that as a violation, the voice mail or the answering
16 service that answers with the name of that business as
17 identified on the license would be sufficient.

18 MR. DONNELLY: Thank you.

19 MR. BLASSINGAME: Does anyone else have
20 anything with Chapter 215 that they wish to discuss?

21 (No response.)

22 MR. BLASSINGAME: All right. Members, do you
23 have any recommendations to the present TxDMV Board
24 regarding Chapter 221, Salvage Dealers?

25 (No response.)

1 MR. BLASSINGAME: Chapter 224. Does anyone
2 have any recommendations for Chapter 224?

3 MR. FERGUSON: Mr. Chairman. Member Ferguson.

4 MR. BLASSINGAME: Member Ferguson, you have the
5 floor.

6 MR. FERGUSON: Thank you, sir. When you look
7 at -- let me start out by saying I am looking at blue page
8 number 273. And I am looking at 224.400(b), B as in Boy.
9 Okay. In B, we say, when SOAH accepts a referral from
10 Department, jurisdiction of the contested case transfers
11 to SOAH.

12 Okay. So if SOAH is in charge, and SOAH has
13 got the ball -- however, there is two other sections that
14 refer to what do you do if you move to modify a stay. And
15 those sections are 224.405. Or one is a cease and desist
16 order, excuse me -- 405(d), and that is on page 276 of the
17 blue.

18 It says the party may appeal to the Board an
19 order granting or denying a motion for a cease and desist
20 order. And then there is similar language in 224.406(c),
21 which is on the next page, 277.

22 It says a person affected by a statutory stay,
23 imposed by Occupations Code Chapter 2301 may initiate a
24 proceeding before the Board to modify, vacate, or clarify
25 the extent of an application or a statutory stay. Now,

1 both of those, those last two that I talked about, about
2 going to the Board are being done while SOAH still has the
3 case. And jurisdiction has not been transferred back to
4 the Agency.

5 I'm going to set aside whether or not the
6 Agency can -- has the authority to do this under the
7 statute, because they passed these rules several years
8 ago. But I think we need to put language in front of both
9 of these second rules that say, notwithstanding the
10 language of Chapter 224.400(b), and just proceed with what
11 we have. So, it would say notwithstanding that Section,
12 like in 1024. I am sorry, 224.406(c).

13 We would just insert that right after (c) and
14 before "a person" so that it is clear. What I am trying
15 to clear up is that a person can go back to Board to
16 question the SOAH judge's ruling on a cease and desist
17 order. And on a statutory stay.

18 Because I have seen this come up before this
19 rule was passed. And there were questions about whether
20 that jurisdiction allowed that.

21 Since this rule has been implemented, I haven't
22 seen it come up. But I could see where that question may
23 come up, where someone could say, well. SOAH still has
24 jurisdiction. How can you come here?

25 So I understand this is a rule and not the

1 statute, but that is just some clarifying language that I
2 would propose.

3 MR. BLASSINGAME: Do you wish to file a motion?

4 MR. FERGUSON: Yes. I will make that my
5 motion. That 224.405(d), and 224.406(c), we include
6 language that states "notwithstanding the terms of
7 224.400(b)." "

8 MR. BLASSINGAME: We have a motion before the
9 Board. Do I have a second?

10 MR. DORAN: I will second.

11 MR. BLASSINGAME: Is that Doran or Durant?

12 MR. DORAN: Doran.

13 MR. BLASSINGAME: I have got it. We have a
14 motion and we have a second.

15 How do you vote on the motion, First Vice Chair
16 Bradburn?

17 MR. BRADBURN: Member Bradburn. Yes.

18 MR. BLASSINGAME: Member Donnelly?

19 MR. DONNELLY: Member Donnelly. Yes.

20 MR. BLASSINGAME: Member Doran?

21 (No response.)

22 MR. BLASSINGAME: It's your second.

23 MR. DORAN: Yes.

24 MR. BLASSINGAME: Member Durant?

25 MR. DURANT: Member Durant. Yes.

1 MR. BLASSINGAME: Member Ferguson. It is your
2 motion.
3 MR. FERGUSON: Yes.
4 MR. BLASSINGAME: Member Gonzalez?
5 (No response.)
6 MR. BLASSINGAME: Member Hall?
7 MR. HALL: Yes.
8 MR. BLASSINGAME: (No audible response.)
9 MR. HAYTER: Member Hayter. Yes.
10 MR. BLASSINGAME: Member Hicks?
11 MR. HICKS: Yes.
12 MR. BLASSINGAME: Member Murphy?
13 (No response.)
14 MR. BLASSINGAME: Member Murphy?
15 MR. MURPHY: (No audible response.)
16 MR. BLASSINGAME: Member Prather?
17 MR. PRATHER: Prather. Yes.
18 MR. BLASSINGAME: Member Provost?
19 MR. PROVOST: Member Provost. Yes.
20 MR. BLASSINGAME: Member Sims?
21 (No response.)
22 MR. BLASSINGAME: Second Chair Sralla?
23 MR. SRALLA: Yes.
24 MR. BLASSINGAME: Member Stark?
25 (No response.)

