

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

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

Thursday,
December 14, 2023
9:00 a.m.

BOARD MEMBERS:

Charles Bacarisse, Chair
Tammy McRae, Vice Chair (absent)
Christian Alvarado
Stacey Gillman
Brett Graham
Sharla Omumu
John Prewitt
Darren Schlosser
Paul R. Scott

I N D E X

| <u>AGENDA ITEM</u> | <u>PAGE</u> |
|--|-------------|
| 1. Roll Call and Establishment of Quorum | 8 |
| 2. Pledges of Allegiance - U.S. and Texas | 9 |
| 3. Chair's Reports | 9 |
| A. Proposed 2024 Board Meeting Calendar | |
| 4. Executive Director's Reports | 10 |
| A. Texas Independent Automobile Dealers Association (TIADA) Town Hall Meetings | |
| B. V.G. Young School for County Tax Assessor Collectors Conference | |
| C. State Employee Charitable Campaign (SECC) Results | |
| D. Saluting Texas Lone Stars Recognition - Wendy Barron | |
| E. Introduction of New MVCPA Director | |
| F. Awards, Recognition of Years of Service, and Announcements | |
| CONTESTED CASE | |
| 5. Consideration and Approval of Proposed Final Order on Enforcement Case Texas Department of Motor Vehicles v. JNC Auto, LLC; Enforcement Docket No. 22-0013983; SOAH Docket No. 608-23-07192.ENF (ACTION ITEM) | 20 |
| RULE ADOPTION | |
| 6. Chapter 219. Oversize and Overweight Vehicles and Loads (ACTION ITEM) Amendments, §§219.11, 219.13, 219.14, 219.30-219.36, 219.41, 219.43, 219.61, and 219.63 (Relating to Cleanup) (Published 9/1/23 - 48 TexReg 4810) | 68 |
| ADVISORY COMMITTEE RECOMMENDATIONS | |
| 7. Customer Service and Protection Advisory Committee (CSPAC) and Motor Vehicle Regulation Advisory Committee (MVIRAC) Recommendations to TxDMV Board (BRIEFING ONLY) | 84 |
| RULE PROPOSALS | |
| 8. Rule Review | |
| A. Rule Review Process Overview (BRIEFING ONLY) | 73 |

| | | |
|-----|--|-----|
| B. | Rule Review Proposals under Government Code §2001.039: Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers (ACTION ITEM) | 77 |
| 9. | Chapter 206, Management (ACTION ITEM) Amendments, Subchapters A, B, C, E, F, G, and H Repeal, Subchapter D (Relating to Cleanup) | 108 |
| 10. | Chapter 215, Motor Vehicle Distribution (ACTION ITEM) Amendments, Subchapters A, C, D, E, F, H and J New §§215.102, 215.120, 215.121, 215.134, and 215.143 Repeal, §§215.112, 215.146, 215.501, 215.502, and 215.505; and Subchapters B, G, and I (Relating to SB 422, Fingerprinting, Legislative Implementation, and Cleanup) | 112 |
| 11. | Chapter 221, Salvage Vehicle Dealers (ACTION ITEM) Amendments, Subchapters A, B, C, D, and F Repeal, §221.48 and Subchapter E (Relating to SB 422, Fingerprinting, and Cleanup) | 152 |
| 12. | Chapter 217, Vehicle Titles and Registration (ACTION ITEM) Amendments, §217.56 (Relating to Cleanup) | 157 |
| 13. | Chapter 218, Motor Carriers (ACTION ITEM) Amendments, §§218.10, 218.16, 218.33, 218.64, 218.70, 218.71, and 218.72 Repeal, §§218.73, 218.75, 218.76, 218.77 and 218.78 (Relating to HB 2190 and Cleanup) | 161 |
| 14. | Chapter 219. Oversize and Overweight Vehicles and Loads (ACTION ITEM) Amendments, §§219.82, 219.120, 219.121 and 219.126 Repeal, §§219.122, 219.124 and §219.127 (Relating to Cleanup) | 165 |
| 15. | Chapter 217, Vehicle Titles and Registration (ACTION ITEM) Amendments, §217.63 (Relating to Digital License Plates) | 168 |

| | | |
|---------------------------|---|-----|
| 16. | New Chapter 224, Adjudicative Practice and Procedure (ACTION ITEM) (Relating to Adjudicative Practice and Procedure, including Contested Cases) | 180 |
| BRIEFING AND ACTION ITEMS | | |
| 17. | Board Governance Documents Update (ACTION ITEM) | 188 |
| 18. | Specialty Plate Designs (ACTION ITEMS) | 194 |
| | A. Florida A&M University-New Design Proposed under Transportation Code §504.851 | |
| | B. Premium Embossed Black and Yellow- New Design Proposed under Transportation Code §504.851 | |
| | C. Premium Embossed Black and Gold- New Design Proposed under Transportation Code §504.851 | |
| | D. Premium Embossed Blue and Gold- New Design Proposed under Transportation Code §504.851 | |
| 19. | Appointment of Members to the Household Goods Rules Advisory Committee (HGRAC) (ACTION ITEM) | 197 |
| 20. | Legislative and Public Affairs Committee Update (BRIEFINGS ONLY) | 200 |
| | A. Legislative Activity Update | |
| | B. 88th Texas Legislature Bill Implementation Status Report | |
| | I. Update on HB 718 | |
| | C. Proposed Development Schedule for Statutory Change Recommendations to the 89th Legislature | |
| | D. New Facilities Update | |
| | E. RTS Update | |
| 21. | Finance and Audit | |
| | A. Delegation of Authority to the Executive Director to Approve and Execute the Contract for the Regional Service Centers' Queueing System (ACTION ITEM) | 209 |
| | B. FY 2023 Annual Financial Report (BRIEFING ONLY) | 212 |
| | C. Internal Audit Division Status Update (BRIEFING ONLY) | 216 |

CLOSED SESSION

- | | | |
|-----|--|------|
| 22. | The Board may enter into closed session under one or more provisions of the Texas Open Meetings Act, Government Code Chapter 551, including but not limited to: Section 551.071 Section 551.076 Section 551 | 64 |
| 23. | Action Items from Closed Session | 64 |
| 24. | Public Comment | none |
| 25. | Adjournment | 222 |

P R O C E E D I N G S

1
2 MR. BACARISSE: Good morning. My name is
3 Charles Bacarisse, and I'm pleased to open this Board
4 meeting of the Texas Department of Motor Vehicles. It is
5 8:59 a.m., and I'm now calling the Board meeting for
6 December 14, 2023 to order.

7 I want to note for the record the public notice
8 of this meeting, containing all items on the agenda, was
9 filed with the Office of the Secretary of State on
10 December 5, 2023.

11 Before we begin today's meeting, please place
12 all cell phones and other communication devices on silent
13 mode. Also, as a courtesy to others, please do not engage
14 in side conversations in the meeting room.

15 I want to welcome those who are with us for
16 today's Board meeting.

17 If you wish to address the board or speak on an
18 agenda item during today's meeting, please complete a
19 speaker's sheet at the registration table or send an email
20 to GCO_General@TxDMV.gov. That's GCO [General@TxDMV.gov](mailto:GCO_General@TxDMV.gov).

21 Please identify in your email the specific item
22 you're interested in commenting on, your name and address,
23 and whether you are representing anyone or speaking for
24 yourself. If your comment does not pertain to a specific
25 agenda item, we'll take your comment during the general

1 public comment portion of the meeting.

2 In accordance with the department's
3 administrative rule, comments to the board will be limited
4 to three minutes. To assist each speaker, a timer has
5 been provided at the podium. The timer light will be
6 green for the first two minutes, yellow when the speaker
7 has one minute left, and then red when the speaker's time
8 is up. Individuals cannot accumulate time from other
9 speakers, and comments should be pertinent to the issue
10 stated on the comment sheet.

11 When addressing the board, please state your
12 name and affiliation for the record, and there are a few
13 things that will help this Board meeting run more smoothly
14 and assist the court reporter back here to getting an
15 accurate record. We want you to identify yourself before
16 speaking, speak clearly and slowly, do not speak over
17 others, and ask the chair for permission to speak and be
18 sure to get recognized before speaking.

19 I'd like to thank our court reporter who is
20 transcribing our meeting back there.

21 And before we begin today, I'd like to remind
22 all presenters and those in attendance of the rules of
23 conduct at our Board meetings. The department's
24 administrative rule: The chair has the authority to
25 supervise the conduct of these meetings, and that includes

1 the authority to determine when a speaker is being
2 disruptive of the meeting or is otherwise violating the
3 timing or presentation rules that I just discussed.

4 So now I'd like to have a roll call of the
5 board members, so please respond verbally when I call your
6 name.

7 Member Alvarado, are you present?

8 MR. ALVARADO: Here.

9 MR. BACARISSE: Member Gillman?

10 MS. GILLMAN: Here.

11 MR. BACARISSE: Member Graham?

12 MR. GRAHAM: Here.

13 MR. BACARISSE: Member Omumu?

14 MS. OMUMU: Present.

15 MR. BACARISSE: Member Prewitt?

16 MR. PREWITT: Here.

17 MR. BACARISSE: Member Schlosser?

18 MR. SCHLOSSER: Here.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Here.

21 MR. BACARISSE: And let the record reflect that
22 I, Charles Bacarisse, am here too, and we do have a
23 quorum.

24 Also, let's let the record reflect that Vice
25 Chair McRae is absent today.

1 Now let's move to agenda item 2, which is the
2 pledges. Please stand and honor our country as we recite
3 the pledges of allegiance to the U.S. and Texas flags, and
4 I'll turn it over to Member Schlosser to lead us in the
5 U.S. pledge.

6 (The U.S. pledge was recited.)

7 MR. BACARISSE: Now Member Scott will lead us
8 in the Texas pledge.

9 (The Texas pledge as recited.)

10 MR. BACARISSE: Thank you both.

11 Agenda item 3, chair's reports, we're going to
12 cover the proposed 2024 Board meeting schedule which may
13 be found in your Board books on page 7. These dates are
14 tentative, but we wanted to make sure the schedule is
15 available for your planning purposes.