1 MR. BLASSINGAME: Member Sullivan?

2 MR. SULLIVAN: [inaudible]. Thank you.

3 MR. BLASSINGAME: Member Thomas?

4 MS. THOMAS: Member Thomas. Yes.

5 MR. BLASSINGAME: That is a unanimous vote of
6 members present. I vote for it. So it is a yes. So,
7 we'll adopt that motion.

8 Any other comment on Chapter 224?

9 MS. MORIATY: Hicks has his hand raised.

10 MR. BLASSINGAME: Thank you.

11 Member Hicks, you have the floor.

12 MR. HICKS: Thank you, Mr. Chairman. Member
13 Hicks. Looking at Section, page 280 -- blue, page 44 of
14 75, for 224 chapter, specifically Section 17. It is
15 really a two-part question for staff.

16 Section (D) of 224.503 specifically limits
17 presentation of a contested case to 15 pages per party.
18 And also, later in that section, subsection (e) on page
19 282, limited to 15 minutes.

20 I am hopeful I never have to rely on that. But
21 I would hope -- I would be looking for more than 15 pages
22 to present my case and more than 15 minutes to do that.
23 So would there be consideration for extending those times
24 and those number of pages?

25 MR. BLASSINGAME: Staff.

1 MS. MORIATY: This is Laura Moriatty, General
2 Counsel. I just want to note that these are existing
3 limitations that we use currently. And to be frank, they
4 seem adequate to me.

5 If you can't deliver the themes of your message
6 to the Board in 15 minutes and 15 pages, they are going to
7 get confused anyway, is my thought. Because when you have
8 watched Board meetings where you consider contested cases,
9 under these rules, they don't feel short.

10 So my concern in making this bigger is that you
11 would only encourage parties to add, frankly, more fat to
12 their presentation -- stuff that is unessential, right.
13 And it would just lead the Board to be less focused on
14 your main arguments.

15 So I guess the question for the Committee is,
16 is the system working now? Because this is what we have.

17 Do you feel like parties are not fully able to present
18 their positions under the current constraints?

19 If so, we can definitely consider changing it.

20 But currently, the meetings, at least to me, are full.
21 Like, they have a lot of opportunity to [inaudible] --

22 (Audio interference.)

23 MR. BLASSINGAME: I am sorry. We have some
24 sound on the line.

25 (Pause.)

1 MR. BLASSINGAME: Somebody needs to mute a
2 line.

3 Does that answer your question? Or, do you
4 wish to make a motion?

5 MR. HICKS: This is Member Hicks. I don't know
6 if the rest of the Committee would have any feedback on
7 that. I just -- like I said, I don't have firsthand
8 experience, and I am thankful I don't.

9 But I would certainly feel, I guess, if my
10 livelihood depended on my ability to state my case, being
11 held to 15 minutes and 15 pages does seem restrictive.
12 But again, I do not have firsthand experience.

13 MR. SULLIVAN: Chairman, if I may --

14 MR. BLASSINGAME: Go ahead, Member.

15 MR. SULLIVAN: Member Sullivan. If I may,
16 Chair --

17 MR. BLASSINGAME: Member Sullivan. You have
18 the floor.

19 MR. SULLIVAN: Yes. Thank you.

20 I have actually -- just for information, for
21 Member Hicks. I have sat in the last two DMV Board
22 meetings, or actually three, where there were protests.
23 And I was not a party at all in either of the three. But
24 I can tell you that I did not have the impression that
25 anyone felt short of time.

1 Keep in mind too, by the time it gets to DMV
2 Board for decision, there has been ample opportunity for
3 people to make their cases. So, in one case, the
4 manufacturer won. In one case, the franchisee, the dealer
5 won.

6 So, just my observation, for what that is
7 worth. Thank you.

8 MR. BLASSINGAME: Member Hicks, does that
9 answer your questions?

10 MR. HICKS: This is Member Hicks. I thank
11 Member Sullivan for the context.

12 And certainly, I feel comfortable. And I will
13 ask him to help me, if I ever need help. Thank you.

14 MS. MORIATY: If I may, Chairman. This is
15 Laura Moriatty, General Counsel again. I just want to
16 point out that when the Board asks the parties questions,
17 that does not count against their time.