16 The board typically meets the second Thursday
17 of the month of every other month at 9:00, and the draft
18 schedule is consistent with the board's typical meeting
19 schedule. If there's a change, the department's Board
20 liaison will notify the board members. As meeting dates
21 are confirmed, they'll be posted on the department's
22 website.

23 So now I'd like to turn to agenda item 4, which
24 is the executive director's reports, and I'll turn it over
25 to Executive Director Daniel Avitia for agenda items 4.A

1 through 4.F.

2 MR. AVITIA: Chairman, members, good morning.
3 For the record, my name is Daniel Avitia. I have the
4 pleasure of serving as the executive director for the
5 Texas Department of Motor Vehicles. I appreciate the time
6 on the agenda this morning to share the executive
7 director's report.

8 I'll start with agenda item 4.A. Chairman,
9 members, item 4.A is a briefing document and can be
10 located on page 8 of your Board books.

11 The Texas Independent Automobile Dealer
12 Association hosted a series of town hall meetings
13 throughout Texas from October through November to discuss
14 navigating the future of temporary tags.

15 Town hall meeting locations included Corpus
16 Christi, Donna, Arlington, and Abilene. Directors Luna,
17 Quintero, Thompson, Johnston, and Yawn attended the series
18 of town hall meetings and provided information related to
19 the implementation of House Bill 718.

20 Additionally, division deputy directors, Brian
21 Gee and Clint Thompson, attended one of the town hall
22 meetings. The town hall series include dealers at the
23 regional level, various agency representatives, tax
24 assessor-collectors, and legislative staff members.

25 Topics discussed included transition from paper

1 temporary tags to metal tags, webDEALER requirements and
2 training opportunities, and open floor dialogue. TxDMV
3 staff provided an overview and update of the House Bill
4 718 and significant dates that are outlined in the bill.

5 TxDMV received positive feedback from the
6 dealership community, the tax assessor-collectors, and
7 legislative offices. We are committed to continued
8 collaboration with our stakeholder groups on this very
9 important implementation.

10 Chairman, members, that concludes my remarks on
11 item 4.A, and I'm happy to continue unless there's some
12 questions.

13 MR. BACARISSE: Any questions, members, so far?

14 (No response.)

15 MR. BACARISSE: I see none. Continue, please.

16 Thank you.

17 MR. AVITIA: Thank you, Chairman.

18 Members, agenda item 4.B is a briefing document
19 as well and can be found on page 9 of your Board books.

20 The Texas Department of Motor Vehicles staff
21 attended the 41st Annual B.G. Young School for Tax
22 Assessor-Collectors Conference between November 14 through
23 the 16 in Waco, Texas. TxDMV staff from the Executive
24 Office, the Motor Vehicle Division, Consumer Relations
25 Division, Enforcement, GSC, IT and VTR attended the

1 conference.

2 TxDMV staff provided training and collaboration
3 opportunities on topics such as orientation for new tax
4 assessor-collectors, DMV Fund adjustment error reports and
5 hot checks, and as well, TxDMV roundtables for all
6 counties in titling fraud training. In addition, Deputy
7 Director Luna provided a DMV update as well as legislative
8 update during the conference's general session.

9 The conference provided various networking and
10 collaborative discussions between attendees and TxDMV
11 staff, which continue to build on the ongoing partnerships
12 and the collaboration that we have with the tax assessor-
13 collectors and their staff. We appreciate them.

14 Chairman, members, that concludes my remarks on
15 item 4.B. I'm happy to answer any questions.

16 MR. BACARISSE: Any questions, members?

17 (No response.)

18 MR. BACARISSE: Thank you. Please continue.

19 MR. AVITIA: Yes, sir. Thank you.

20 Members, agenda item 4.C can be found on page
21 10 of your Board materials.

22 The annual State Employee Charitable Campaign,
23 or SECC, ran from September 1 through October 31. The
24 SECC is an annual event in which state employees can
25 voluntarily donate to different charities.

1 For 29 years the State of Texas employees have
2 embraced fellow Texans through the SECC by contributing
3 millions of dollars each year, one gift at a time. The
4 SECC gives state employees a way to give back to their
5 communities and make an impact beyond their daily role in
6 public service.

7 This year's goal was \$3,500 for the agency.
8 However, thanks to the amazing efforts by our wonderful HR
9 Department -- some of them sitting right here to my
10 right -- and staff's amazing generosity throughout the
11 agency, the TxDMV raised a grand total of \$8,569 in
12 contributions for this important organization. The DMV
13 donated funds equally to St. Jude Children's Hospital,
14 Lone Star Circle of Care, and Assistance to Domestic
15 Victims of Human Trafficking.

16 It takes great teamwork to change lives, and
17 I'm so proud and grateful for the agency's support of such
18 a great cause and exceeding our 2023 annual goal. Thank
19 you all for your support and collaboration. HR did a
20 fantastic job.

21 Chairman, members, that concludes my remarks on
22 item 4.C.

23 MR. BACARISSE: I just want to add my
24 congratulations to the agency as well. Thanks for being
25 generous.

1 MR. AVITIA: Indeed. Thank you, Chairman.

2 Agenda item 4.D, members, can be found on page
3 11 of your Board materials, and this is a briefing item
4 only.

5 The Texas Government Insider selected our very
6 own chief information security officer -- I'm sorry --
7 chief information officer -- I think I just demoted you,
8 Wendy -- in Saluting Texas Lone Stars feature in the
9 November 10, 2023 issue.

10 Saluting Texas Lone Stars features highlights
11 on Wendy's career, what she likes about public service,
12 and the best advice she ever received. Wendy also shared
13 what people should know about the DMV, and I quote, "The
14 TxDMV is an excellent workplace. I have highly skilled
15 and dedicated professionals. It is an exciting time to be
16 part of the TxDMV."

17 Wendy, congratulations for being featured in
18 the Texas Government Insider.

19 Members, please join me in congratulating
20 Wendy.

21 (Applause.)

22 MR. AVITIA: More exciting news, Chairman,
23 members, agenda item 4.E is located on page 12 of your
24 Board books.

25 I'm very pleased to introduce Mr. William Diggs

1 as the new Motor Vehicle Crime Prevention Authority
2 director. His new post is effective tomorrow, December
3 15.

4 Mr. Diggs has an extensive background in public
5 service, with 34 years of prior law enforcement
6 experience, with an emphasis on motor vehicle theft and
7 law enforcement command.

8 William joined the TxDMV in December 2015 as
9 the assistant chief of the regional service section and
10 was later promoted to the chief regional service center
11 director, where he oversaw 16 regional service centers,
12 175 staff members, and more than two million motor vehicle
13 transactions per year.

14 He retired from the Texas Department of Public
15 Safety after 29 years of serving Texas as a state trooper,
16 a lieutenant in the Texas State Capitol, and a captain and
17 a major in the Texas Highway Patrol Division. William
18 also served as a law enforcement trainer and achieved a
19 master peace officer certification. He graduated from
20 Midwestern State University with a bachelor of applied
21 arts and sciences degree.

22 We are confident that William will help build
23 on the past successes and future endeavors of the MVCPA
24 program.

25 Chairman, members, please join me in

1 congratulating William on his appointment.

2 (Applause.)

3 MR. AVITIA: Do we have William in the house?

4 MR. BACARISSE: Yeah, he's right over there.

5 MR. AVITIA: Okay. There you are, sir. Thank
6 you, William.

7 (Applause.)

8 MR. AVITIA: Chairman, members, before I move
9 on, I also want to express my sincere appreciation to Mr.
10 Earl Pence, who has managed the MVCPA as the interim
11 director since August. Earl did a fantastic job in his
12 interim role.

13 Please join me in congratulating Earl as well.

14 (Applause.)

15 MR. BACARISSE: Can I say something real
16 quickly about that?

17 MR. AVITIA: Absolutely, Chairman.

18 MR. BACARISSE: I was thankful for the
19 opportunity to sit before the MVCPA Board at their meeting
20 in Houston last week and to address them briefly. I think
21 it was very clear that we've got a wonderful partnership,
22 a collaborative relationship between the MVCPA and this
23 Board and this agency, and that's as it should be.

24 So again, thank you, and look forward to your
25 leadership, William, and I appreciate the work the MVCPA

1 does. Thank you.

2 MR. AVITIA: Chairman, thank you.

3 Agenda item 4.F, members, can be found on page
4 13 of your Board materials.

5 At this time I would like to recognize our
6 employees who have reached a state service milestone. We
7 celebrate these employees as part of our show of
8 appreciation for their years of service and dedication to
9 the DMV and the citizens of our great state.

10 We will start with 20 years of service, and so
11 for 20 years of service we have: Ms. Annette Quintero,
12 Vehicle Titles and Registration; Carolyn Fallin, Motor
13 Carrier Division; Daniel Clark, Motor Carrier Division;
14 Lisa Samaniego, Consumer Relations Division; Catherine
15 Torres, Human Resources Division; and last, Donald Ogle
16 with the Enforcement Division.

17 Next with 25 years of state service we have Mr.
18 Juan Luna with the Enforcement Division.

19 And finally, members, with 30 years of state
20 service we have Ms. Lori Carr with the Motor Vehicle
21 Division, and Cynthia Turi with the Motor Carrier
22 Division.

23 Members, I'd like to share a few words about
24 two of the recipients that are with us here today.

25 The first is Ms. Annette Quintero, who serves

1 as the division director for the Vehicle Titles and
2 Registration Division. She has received a service
3 milestone of 20 years, as I just mentioned.

4 Prior to joining the DMV last November, Annette
5 served in various leadership positions. Her management
6 experience includes services as a field service manager,
7 director of communications, deputy director of program
8 innovation and communications.

9 I have enjoyed working closely with Annette on
10 legislative activities, operations and other significant
11 activities that impact our customers and our staff.

12 Annette is a professional and analytical leader and has
13 demonstrated her creativity and innovation experience.

14 She has done an excellent job of representing
15 the department at regional and statewide training events
16 and keeps employees' best interests in mind always. I'm
17 thankful for Annette's character, support of staff, and
18 her innovative efforts to improve efficiency.

19 Chairman, members, next we have Ms. Catherine
20 Torres, who serves as a human resources specialist in the
21 Human Resources Division and has also reached a service
22 milestone of 20 years.

23 Prior to joining the DMV in August of '22,
24 Catherine worked in human resources for the Texas
25 Department of Criminal Justice for almost 19 years.

1 Catherine specializes in the administration of the new
2 employee orientation program. In addition, Catherine is a
3 benefits specialist and administers FMLA and oversees the
4 employee service and award program.

5 Catherine has brought an amazing wealth of
6 knowledge and skills to the Human Resources Division. We
7 are very lucky to have Catherine in our HR Division in
8 this wonderful agency.

9 Congratulations to Annette and Catherine.

10 Now, members, we also have the following
11 individuals that have retired from the agency. First we
12 have Melissa McClanahan with Vehicle Titles and
13 Registration, 25 years of service; Ms. Lisa Cuellar with
14 the Enforcement Division, 30 years of state service; and
15 finally, Brad Beaty with the Vehicle Titles and
16 Registration Division, 31 years of state service prior to
17 his retirement.

18 Chairman, members, would you please join me in
19 congratulating those individuals for their years of
20 service and dedication to the State of Texas.

21 (Applause.)

22 MR. AVITIA: Lastly, Chairman and members,
23 would you please join me in the front of the dais for a
24 photo opportunity with Ms. Quintero and Ms. Torres for
25 their state years of service.

1 (Pause for presentations and photos.)

2 MR. AVITIA: Chairman, members, this concludes
3 my executive director's report, and again, I appreciate
4 the time and thank you.

5 MR. BACARISSE: Thank you, Daniel.

6 Before we move to the oral presentation for one
7 of our agenda items -- item 5 is a contested case --
8 General Counsel Laura Moriatty will present the procedural
9 history and summary of the case.

10 So shall I give you the floor?

11 MS. MORIATY: Please, sir.

12 MR. BACARISSE: Thank you.

13 MS. MORIATY: Good morning, Board. Laura
14 Moriatty, general counsel of the Department of Motor
15 Vehicles. I'm here to present your contested case for the
16 day. This one is a licensure case brought by the
17 department against JNC Auto, LLC. JNC holds a general
18 distinguishing number issued by the department.

19 So the questions for the board to decide today
20 are, first, whether JNC Auto violated the board's rules
21 and statutes, and then if you find that it did, we have to
22 decide what the penalty is, whether we revoke JNC Auto's
23 GDN; if we don't revoke, whether we reinstate JNC's access
24 to the temporary tag system, and then whether to assess a
25 civil penalty against JNC Auto, and if so, what the civil

1 penalty should be.

2 This case began back on January 9, 2023, when
3 the department issued a notice of department decision and
4 denied JNC Auto access to the temporary tag system. The
5 department then issued a first amended notice of
6 department decision on February 28 and set the case for
7 hearing at the State Office of Administrative Hearings,
8 which I'm going to call SOAH, on May 23, 2023. The SOAH
9 administrative law judge -- from here on out I'll call
10 that an ALJ -- issued a proposal for decision on July 17,
11 2023.

12 In the proposal for decision -- which I'm going
13 to call the PFD, and I think that's the last acronym --
14 the ALJ found several violations. First they found that
15 JNC had misused buyer's temporary tags in several ways:
16 first, by issuing successive temporary tags for each of
17 three vehicles, so JNC Auto would issue a temporary tag
18 when they initially sold the car and then issue two
19 subsequent tags.

20 The ALJ said that JNC Auto did this to appease
21 customers who were frustrated that the county was taking a
22 long time with their title and registration processing, so
23 when the first tag would expire, he would reissue two more
24 in order to keep them from getting pulled over.

25 Another way in which JNC Auto had violated our

1 rules was by issuing three successive temporary tags for a
2 vehicle that he hadn't actually sold. So between these
3 two kinds we have nine temporary tags that are issued
4 incorrectly. And then he also issued temporary tags
5 without recent state inspections, in violation of the
6 rules.

7 Other violations: JNC Auto had failed to
8 transfer title and registration on a vehicle timely and
9 had failed to file monthly vehicle income tax statements
10 with the county; we'll call those VITs.

11 JNC Auto also failed to make records available
12 for inspection by our representative when we came during
13 normal business hours.

14 So those were the violations that the ALJ
15 found, and based on those violations, the ALJ recommended
16 that the board not revoke JNC Auto's GDN and reinstate
17 JNC's access to the temporary tag system. But the ALJ did
18 recommend that the board assess a penalty of \$11,500
19 against JNC Auto.

20 That was \$500 for each of the incorrectly
21 issued temporary tags for a total of \$4,500; \$3,000 for
22 issuing temporary tags without timely inspections; \$1,000
23 for failing to title and register a sold vehicle timely;
24 \$2,000 for failing to file VIT statements; and \$1,000 for
25 failing to make records available for inspection when we

1 came.

2 So on July 25 the department's attorney filed
3 exceptions to the decision. Those are included in your
4 Board materials. The ALJ issued a response to the
5 exceptions -- that's also in your Board materials -- on
6 August 7, stating that there were no changes necessary in
7 response to the department's exceptions and that the case
8 was ready for the board to look at it. So that's how we
9 got here today.

10 Both parties received notice that you would be
11 taking up this case at this meeting, but JNC Auto did not
12 respond. Only the department requested time to present
13 oral argument. However, a representative of JNC Auto is
14 here today and has requested to make public comment, so
15 they will have an opportunity, when the chairman calls for
16 public comment, to make a three-minute comment to you at
17 the end of this presentation.

18 Now I want to review with you your options
19 today as you're considering this case. At the outset it's
20 important to understand the difference between the role of
21 SOAH and the role of the board in deciding these contested
22 cases.

23 SOAH's job is to hear the evidence, to
24 determine what's believable, to decide what's going to be
25 in the record and what's going to stay out of the record,

1 and then to make recommended findings of fact and
2 conclusions of law and to recommend a penalty to you.

3 So the board cannot step into SOAH's
4 jurisdiction with regard to finding facts, hearing
5 evidence, making new facts, those are all clearly
6 restricted to SOAH's jurisdiction. What your authority is
7 is to decide whether when we apply the facts that SOAH
8 found to your laws and your rules, whether the SOAH judge
9 interpreted those rules and statutes correctly.

10 And you also have leeway to determine the
11 sanction in the case, figure out what is the appropriate
12 sanction, and even if it's something different than what
13 the ALJ recommended.

14 So to do that you have three options today:
15 You could just accept the ALJ's proposal for decision,
16 accept the findings of fact, the conclusions of law and
17 the sanction recommendation. That would result in the
18 board not revoking JNC's GDN, reinstating JNC Auto's
19 access to the temporary tag system, and assessing an
20 \$11,500 civil penalty.

21 You could also amend portions of the PFD, adopt
22 the findings of fact and the conclusion of law as amended,
23 and then issue a sanction that's potentially different
24 from what the ALJ recommended.

25 If you do so, any changes to the PFD must

1 comply with Section 2001.058(e) of the Government Code,
2 and that means we can only make changes to a finding of
3 fact or a conclusion of law under very specific
4 circumstances.

5 For findings of fact it's essentially if the
6 ALJ made a typo that we're correcting. We cannot create
7 new findings of fact, we can't remove findings of fact,
8 and we can't change or fix findings of fact with regard to
9 the actual facts that they hold.

10 We can also make a change if the ALJ misapplied
11 or misinterpreted applicable law, agency rules, written
12 policies, or prior administrative decisions, or relied on
13 an administrative decision that we now feel was decided
14 incorrectly.

15 So those are the limited ways in which we can
16 change a finding of fact or conclusion of law. And that
17 means that if you're making a motion to change a finding
18 of fact or conclusion of law, I need you to identify the
19 specific change you're requesting, identify the law that
20 was misapplied or misinterpreted, explain why that
21 interpretation or application was incorrect, and then
22 explain how the findings of fact given to us by the ALJ
23 support your interpretation. We can't make any conclusion
24 if we don't have the findings of fact to support it.

25 So your third option is to remand a portion of

1 the decision to the State Office of Administrative
2 Hearings, but that option is much more limited than it
3 sounds initially. We can remand if there's an area that
4 the SOAH ALJ hasn't looked at at all that you need
5 findings of fact on, but we can't ask the SOAH ALJ to
6 revisit findings already made or to make findings that are
7 opposite the findings that were already made.

8 And the SOAH ALJ is not required to take our
9 remand. It could very well kick it right back to us
10 without making any changes, just as it did on the
11 exceptions.

12 So you as a Board have the authority and the
13 discretion to determine the penalty in this case. In
14 deciding the amount of the penalty, we look to Texas
15 Occupations Code 2301.801(b), which requires when you're
16 setting a civil monetary penalty that the board look at
17 the seriousness of the violation, the economic damage to
18 the public caused by the violation, the history of
19 previous violations, the amount necessary to deter a
20 future violation, efforts to correct the violation, and
21 then my favorite, any other matter which justice may
22 require.

23 Similarly, in determining whether to revoke,
24 the board must decide that the facts in this case fall
25 under one of the categories under Texas Occupations Code

1 2301.651, but those reasons include that the board may
2 revoke a license for a violation of Board rules and
3 statutes.

4 If you make a motion to change the proposed
5 sanction, we just need you to explain how the new sanction
6 is appropriate and how it's supported by the factors from
7 the Occupations Code and the facts in this case.

8 So with all of that being said, if there are no
9 questions for me, I will turn it back over to Chairman
10 Bacarisse to introduce the attorney and describe the rules
11 that govern the oral presentations.

12 MR. BACARISSE: Before we move to those oral
13 presentations from one of the parties of the contested
14 case, General Counsel has explained under the board's
15 rules a party that timely submitted a request to make an
16 oral presentation will be allowed up to 15 minutes to make
17 that presentation.

18 In this case, only the department submitted a
19 timely request for that oral presentation. Respondent JNC
20 Auto did not submit a request to do an oral presentation,
21 but we certainly will take their comments in the public
22 comment way, after we hear from the agency here.

23 During this oral presentation, time spent by a
24 party -- in this case, us -- to any Board questions is not
25 counted against the party's time. The timer light will be

1 green for the first 14 minutes, yellow when there's one
2 minute left, and then red when the party's time is up.