18 So all of the time that you hear parties
19 responding to Board questions and Board members trying to
20 suss out arguments through questions, those are not
21 counting against those 15 minutes. It is just 15 minutes
22 of pure presentation time at the beginning, where the
23 party gets to state their case, however they want to.

24 MR. BLASSINGAME: Thank you, ma'am.

25 Does anyone else have any recommendations for

1 Chapter 224?

2 MR. DURANT: Member Durant.

3 MR. BLASSINGAME: Member Durant.

4 MR. DURANT: I draw your attention to page 306,
5 blue page 306. Section 224.602(g).

6 MR. BLASSINGAME: Yes, sir.

7 MR. DURANT: This is in regards to Lemon Law, I
8 believe. In any award in favor of the Complainant, the
9 final order authority may require the dealer involved to
10 reimburse the Complainant, manufacturer, converter, or
11 distributor for the cost of any items or options added to
12 the motor vehicle, if one or more of those items
13 contributed to the defect that is the basis of the order,
14 repurchase, or replacement.

15 I don't object to the spirit of this.
16 Certainly, if I as a dealer installed something on the
17 vehicle that contributed to the defect, I understand that
18 I need to reimburse. But it leaves open post-sale
19 modifications to the vehicle.

20 I have sold many sports cars to many young
21 individuals who took it to a hot-rod shop and made
22 extensive modifications. And I don't want to be held
23 liable for those. So I encourage the Board to change that
24 language to only refer to dealer-installed options.

25 MR. BLASSINGAME: Do you wish to make a motion?

1 MR. DURANT: Staff, do you need this as a
2 motion? Should the whole Board vote on it?

3 MS. MORIATY: Sure. We can vote on it. It is
4 specific enough.

5 Yes. If you would like to vote on it, and make
6 it part of the written materials. Or if you are
7 comfortable just telling us. Either way can work.

8 MR. DURANT: Okay. I will make it a motion, so
9 the whole Board can vote on it. The motion is to restrict
10 this paragraph to only dealer-installed options that a
11 dealer has to reimburse.

12 MR. BLASSINGAME: We have a motion. Do I have
13 a second?

14 MR. HICKS: Member Hicks. Second.

15 MR. BLASSINGAME: We have a motion and a
16 second.

17 How do you vote, Chairman Bradburn?

18 MR. BRADBURN: Member Bradburn. Yes.

19 MR. BLASSINGAME: Member Donnelly?

20 MR. DONNELLY: Yes.

21 MR. BLASSINGAME: Member Doran?

22 MR. DORAN: Yes.

23 MR. BLASSINGAME: Member Durant?

24 MR. DURANT: Member Durant. Yes.

25 MR. BLASSINGAME: Member Ferguson?

1 MR. FERGUSON: (No audible response.)
2 MR. BLASSINGAME: Member Hall?
3 MR. HALL: Member Hall. Yes.
4 MR. BLASSINGAME: Member Hayter?
5 MR. HAYTER: (No audible response.)
6 MR. BLASSINGAME: Member Murphy?
7 MR. MURPHY: (No audible response.)
8 MR. BLASSINGAME: Member Hicks?
9 MR. HICKS: Member Hicks. Yes.
10 MR. BLASSINGAME: Member Prather?
11 MR. PRATHER: Prather. Yes.
12 MR. BLASSINGAME: Member Provost?
13 MR. PROVOST: Member Provost. Yes.
14 MR. BLASSINGAME: Second Vice Chair Sralla?
15 MR. SRALLA: (No audible response.)
16 MR. BLASSINGAME: Member Sullivan?
17 MR. SULLIVAN: Sullivan. Yes, thank you.
18 MR. BLASSINGAME: Member Thomas?
19 MS. THOMAS: Yes.
20 MR. BLASSINGAME: I support that. And so that
21 passes easily.
22 Does anyone else have a recommendation for
23 Chapter 224.
24 MS. PIERCE: I do.
25 MR. BLASSINGAME: Go ahead.

1 MS. PIERCE: This is Heather Pierce. And I
2 wanted to draw your attention to page 255, lines 14
3 through 18.

4 It talks about the Department shall issue a
5 notice of Department decision to license applicant,
6 license holder, and other person by certified mail return
7 receipt requested to last known address, and email
8 address, upon determination. And so on, and so forth.

9 I wanted to make a suggestion that we
10 incorporate the Texas Rules of Civil Procedure 21(a) as it
11 relates to the methods of service, so as to be in
12 alignment with the standard practice across Texas, and to
13 allow us more flexibility in noticing a party.

14 MS. MORIATY: This is Laura Moriaty, General
15 Counsel. So since this is a staff recommendation to
16 staff, we could just take it as a recommendation, unless
17 the Committee feels strongly that you want to make that
18 into a motion -- in which case, a Committee Member would
19 need to make it.