3 I'd also like to remind board members and the
4 party that the board's decision must be based solely on
5 the evidence contained within the administrative record,
6 as Laura had pointed out, from the State Office of
7 Administrative Hearings.

8 And if a board member asks a question about
9 evidence that's not in the SOAH's administrative record
10 for this case, the parties will respond by saying that
11 that question is about evidence that's out or not in the
12 SOAH's administrative record.

13 The petitioner, the Texas Department of Motor
14 Vehicles, is represented by Damien Shores, who will now
15 make the department's oral presentation in this contested
16 case.

17 So, Mr. Shores, you have the floor.

18 MR. SHORES: Good morning, Board members and
19 Executive Director Avitia. My name is Damien Shores and
20 I'm an Enforcement attorney with the Texas Department of
21 Motor Vehicles.

22 The violations at issue in this contested case
23 concern tag misuse, failure to inspect vehicles within 180
24 days prior to tag issuance, failure to timely title and
25 register a vehicle, failure to make records available for

1 inspection during business hours, and failure to file
2 monthly motor vehicle inventory tax statements, which I
3 will refer to as VIT statements moving forward. These VIT
4 statements were during the year 2021.

5 So today I'm going to be asking the board to
6 issue a final order in this matter that amends the
7 findings of fact and conclusions of law in the proposal
8 for decision -- or PFD moving forward -- and basically I'm
9 asking you to do three things.

10 One is to correct the administrative law judge,
11 or ALJ's misapplication of the law regarding respondent's
12 issuance of 99 buyer's temporary tags between May 2021 and
13 April 2022, for which there was no VIT statement on file
14 reporting that the vehicles had been sold. For reference,
15 this is allegation number 11 in the first amended notice
16 of department decision.

17 Number two, I will be asking the board to
18 revoke respondent's GDN, and three, I will be asking the
19 board to assess a civil penalty in the amount of \$16,000.

20 The reasons to support these changes arise from
21 the following, which fall into four categories: number
22 one is the ALJ's misapplication of applicable law; number
23 two is agency rules; three, written policies; and four,
24 prior administrative decisions, specifically in regards to
25 the inference of tag misuse from the existence of

1 discrepancies between the tag report and VIT statements
2 and in regards to appropriate sanctions for the nature and
3 number of respondent's violations of state statute and
4 Board rule.

5 Where the ALJ misapplied or misinterpreted
6 applicable law in regards to tax misuse, I'd like to
7 direct your attention to page 46 of your Board book. That
8 is the proposal for decision, or PFD in this matter.

9 On page 46, the ALJ states: "To the extent
10 staff is seeking to establish additional violations
11 predicated on discrepancies between tags issued versus
12 sales report in VIT statements, its proof falls short, and
13 this is so despite the presumption under the board's rule
14 that a vehicle was not in respondent's inventory if the
15 vehicle is not listed in the relevant monthly VIT
16 statement."

17 The ALJ misapplied Texas Administrative Code
18 Rule 215.505. Specifically the term "fraudulently
19 obtained temporary tags from the temporary tag database"
20 means a dealer misused the temporary tag database to
21 obtain: one, an excessive number of temporary tags
22 relative to dealer sales; two, temporary tags for a
23 vehicle or vehicles not in the dealer's inventory and, of
24 note here, a vehicle is presumed not to be in the dealer's
25 inventory if the vehicle is not listed in the relevant

1 monthly VIT statement; or three, access to the temporary
2 tag database for a fictitious user or person using a false
3 identity. That's not really at issue here, that third
4 one.

5 In the present matter, the ALJ found in the PFD
6 that respondent had failed to file VIT statements for May
7 through December of 2021, which is a violation of Tax Code
8 Section 23.122.

9 It is well established that a dealer may not
10 issue a buyer's temporary tag if a sale has not occurred.

11 There is a presumption under Texas Administrative Code
12 215.505 that a vehicle is not in a dealer's inventory if
13 the vehicle is not listed in the VIT statement.

14 Since respondent did not produce any VIT
15 statements at the hearing for the months in question, it
16 can be presumed that any tags he issued during this time
17 were fraudulently obtained temporary tags from the
18 temporary tag database.

19 In addition to the presumption that a vehicle
20 is not in the dealer's inventory if the vehicle is not
21 listed in the dealer's relevant monthly VIT statement, an
22 excessive number of temporary tags relative to dealer
23 sales also meets the criteria for fraudulently obtaining
24 temporary tags from the temporary tag database.

25 The ALJ used respondent's statement that he

1 never issued a buyer's temporary tag on a vehicle he did
2 not actually sell as incontrovertible evidence to rebut
3 the presumption that issuing tags for vehicles not on VIT
4 statements is issuing tags for vehicles not in their
5 inventory.

6 Thus, the ALJ gave more weight to respondent's
7 statement than the tag reports, the missing VIT
8 statements, and the actual filed VIT statements, despite
9 the fact that in finding of fact number 15, the ALJ found
10 that respondent issued three buyer's temporary tags for a
11 vehicle that was sold by another dealer.

12 Based on this inconsistency, the ALJ did not
13 properly apply or interpret the law when he used the
14 respondent's statement to rebut a presumption that
15 respondent issued buyer's temporary tags for vehicles not
16 in their inventory.

17 Now, starting on the bottom of page 47 of your
18 Board book, the ALJ writes in the PFD that "Staff's proof
19 does not permit the ALJ to infer from the existence of
20 discrepancies, and no more, that respondent had more
21 likely than not issued additional buyer's tags without
22 having underlying sales or vehicles in inventory,
23 vis-à-vis other potential explanations or at least does
24 not do so persuasively."

25 Here the ALJ also misinterpreted and misapplied

1 the law. In NJIM Auto Group case that this Board heard at
2 the last Board meeting in October, the ALJ in that case
3 did infer from the existence of discrepancies between the
4 tag report and VIT statements that the respondent issued
5 377 buyer's tags but only reported 30 sales, which left
6 347 buyer's temporary tags unaccounted toward specific
7 sales from January of 2022 to June of 2022, thereby
8 finding that the respondent in that case violated Texas
9 Transportation Code Section 503.063 in the issuance and
10 misuse of buyer's temporary tags.

11 At the hearing in this matter, I entered
12 evidence showing that the respondent issued a total of 99
13 buyer's temporary tags between May of 2021 and April of
14 2022, for which there was no VIT statement on file
15 reporting that the vehicle had been sold.

16 Because the ALJ misinterpreted and misapplied
17 the law, I request that the findings of fact and
18 conclusions of law be changed to reflect that respondent
19 issued 99 buyer's temporary tags during the period of May
20 1 of 2021 through April 30 of 2022 without corresponding
21 vehicle sales, which is in violation of Texas
22 Transportation Code Section 503.063 and subject to
23 sanctions under Transportation Code 503.038(a)(12) and
24 Occupations Code Section 2301.651(a)(8).

25 Now on to the matter of revocation. As pointed

1 out by the administrative law judge in conclusion of law
2 number 13 -- and this is found on page 61 of your Board
3 book -- the board by statute has discretion to revoke
4 respondent's GDN, and I'm going to explain why in more
5 detail.

6 Earlier I mentioned the finding that the ALJ
7 made regarding the Tax Code violation. That's the one
8 where the respondent failed to file VIT statements with
9 the Harris County Tax Assessor-Collector's Office by the
10 10th of each month in each month beginning May of 2021
11 through December of 2021.

12 That violation is eligible for license
13 revocation. Specifically, Transportation Code Section
14 503.038(a)(10) states that the department may cancel a
15 dealer's GDN if the dealer has failed to demonstrate
16 compliance with Section 23.122 of the Texas Tax Code.

17 Additionally, the ALJ found that respondent
18 issued three buyer's temporary tags for a vehicle sold by
19 another dealer. The ALJ also found that respondent issued
20 two extra buyer's temporary tags for three different
21 buyers, in violation of the Texas Transportation Code.

22 These tag misuse violations are also eligible
23 for revocation. Based on Transportation Code Section
24 503.038(a)(12), the department may cancel a dealer's GDN
25 if the dealer misuses or allows the misuse of a temporary

1 tag authorized under this chapter. Furthermore, under
2 Occupations Code Section 2301.651(a)(8), the board may
3 revoke a license if the license holder violates the
4 temporary tag database requirements of Transportation Code
5 Section 503.0631.

6 In conclusion of law number 14 -- and this is
7 also on page 61 of your Board book -- the ALJ points out
8 that based on Transportation Code 503.0632(f) and Texas
9 Administrative Code Rule 215.505, the board has discretion
10 to continue the denial of respondent's access to the
11 department's temporary tag database for the five tag
12 misuse violations that were found to have occurred after
13 September 1 of 2021.

14 Also, in conclusion of law number 9 -- that's
15 on page 60 of the board book -- the administrative law
16 judge states that by failing to initiate registration and
17 title transfer within 30 days of selling a vehicle,
18 respondent violated statute and Board rules.

19 This violation is also eligible for revocation,
20 I just want to note that. Under Transportation Code
21 Section 503.038(a)(4), the department may cancel a
22 dealer's GDN if the dealer fails to assign any basic
23 evidence of ownership, including a certificate of title,
24 for a vehicle the dealer sells.

25 And the remaining violations, basically all the

1 violations found by the judge are eligible for revocation.
2 So because all the violations the respondent committed are
3 eligible for revocation by statute and rule, I do
4 recommend the board revoke respondent's GDN.

5 Finally, I want to address the appropriate
6 civil penalties to assess. In conclusion of law number
7 15, on page 61 of the board book, the ALJ states that
8 based on the violations identified in conclusions of law
9 number 6 through 11, the board has discretion to impose
10 civil penalties under either or both Texas Occupations
11 Code 2301.801 or Texas Transportation Code 503.95.
12 Together these statutes effectively give the board a civil
13 penalty range of \$50 to \$10,000 per violation.

14 In conclusion of law number 20, the ALJ only
15 recommended a \$500 civil penalty for each of the three
16 buyer's temporary tags respondent issued for a vehicle
17 sold by another dealer, for a total of \$1,500.

18 This penalty is too low given the gravity of
19 the violation. I recommend that the board assess a \$1,000
20 civil penalty for each of these three improperly issued
21 tags, for a total of \$3,000, which is in line with the
22 current disciplinary matrix and is also within the range
23 of the disciplinary matrix relied on by the ALJ, which was
24 the disciplinary matrix in effect prior to May 17 of 2023.

25 In conclusion of law number 19, the ALJ only

1 recommended a \$1,000 civil penalty for each of the three
2 buyer's temporary tags that respondent improperly issued
3 two additional tags, for a total of \$3,000. This penalty
4 is too low, because it assesses \$500 per each of the six
5 improperly issued buyer's temporary tags.

6 Instead, I recommend the board assess a civil
7 penalty of \$1,000 for each of the six improperly issued
8 temporary buyer's tags, for a total of \$6,000, which is
9 also in line with current and past disciplinary matrices.

10 In addition to being allowed by statute and
11 within the range of our current and past disciplinary
12 matrices, these modifications to the assessed civil
13 penalty are necessary because the ALJ did not properly
14 apply or interpret the factors in Occupations Code Section
15 2301.801(b) that the board considers in determining the
16 amount of a civil penalty, which includes the seriousness
17 of the violation, the amount necessary to deter a future
18 violation, and any other matter that justice may require.

19 To recap, given the tag misuse at issue in this
20 case, it's considered a very serious offense, it's a
21 terrible breach of trust that the state puts in a GDN
22 holder when it allows the licensee to access the state's
23 registration and title system.

24 A very strong sanction is necessary to reflect
25 the seriousness of the temporary tag misuse and to create

1 a sufficient deterrent to respondent and other dealers;
2 therefore, the appropriate sanction in this case for each
3 misuse of a buyer's temporary tag is \$1,000. This is
4 supported by the group that the board heard at the October
5 Board meeting.

6 And as for the remaining civil penalties, I do
7 not recommend any changes. Taken together with the civil
8 penalty increases I'm asking for, the total civil penalty
9 that should be assessed against respondent should be
10 \$16,000 instead of \$11,500.

11 Thank you.

12 MR. BACARISSE: Thank you, Mr. Shores. I
13 appreciate your briefing there.

14 Any questions from Board members for Mr. Shores
15 on his presentation?

16 Member Scott.

17 MR. SCOTT: Thank you. Paul Scott, for the
18 record.

19 Did the ALJ address any sanction for the
20 failure to provide access to the records?

21 MR. SHORES: Yes, Board Member Scott. The ALJ
22 assessed a \$1,000 civil penalty for that violation.

23 MR. SCOTT: All right. Also, on the VIT, the
24 dealer is also subject to penalty by the county, right,
25 for failure to file?

1 MR. SHORES: That is my understanding, yes.

2 MR. SCOTT: Okay. So there's potential there
3 that he could be fined by two separate entities?

4 MR. SHORES: I believe that could be the case.

5 MR. SCOTT: Okay. That's all I have. Thank
6 you.

7 MR. BACARISSE: Thank you.

8 Members, any other questions for Mr. Shores on
9 his presentation.

10 General Counsel Moriatty.

11 MS. MORIATY: I'm sorry. I have a quick
12 question for Mr. Shores.

13 Mr. Shores, you spoke about 99 tags that were
14 issued excessively, but I do not see that in the findings
15 of fact. Given that we don't have a finding of fact, how
16 can the board reach that conclusion?

17 MR. SHORES: Well, my suggestion would be to
18 amend one of the existing findings of fact to insert that
19 missing information.

20 MS. MORIATY: So you would agree with me that
21 the board cannot create findings of fact or make its own
22 findings of fact. Right?

23 MR. SHORES: My understanding is we cannot
24 create or add new ones, but we can amend existing ones.

25 MS. MORIATY: So, Board, I just want to help

1 out here with the understanding of how this law works.
2 Any new fact you find, whether we embed it in a finding
3 that exists or we don't, if we find a number, like that
4 there were 99 sales, that's a fact and it's not currently
5 in your findings of fact, so my concern is that the
6 argument Mr. Shores is making is not one that the judge
7 has given you the findings of fact to implement. My
8 concern is that this is not something that's within your
9 authority.

10 MR. BACARISSE: Okay. Point taken. Thank you,
11 Counsel.

12 Member Graham.

13 MR. GRAHAM: Is the number 99 anywhere in the
14 proposal for final decision?

15 MR. SHORES: Yes, Board Member Graham. The ALJ
16 does discuss it -- bear with me one moment.

17 MR. GRAHAM: I just wanted to ask the question
18 if it was anywhere in the record.

19 MS. MORIATY: It is in the record, yes. I'm
20 sorry. Laura Moriaty, general counsel. It is in the
21 record.

22 MR. GRAHAM: Thank you.

23 MS. MORIATY: It was just the ALJ did not find
24 this argument persuasive and therefore did not make the
25 findings of fact.

1 Mr. Shores' arguments on revocation and on the
2 penalty I believe are completely within your jurisdiction.

3 I just wanted to clarify this one issue.

4 MR. BACARISSE: This particular point.

5 MS. MORIATY: Yes.

6 MR. BACARISSE: Okay. Members, any other
7 questions on this matter?

8 (No response.)

9 MR. BACARISSE: I hear none. The chair would
10 entertain a motion on agenda item 5, if there is one.

11 Member Gillman.

12 MS. GILLMAN: I move that the board accept the
13 ALJ's proposal for decision and adopt findings of fact
14 number 1 through 19 and conclusions of law numbers 1
15 through 25, as set forth therein.

16 In keeping with the ALJ's recommendations, I
17 move that the board issue a total civil penalty of \$11,500
18 and reinstate respondent's access to the department's
19 temporary tag database.

20 I do have comments after when it's appropriate.

21 MR. BACARISSE: Okay. Certainly.

22 Is there a second for that motion?

23 MS. OMUMU: I'd like to make a friendly
24 amendment to that motion, when it's appropriate.

25 MR. BACARISSE: Okay. You can state it now, I

1 suppose, and we'll see if Member Gillman accepts.

2 MS. MORIATY: Do we have a second for Member
3 Gillman's motion?

4 MR. BACARISSE: No, I'm sorry. We do not yet
5 have a second, so I suppose we should have a second first,
6 and then we'll entertain friendly amendments. So is there
7 a second to Member Gillman's motion?

8 MR. GRAHAM: I'll second.

9 MR. BACARISSE: Okay. Member Graham seconds.
10 Please proceed, Member Omumu.

11 MS. OMUMU: Friendly amendment here. I move
12 that the board adopt findings of fact 1 through 19 and
13 conclusions of law 1 through 17, 19 and 21 through 25. I
14 further move that the board modify conclusions of law 18
15 and 20 from the proposal for decision to read as follows.

16 Conclusion of law number 18: "For each of the
17 six violations identified in conclusion of law number 6,
18 the board should impose a \$1,000 penalty, for a total of
19 \$6,000."

20 Conclusion of law number 20: "For each of the
21 three violations identified in conclusion of law number 8,
22 the board should impose a \$1,000 civil penalty, for a
23 total of \$3,000."

24 These modifications are necessary and
25 permissible under Texas Government Code 2001.058(e),

1 because the ALJ did not properly apply or interpret the
2 factors in Texas Occupations Code 2301.801, which the
3 board considers in determining the amount of a civil
4 penalty.

5 To determine the appropriate penalty for misuse
6 of temporary tags, the board looks to factors including
7 the seriousness of the violation and the amount necessary
8 to deter a future violation.

9 Misuse of temporary buyer's tags is a very
10 serious offense, a terrible breach of the trust that the
11 state puts in a GDN holder when it allows the licensee
12 access to the state's registration and title system. A
13 strong sanction is necessary to create a sufficient
14 deterrent to respondent and others like him who are
15 tempted to misuse temporary tags.

16 The ALJ's recommended sanction of \$500 per
17 misused temporary tag is not sufficient to address these
18 concerns. I therefore move that the board issue a \$16,000
19 total civil penalty against respondent and reinstate
20 respondent's access to the department's temporary tag
21 system.

22 MS. MORIATY: Mr. Chairman, if I may? That
23 sounds like a substitute motion to me.

24 MS. OMUMU: A substitute motion.

25 MS. MORIATY: I suppose Member Gillman -- well,

1 we should probably take a vote on whether to substitute
2 that motion for the motion that's currently on the table.

3 MR. BACARISSE: Right. It's not an amendment.

4 MS. MORIATY: It's pretty big; it's gone beyond
5 an amendment, I think.

6 MR. BACARISSE: Right, right. So it's a
7 substitute motion.

8 MS. MORIATY: It sounds like a substitute
9 motion to me.

10 MR. BACARISSE: It's comprehensive.

11 Member Gillman.

12 MS. GILLMAN: Can I ask a question of counsel?

13 MR. BACARISSE: Certainly you may.

14 MS. GILLMAN: And Member Omumu.

15 MS. MORIATY: We would need a second on the
16 substitute motion.

17 MR. BACARISSE: I'm sorry. First we need a
18 second, or do you ask the person who has the motion --

19 MS. MORIATY: I suppose if Member Gillman wants
20 to withdraw her motion, she could do that voluntarily.

21 MR. BACARISSE: Or she could reject.

22 MS. MORIATY: Well, she can't reject. If
23 Member Omumu is moving to substitute her motion, Member
24 Gillman doesn't get any say in it, I'm afraid.

25 MR. BACARISSE: I see. Okay.

1 MS. MORIATY: The board would get to vote as a
2 group.

3 MR. BACARISSE: Okay, got it. So there is a
4 move to substitute the motion. So in that case, we have
5 to have a second. Is there a second on that substitute
6 that Member Omumu is offering?

7 Member Scott.

8 MR. SCOTT: So I'm a little confused.

9 MR. BACARISSE: That's understandable.

10 MS. GILLMAN: I need to ask a question too.

11 MR. SCOTT: So do we have to vote on Member
12 Gillman's motion? It has a second.

13 MS. MORIATY: It just has a second. Member
14 Omumu has made a motion for a substitute motion,
15 essentially.

16 MR. BACARISSE: The second would either
17 substitute that or not.

18 MS. MORIATY: Right. If you second, then
19 you're seconding the idea of substituting Member Omumu's
20 motion for Member Gillman's motion to be the motion on the
21 floor.