20 MR. BLASSINGAME: Committee, does anyone wish
21 to make a motion, or is staff allowed to change that?

22 MR. HICKS: Member Hicks. I support the staff
23 taking it on.

24 MR. DURANT: Member Durant. Second.

25 MR. BLASSINGAME: Well, we really don't need a

1 motion on that if we want staff to take care of it. So it
2 is done.

3 MR. HICKS: Mr. Chairman, this is Member Hicks.
4 Can I have the floor?

5 MR. HICKS: Yes, sir.

6 MR. HICKS: This is a question for staff.
7 Could we ask you guys to just apply those same rules
8 throughout any of the notifications throughout the
9 proposal? You know, each chapter that we have looked at
10 today? I think the consistency would help.

11 MS. MORIATY: This is Laura Moriatty, General
12 Counsel. Yes. We will take a look at it and apply them
13 as frequently and often as we can.

14 MR. HICKS: Member Hicks. Thank you.

15 MR. BLASSINGAME: All right. Does anyone else
16 have any recommendations for Chapter 224?

17 (No response.)

18 MR. BLASSINGAME: I will now move on to Agenda
19 Item 3, public comment.

20 David Richards, is there any comments from the
21 public?

22 MR. RICHARDS: No, Chairman. There are not.

23 MR. BLASSINGAME: We will now move to adjourn.

24 If we have no further business, I would like to entertain
25 a motion to adjourn.

1 MR. HICKS: Mr. Chairman, this is Member Hicks.
2 Could I ask one last question of staff?

3 MR. BLASSINGAME: Certainly.

4 MR. HICKS: As a new member, I am just curious.
5 What is the timeline for -- you know, what does it look
6 like for us? And when do we need to have some deadlines
7 to provide you guys final feedback on these proposals?

8 MS. MORIATY: So the plan is to have the Board
9 consider these at its December Board meeting as a
10 proposal. So if you could get us feedback, well, at least
11 a month in advance. So that is mid-November would be a
12 nice cutoff.

13 But you know, that is only the beginning, even
14 then, because we will still have the public comment phase.
15 So, even though -- if we can get it on the front end, it
16 is better, because it is hard to make changes after a
17 proposal. There is very limited kinds of changes you can
18 make.

19 But if you miss the opportunity to get it to us
20 before the December Board meeting, you can always do it
21 during the public comment period. That is 30 days after
22 we post in the *Texas Register* following that. And then we
23 are anticipating we will not be adopting at the February
24 meeting, but then at the April meeting, I believe, is when
25 we'll go to adoption.

1 So, that is the timeline. We still have two
2 months to get in any thoughts and ideas and rule text that
3 you might have, that you want to recommend.

4 MR. HICKS: Member Hicks. Thank you.

5 MR. HALL: This is Member Hall. A follow-up
6 question on that.

7 Is there -- so this rule process, I have got
8 sticky notes and stuff all over for non-substantive things
9 that kind of jumped out, commas and numbering that was off
10 and stuff like that. Obviously, I wasn't going to belabor
11 that during this meeting.

12 Is there a formal process whereby we send that
13 to you? Do we just send that to the person that is
14 setting these meetings up?

15 Do we need to direct that to the General
16 Counsel's office? What is the process for us just to
17 submit written feedback or notes like that to you?

18 MS. MORIATY: Sure. You can submit them to the
19 person who is setting these meetings up, and we will get
20 them distributed everywhere they need to be. That would
21 be fine.

22 If you want to refer them to me, you are
23 welcome to, but she is probably a contact email address
24 that you already have. So that should work.

25 MR. HALL: Thank you. Appreciate that.

1 MR. BLASSINGAME: Unless there's any further
2 business, I would like to entertain a motion to adjourn.

3 Do I have a motion from anyone to adjourn this
4 meeting?

5 MR. HALL: Member Hall makes the motion.

6 MR. BLASSINGAME: Member Hall.

7 MR. BRADBURN: Member Bradburn. Second.

8 MR. BLASSINGAME: Member Bradburn. All in
9 favor?

10 (A chorus of ayes.)

11 MR. BLASSINGAME: It is now 3:57, and we are
12 adjourned.

13 (Whereupon, at 3:57 p.m., the meeting was
14 concluded.)

C E R T I F I C A T E

MEETING OF: TxDMV Motor Vehicle Industry Regulation
Advisory Committee

LOCATION: Austin, Texas

DATE: September 13, 2023

I do hereby certify that the foregoing pages,
numbers 1 through 129, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Elizabeth Stoddard before
the Texas Department of Motor Vehicles.

DATE: September 28, 2023

/s/ Anna Marie Reyes
(Transcriber)

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