22 MR. BACARISSE: And then we have discussion on
23 that motion. Then there would be discussion on the
24 substitute motion.

25 MS. MORIATY: Right.

1 MR. BACARISSE: Yes, okay.

2 MR. SCOTT: So Member Omumu's motion was
3 introduced as a friendly amendment. Does it need to be
4 reintroduced as a substitute amendment?

5 MS. MORIATY: Well, I think we can take it as a
6 motion for a substitute motion. Since it was so
7 extensive, we can't really call it an amendment. That's
8 our challenge here.

9 MR. SCOTT: Okay.

10 MS. MORIATY: An amendment would be to add a
11 phrase into what Member Gillman had offered, and this was
12 beyond that.

13 MR. SCOTT: Okay. Thank you.

14 MR. BACARISSE: So the chair asked if there is
15 a second for the substitute amendment.

16 (No response.)

17 MR. BACARISSE: Hearing none, it appears that
18 that substitute amendment dies.

19 MS. MORIATY: So Member Gillman's motion is the
20 operative one.

21 MR. BACARISSE: It's still standing, yes.

22 So now, Member Gillman, did you have a
23 question?

24 MS. GILLMAN: Yes. For my knowledge --

25 MR. BACARISSE: And you're asking a question of

1 General Counsel?

2 MS. GILLMAN: Yes, I'm asking a question of
3 General Counsel.

4 MR. BACARISSE: Okay. Thank you

5 MS. GILLMAN: For my knowledge, and respectful
6 of Member Omumu's substitute, I wanted to just ask a
7 question with regard to 18 and I think 20 that you wanted
8 to change the numbers.

9 I'm curious, of the six violations, where are
10 the six violations? I want to identify the temporary tag,
11 the printing of three other tags. Which violations were
12 those specifically? I just kind of want to understand
13 what numbers were those versus the --

14 MS. MORIATY: So 18 and 20 -- you're on the
15 right conclusions of law. Let me walk through how this
16 works again. We have three vehicles which he actually
17 sells, they're in his inventory. He sells them properly;
18 he issues temporary tags on them properly.

19 MS. GILLMAN: And which violation is that,
20 number what?

21 MS. MORIATY: That's number 18. So 18, he's
22 issuing those properly, but then he reissues two
23 subsequent tags on each of those cars, for a total of six,
24 so we multiply six times \$500, and we get \$3,000 in
25 conclusion of law 18.

1 MS. GILLMAN: Okay. That's for printing extra
2 tags.

3 MS. MORIATY: Right. And then we have this
4 vehicle that gets transferred to another dealer's
5 inventory, sold there, and the respondent issued --

6 MS. GILLMAN: That's number?

7 MS. MORIATY: That's number 20. He issues
8 three temporary tags, all of which are invalid, on that
9 vehicle. So again, now we have three times \$500 for
10 \$1,500, so that's conclusion of law 20.

11 MS. GILLMAN: Got it. Okay.

12 MS. MORIATY: So Member Omumu's motion was to
13 increase the penalty to \$1,000 on 18 and 20.

14 MS. GILLMAN: Thank you. I'm going to keep my
15 motion the same but I would like to, when it's
16 appropriate, make some comments.

17 MR. BACARISSE: Well, I think we're at that
18 point. If any member has a comment or what-have-you,
19 we're debating the motion. It's been seconded and it's on
20 the floor; yours is on the floor.

21 MS. GILLMAN: Okay. When I first read this, I
22 noticed that he started as a dealer in December of 2019,
23 and I chuckled to myself, because that's right before
24 COVID and what a crazy time that was to be a dealer trying
25 to register vehicles and get people real license plates.

1 So when I read through this, I am very
2 sympathetic to JNC Auto with respect to the timing. I
3 look at the dates of some of these, and when I see 2021,
4 it was a crazy time to try and get things titled, and I
5 know that the tax offices were closed, webDEALER was down,
6 and in many cases, the operations even within your own
7 staff with people having COVID, it was difficult.

8 And so I say that the timing of this to attach
9 revocation of a license I think is an excessive weapon
10 against a dealer at this particular time in history.

11 But I'll say the printing of tags, if you sold
12 one car and you printed three, while I know that that's
13 not good and it's a violation, I know that when a customer
14 of mine during this COVID time -- when it was hard to get
15 things done anyway, when a customer comes at five o'clock
16 on a Friday and his tag has expired, you feel like you're
17 doing something to help a citizen of the Great State of
18 Texas so they don't get a ticket at closing time or on a
19 Saturday or when the tax office is closed and we can't go
20 get another one appropriately for them.

21 So I personally do not think that issuing three
22 tags for one sale is excessive abuse to the point of
23 revocation. I actually think that's kind of ridiculous
24 and too strict. So I'm going to put that aside, and
25 that's why I asked you about number 18, that it was

1 related to those three tags for one sale.

2 With respect to the other violation, like
3 printing tags for cars you don't sell, like not making
4 records available, not submitting VIT records, not
5 responding when the DMV calls, I think that that's wrong
6 and should be addressed and that a fine and civil penalty
7 seems appropriate. And so I think those are kind of it's
8 not responsible and it's not reasonable for a dealer to
9 just not respond. That would make me angry too if I was
10 in Enforcement.

11 So that is why I'm supporting the ALJ for a
12 fine, and actually, if you want to assess a larger fine
13 for the not providing records and the not responding to
14 DMV, I'd be very open to that, but the revocation and the
15 printing of three tags for a customer during COVID I think
16 is unreasonable. So I don't know.

17 MR. BACARISSE: That's the rationale behind
18 your motion.

19 MR. BACARISSE: That's the rationale behind it.

20 MR. BACARISSE: Okay. Very good. So we do
21 have a motion and a second.

22 Member Scott.

23 MR. SCOTT: Yeah, follow-up comment to Member
24 Gillman. Just for the board and others, I would say she's
25 really spot on. That was a very crazy time. You had tax

1 offices that were closed or limited hours, you didn't have
2 access. We had situations where people were having to
3 send title work outside their existing county where they
4 lived to other counties to find a friendly tax assessor,
5 so it was very difficult.

6 And to follow up what she said about a
7 customer, a customer is a customer. We sell them a car,
8 through no fault of the customer, through no fault of ours
9 really, we can't provide the tag, the tag expires. They
10 use these cars for multiple reasons, to transport their
11 family, get to work, whatever, and so they come in, tag is
12 expired, you're supposed to go to the county tax assessor
13 and have them issue a new tag, but if they're not
14 available, what are you going to do?

15 MS. GILLMAN: I don't know.

16 MR. SCOTT: You subject them to who knows, the
17 tag is expired, it provides probable cause for all kinds
18 of things, you could get pulled over for whatever. And so
19 I just want to commend Member Gillman for the statement
20 that she made, it was very difficult.

21 And I would agree with her that maybe there
22 should be -- the fact that the dealer failed to provide
23 access to records, that's a pretty serious violation. I
24 mean, you just can't thumb your nose or whatever and say,
25 well, I'm just not going to do that and just walk away.

1 But when circumstances are outside your
2 control -- this is so different from the situations we've
3 had over the last couple of years where people were
4 egregiously taking and abusing the temporary tag system,
5 they were using it for monetary gain, they were selling
6 tags, printing all this stuff, this is a completely
7 different situation.

8 So I support what Member Gillman has to say.

9 MR. BACARISSE: Thank you, Member Scott.

10 Member Schlosser.

11 MR. SCHLOSSER: Member Schlosser, for the
12 record.

13 So in regards to the situation that was brought
14 up with the 99 tags, I know we cannot make determination
15 on that; however, by failing to make records available for
16 inspection at the licensed location, in my mind, if a
17 dealer is not providing on that date but were to provide
18 those documents at a later date, I would find that to be
19 not in compliance, but yet they do show proof that they
20 had vehicles that corresponded with the temporary tags
21 that they sold.

22 So as far as that goes, when you have a
23 dealership anywhere in the state that is unclear if they
24 ever owned that vehicle, ever sold that vehicle, ever had
25 their hands on that vehicle, I believe it is very -- we

1 can assume that there was some sort of gain by issuing
2 that tag, either it's as a favor or it's as a monetary
3 gain for something else.

4 So though we can't respond to that, I think we
5 need to make sure to hand down a healthy fine for all of
6 these violations as a deterrence for future acts and also
7 to send a message to other people that you don't abuse the
8 system that's in place. You use it appropriately, you
9 report appropriately, or else there are consequences.

10 MR. BACARISSE: Member Schlosser, do you wish
11 to make a friendly amendment regarding your feeling there
12 on the fine issue, or are you just commenting?

13 MR. SCHLOSSER: I believe at this point it's
14 just a comment. I'm willing to go with Member Gillman's
15 recommendation in order to assess that level of fine for
16 what, in essence, is a first offense, and then give them a
17 second opportunity to grow their business and correct
18 their actions.

19 MR. BACARISSE: Okay. Thank you.

20 Members, any other questions?

21 MR. PREWITT: Mr. Chairman.

22 MR. BACARISSE: Member Prewitt.

23 MR. PREWITT: I'd like to offer a friendly
24 amendment to increase the total civil penalty to \$16,000,
25 and I can go into some detail, if you want to, on the

1 computation of that number.

2 MR. BACARISSE: Is there a second to Member
3 Prewitt's --

4 MS. MORIATY: Can I interrupt? I'm sorry.

5 MR. BACARISSE: Yes, ma'am.

6 MS. MORIATY: Would you be amending conclusions
7 of law 18 and 20 to increase the sanction from \$500 to
8 \$1,000?

9 MR. PREWITT: I would modify the conclusions of
10 law 18 and 20 from the proposal PFD to read differently,
11 yes.

12 MS. MORIATY: Thank you.

13 MR. PREWITT: For clarification.

14 MS. MORIATY: For clarification.

15 MR. BACARISSE: Thank you.

16 MS. GILLMAN: Could I encourage you to only
17 increase it on number 20?

18 MR. PREWITT: No.

19 MR. BACARISSE: So we have a friendly
20 amendment, and I guess, Member Gillman, you get to decide
21 whether or not you're accepting or rejecting Member
22 Prewitt's friendly amendment.

23 MS. GILLMAN: The reason why I'm wanting -- I
24 don't mind an increase on number 20, because I agree that
25 he should provide records; I agree, so an increase on

1 number 20 to whatever dollar amount you want, but I'm
2 disagreeing about number 18 with respect to the printing
3 three tags on one car. It just was a crazy time and often
4 was out of his hands.

5 MR. BACARISSE: Okay. Member Prewitt, do you
6 want to amend your friendly amendment or are you standing
7 pat?

8 MR. PREWITT: I think the essence is that I
9 feel a larger civil penalty is warranted as a deterrent,
10 and I feel the \$16,000 number resonates with me over the
11 11- and to decrease that I feel basically eliminates the
12 real effect of an increase in civil penalty.

13 So I really look more to the dollar amount,
14 whether that's valid or not. I think a \$16,000 fine is
15 significantly more than 11- and say if you only increase
16 by \$2,000, it's almost not significant.

17 MR. BACARISSE: Okay. So the matter on the
18 floor currently is, Member Gillman, you may accept or
19 reject the friendly amendment.

20 MS. GILLMAN: Is the amendment to increase the
21 fine on number 20 to the point where your total is a total
22 fine of \$16,000?

23 MR. PREWITT: Yes, ma'am.

24 MS. GILLMAN: Laura, can we do that?

25 Conclusion of law number 18 is related to the

1 tags; conclusion of law number 20 is related to the not
2 providing statements, not providing records, not
3 responding to the DMV.

4 MR. PREWITT: Right.

5 MS. MORIATY: If we amend number 20 in that way
6 we would be looking at saying that it was for \$1,500 per
7 tag for number 20, which is larger than what you've done
8 in the past.

9 MR. PREWITT: Well, I had three violations with
10 \$1,000 civil penalty totaling \$3,000 versus \$1,500 per
11 penalty.

12 MS. MORIATY: Right. It will equal \$4,500 for
13 20 versus \$1,500.

14 MR. PREWITT: Okay.

15 MS. MORIATY: We're going with \$1,500 each.

16 MR. BACARISSE: Just a moment. I've got a
17 friendly amendment question that needs to be accepted or
18 rejected by Member Gillman first.

19 MR. SCOTT: She needs some clarification.

20 MR. BACARISSE: We need to act on the friendly
21 amendment up or down.

22 MR. SCOTT: That's what we're talking about
23 right here.

24 MR. BACARISSE: Yeah.

25 MR. SCOTT: Okay. So for clarification

1 purposes on the friendly amendment, increasing number 20,
2 number 20 has to do with the number of tags. Correct?

3 MS. MORIATY: Number 20 is specifically about
4 the tags issued on the vehicle that was not his, that he
5 gave to the other dealer. And the other dealer sold it
6 but then he issued the temporary tags on it. So it's
7 those three temporary tags on that specific vehicle; this
8 is not the tags issued in succession on the vehicles that
9 he sold.

10 MR. SCOTT: So which is the penalty for the
11 failure to provide records?

12 MS. MORIATY: Twenty-three, finding of fact 11,
13 yes, 23. So 23 is currently at \$1,000 penalty for failing
14 to provide records.

15 MR. BACARISSE: So do we need to restate, does
16 Member Prewitt need to restate his friendly amendment at
17 this point? Do we have all the numbers?

18 MS. MORIATY: Perhaps. Member Prewitt, are you
19 only now amending 20 to go up to \$1,500 per temporary tag
20 issued on number 20, for a total of \$4,500?

21 MR. PREWITT: The source document I used was it
22 would be \$1,000 civil penalty per violation, for a total
23 of \$3,000.

24 MS. MORIATY: Well, if you want to get to
25 \$16,000 total, the \$1,000 needs to come on both 18 and 20

1 if we're going to get that.

2 MS. GILLMAN: Or add some to 23.

3 MS. MORIATY: Or add some to 23.

4 MS. GILLMAN: Because that's the one where he
5 didn't make records available.

6 MS. MORIATY: Or add to -- you had mentioned
7 the VIT failures as significant. That's number 22, so you
8 could add there too.

9 MR. PREWITT: Whatever gets us to 16-.

10 (General laughter.)

11 MS. GILLMAN: I'm fine with 16- too if we
12 sprinkle it, not so much about the tag violations but more
13 weight on the not providing records, no VIT, not
14 responding to the DMV. Those, I think, should be serious
15 fines, and the department should be respected in that way.

16 MR. BACARISSE: I think Member Prewitt has
17 further.

18 MR. PREWITT: I have a question for General
19 Counsel. So per my prior comment, how would you propose
20 getting to that number, given the violations?

21 MS. MORIATY: So what we want to look at -- let
22 me make sure, check my understanding -- what we want to
23 look at is not the temporary tags at all. Is that
24 accurate?

25 MR. PREWITT: Right.

1 MS. MORIATY: We just want to look at the
2 violation for failing to provide records and the violation
3 for failing to file VITs. Is that right?

4 MS. GILLMAN: That would be great.

5 MS. MORIATY: Okay. So we currently have
6 \$2,000 for the failure to file VITs. If we turn that up
7 to \$4,500 and we turned number 23, the violation for
8 failing to give us documents \$1,000 -- if we took that up
9 to -- what do we need, \$3,000, we would be there.

10 MR. PREWITT: Okay. Check your math on that,
11 General Counsel.

12 MS. MORIATY: I think we're good. We need
13 \$4500. So I'm proposing that we get \$2500 of the 45- from
14 the failure to file VITs and \$2,000 from the failure to
15 provide us records, but that means get to a total of
16 \$4,500 for failure to file VITs and \$3,000 for the failure
17 to give us records.

18 MR. PREWITT: And the overall file would then
19 total \$16,000.

20 MS. MORIATY: Right.

21 MR. PREWITT: Mr. Chairman, I'd like to amend
22 my friendly motion to just that, what she just said.

23 MR. BACARISSE: Member Prewitt, sure, go ahead.
24 You're going to amend your friendly amendment to -- can
25 we restate that in some way?

1 MS. MORIATY: Sure. We're moving to amend
2 conclusion of law 22 to impose a civil penalty of \$4,500
3 and number 23 to impose a civil penalty of \$3,000.

4 MR. BACARISSE: All right. And, Member
5 Gillman, do you accept or reject that friendly amendment?

6 MS. GILLMAN: I accept the friendly amendment.

7 MR. BACARISSE: Thank you.

8 Now the amendment has been accepted. Are there
9 any further questions on the friendly amendment?

10 MR. GRAHAM: If I may?

11 MR. BACARISSE: Sorry. Member Graham, and
12 then, Member Alvarado, I'll come to you.

13 MR. GRAHAM: I'll just say I agree with the
14 friendly amendment. I think the real question of this
15 case was whether this dealer should be terminated, lose
16 their GDN. That's a difficult thing to gauge.

17 I mean, these are serious violations, they're
18 also violations in what was a very difficult time for all
19 dealers in the state, and I do think the fines are
20 appropriate given the actions, and so anyway, I think it
21 was a good place to come down. I'm in support of it.

22 MR. BACARISSE: Great. Thank you.

23 Member Alvarado.

24 MR. ALVARADO: Yes, sir. Thank you.

25 My question is just relating to the

1 disciplinary matrix that has been discussed. Do these new
2 numbers fit within the matrix?

3 MS. MORIATY: I'm so glad you brought that up.

4 So typically for these violations we're talking about,
5 it's \$2,000 per incident, is typically our high sanction.

6 So we would be exceeding that, but you have authority to
7 exceed that. If you feel that these are particularly
8 egregious circumstances, then you have authority to go up
9 to \$10,000.

10 MR. BACARISSE: Does that answer your question,
11 sir?

12 MR. ALVARADO: I just think it's important to
13 always be --

14 MS. MORIATY: I'm sorry. \$2,000 is for failure
15 to give us records. You can go up to revocation on the
16 VIT, which is where you will have your higher penalty.

17 MR. ALVARADO: So false VIT statements \$1,000
18 up to revocation, and then the other one?

19 MS. MORIATY: And we could change how we have
20 the numbers right now. We could switch \$1,000 from
21 failure to give us records on to the VITs, if you'd like
22 to, and that would make you in keeping with your penalty
23 matrix.

24 MR. ALVARADO: I just think it's important to
25 have that predictability, the transparency, and there's

1 always going to be circumstances that are outside of a
2 matrix or a special circumstance that requires a different
3 analysis, but I think when we can, it's important to stay
4 within the realm of guidelines and rules that we have.

5 MR. BACARISSE: Member Schlosser.

6 MR. SCHLOSSER: Member Schlosser, for the
7 record.

8 I think we do have room for that in item 20,
9 conclusion of law number 8. He did commit offenses for
10 vehicles he didn't own from another dealership. Currently
11 the level is \$500; we could impose the sanction on those
12 which was a definite violation for a vehicle he never
13 owned, so we have some room there to play with the amount
14 of money.

15 MR. BACARISSE: Okay. Member Scott.

16 MR. SCOTT: So we have a motion, we have a
17 friendly amendment which has been accepted, at some point
18 do we need to stop here and rewrite the motion? Do we
19 need to rewrite the motion so everybody understands
20 exactly what we're doing?

21 MS. MORIATY: I can restate what we're doing if
22 that will help, but Member Alvarado, I don't know if he's
23 made it into a friendly amendment, but he was suggesting a
24 different proportioning of the penalty.

25 Member Alvarado, do you want to make that a

1 friendly amendment, or is it merely a suggestion?

2 MR. ALVARADO: I think it's something that we
3 should consider as we come up with the actual motion. I
4 agree with Member Gillman and the analysis that we're
5 taking; I just think the allocation should fit within the
6 matrix as much as possible.

7 MR. BACARISSE: Would you like to propose an
8 adjustment there so that we can sort of comply in the
9 spirit of the situation?

10 MR. ALVARADO: That's fine. We just need to
11 see where the numbers fit to get to the desired amount.

12 MR. BACARISSE: Do you want to take a brief
13 recess while we work out the numbers?

14 MS. MORIATY: Absolutely, we can do that.

15 MR. BACARISSE: Let's do that. And gather
16 around General Counsel's table so we can all get our math
17 down.

18 MS. MORIATY: We can go in the back if you'd
19 like.

20 MR. BACARISSE: Okay, fine.

21 MS. MORIATY: Well, actually, we should do it
22 as a closed session, I would think.

23 MR. BACARISSE: All right, very good. We'll do
24 that then.

25 It is now 10:18 a.m. on December 14, 2023. We

1 will go into closed session under Texas Government Code
2 Section 551.071.

3 For those of you in the audience, I anticipate
4 being in this closed session for, I don't know, 15
5 minutes, maybe. It will be fairly short, and we'll
6 reconvene in open session after that.

7 With that, we are now recessed from the public
8 meeting and we're going to closed session.

9 (Whereupon, at 10:18 a.m., the meeting was
10 recessed, to reconvene this same day, Thursday, December
11 14, 2023, following conclusion of the executive session.)

12 MR. BACARISSE: Good morning. It is now 10:36
13 a.m., and the Board of the Texas DMV is back in open
14 session.

15 The board will now take up agenda item 5, the
16 contested case. So I think we have a motion, a friendly
17 amendment, actually, that Member Alvarado might make.

18 Is that correct, Member Alvarado?

19 MR. ALVARADO: Yes, sir, Mr. Chairman. Thank
20 you.

21 In an effort to fit more closely and align with
22 the matrix that we have here, I'd like to make an
23 amendment, a slight amendment.

24 MR. BACARISSE: Please go ahead.

25 MR. ALVARADO: Make no change to the conclusion

1 of law number 18; I would like to amend conclusion of law
2 number 20 to increase the penalty for the temporary tags
3 to \$1,000 per tag, for a total of \$3,000; amend conclusion
4 of law number 22 to increase the sanction to \$4,000, which
5 is a \$2,000 increase, for failure to file VIT statements;
6 and then last, to amend conclusion of law number 23 to
7 increase the sanction to \$2,000, a \$1,000 increase for
8 failure to provide records as requested for inspection.

9 MR. BACARISSE: And, Member Gillman, do you
10 accept that friendly amendment?

11 MS. GILLMAN: I accept the friendly amendment.

12 MR. BACARISSE: Okay. Thank you.

13 Members, we have a motion and what amounts to a
14 second on the floor. Thank you.

15 Is there any further discussion on this
16 amendment?

17 (No response.)

18 MR. BACARISSE: Hearing none, I will call the
19 roll.

20 MS. MORIATY: Sir, we have public comment on
21 this item.

22 MR. BACARISSE: Public comment, yes. Thank
23 you. I'm sorry.

24 Do you want to introduce that public speaker?

25 MS. MORIATY: Sure. John Chilaka of JNC Auto

1 is here for public comment.

2 MR. BACARISSE: Great. Please approach the
3 podium, sir, and we will now hear from you. You will have
4 three minutes, and that little box up there will stay
5 green and then it will go to yellow when you've got a
6 minute left, and then red when your time is up. Okay?
7 So, please, whenever you're ready. Thank you.

8 MR. CHILAKA: Okay. Good morning, everybody. I
9 really appreciate an opportunity to be here. I thank you
10 guys and I thank God for the judgment, and I really say
11 I'm sorry about what happened. I cannot dispute anything,
12 I agree whatever decision you guys make.

13 Thank you and God bless you.

14 MR. BACARISSE: Thank you, sir. We appreciate
15 you and so many others like you across the state that are
16 trying to do business, trying to serve the public and do
17 it the right way.

18 We want you to be successful, we want you to
19 know and understand and comply with all the rules and
20 regs. That's, I think, the desire of this Board. We are
21 pro-business; we don't want to take anyone's opportunity
22 to make a living away. It's a very serious decision, and
23 so we're trying to get to the right decision. So thank
24 you for making the time to come up from Houston, and I
25 think we've reached a conclusion. So thank you.

1 All right. So we have a motion and a second
2 and we've had public comment. Now I would like to call
3 the vote on this item.

4 Member Alvarado?

5 MR. ALVARADO: Aye.

6 MR. BACARISSE: Member Gillman?>

7 MS. GILLMAN: Aye.

8 MR. BACARISSE: Member Graham?

9 MR. GRAHAM: Aye.

10 MR. BACARISSE: Member Omumu?

11 MS. OMUMU: Aye.

12 MR. BACARISSE: Member Prewitt?

13 MR. PREWITT: Aye.

14 MR. BACARISSE: Member Schlosser?

15 MR. SCHLOSSER: Aye.

16 MR. BACARISSE: Member Scott?

17 MR. SCOTT: Aye.

18 MR. BACARISSE: And I, Charles Bacarisse, vote
19 aye as well. It is unanimous. Thank you. Good work.
20 Thank you all.

21 We'll now move on to agenda item 6, which is
22 rule adoption, and we're going to cover Chapter 219 of the
23 oversize/overweight vehicles and loads, and Jimmy Archer
24 is going to walk us through that particular chapter.

25 Mr. Archer.

1 MR. ARCHER: Good morning, Chair Bacarisse,
2 Executive Director Avitia, members of the board. For the
3 record, my name is Jimmy Archer, and I'm director of the
4 Motor Carrier Division.

5 This is item number 6 on today's agenda, and
6 it's found beginning on page 78 of your Board materials.

7 For the board's consideration I'm presenting
8 these rule amendments to 43 Texas Administrative Code,
9 Chapter 219 relating to oversize and overweight vehicles
10 and loads for adoption and publication in the *Texas*
11 *Register*.

12 These amendments were proposed at the August 17
13 Board meeting and were published for comment in the *Texas*
14 *Register* on September 1, 2023. The comment period closed
15 on October 1, 2023, and the department received no
16 comments on the proposed amendments.

17 The proposed amendments are necessary to clean
18 up the sections of Chapter 219 and ensure alignment of the
19 rules with prior legislative sessions. The proposed
20 amendments align Chapter 219 with House Bill 2620 that was
21 passed in 2019 during the 86th regular legislative
22 session.

23 House Bill 2620 enacted Transportation Code
24 623.004, which authorizes the department to deny an
25 oversize or overweight permit application if either the

1 Federal Motor Carrier Safety Administration, or FMCSA, or
2 the Texas Department of Public Safety issues an
3 out-of-service order to prohibit the applicant from
4 engaging in interstate or intrastate transportation
5 respectively.

6 To give you some perspective on how many permit
7 applications we have checked against the FMCSA system, in
8 fiscal year 2023 we checked 742,622 applications and
9 denied 140 permits for out-of-service, and for fiscal year
10 2024 through this last December 8, we checked 198,263
11 permits and denied 36.

12 Once that check has been completed a permit is
13 denied, the carrier is notified of the opportunity to cure
14 the out-of-service issue, and then the permit is issued
15 once they cure it.

16 The proposal also aligns Section 219 with
17 Senate Bill 1814 that was passed in 2021 during the 87th
18 regular session. This deleted references to the state
19 highway system in Section 219.30 because the legislature
20 removed the requirements under Transportation Code for the
21 surety bond to be payable to TxDOT for any damage to the
22 State Highway System and authorized the department to
23 adopt a rule to allow an applicant to file an electronic
24 copy of their surety bond with the department if a surety
25 bond is required.

1 It also deletes language from the rule
2 regarding movement during hazardous conditions because the
3 Transportation Code gives the Department of Public Safety
4 the express authority regarding the safe operation of
5 commercial motor vehicles.

6 Additionally, the rule amends application
7 requirements to provide the department with additional
8 information to help the department administer and enforce
9 the laws regarding size and weight on public highways.

10 For example, we're asking that applicants give
11 us their email address to make it easier to notify them
12 after TxDOT restrictions will be put on their routes after
13 the permit has been issued or during issuance of a permit.

14 Transportation Code Section 623.145 and 623.195
15 require the board of the Department of Motor Vehicles to
16 consult with the Texas Transportation Commission prior to
17 adoption of certain rules regarding oversize and
18 overweight permits for operation of oil well servicing and
19 drilling machinery and unladen lift equipment motor
20 vehicles respectively.

21 Accordingly, the Transportation Commission
22 considered the proposed amendments during its open meeting
23 on October 26, 2023 and issued the attached minute order,
24 which is on page 80 of your Board materials, to comply
25 with Transportation Code 623.145 and 623.195 and indicated

1 that the Department of Transportation staff did not have
2 any comments on the proposed amendments.

3 And finally, the cleanup language is modified
4 in the language to be consistent with statutes and other
5 sections in Chapter 219, deleting language for which the
6 department does not have rulemaking authority, and
7 modifying language to be consistent with current practice.

8 I ask that the board adopt these rule
9 amendments for publication and comment, and I'm happy to
10 answer any questions you may have.

11 MR. BACARISSE: Thank you, Mr. Archer.

12 Does anybody have any questions? Member
13 Prewitt, do you have a question?

14 MR. PREWITT: No questions, sir.

15 MR. BACARISSE: Member Schlosser, are you good?

16 MR. SCHLOSSER: Yes.

17 MR. BACARISSE: Okay. Seeing no questions, I
18 appreciate that and we will now move towards a vote on
19 that item.

20 MR. PREWITT: Mr. Chairman, may I make a
21 motion, please?

22 MR. BACARISSE: Sure.

23 MR. PREWITT: I make a motion for agenda item
24 6, moving the board approve the adoption of proposed
25 amendments to 43 Texas Administrative Code, Chapter 219

1 concerning cleanup, as recommended by staff. I also move
2 that the board grant the department the ability to make
3 changes to the adopted sections based on non-substantive
4 corrections made by the *Texas Register*.

5 MR. BACARISSE: We have a motion from Member
6 Prewitt, and I need a second for that motion. Is there a
7 second?

8 MR. SCOTT: Second.

9 MR. BACARISSE: Second by Member Scott. Any
10 further discussion on this item?

11 (No response.)

12 MR. BACARISSE: Any public comments on this
13 item, Laura? I don't think so, just checking.

14 MS. MORIATY: No, sir, no public comment.

15 MR. BACARISSE: All right, thanks. Well, I'll
16 call for the vote.

17 Member Alvarado?

18 MR. ALVARADO: Aye.

19 MR. BACARISSE: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. BACARISSE: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. BACARISSE: Member Omumu?

24 MS. OMUMU: Aye.

25 MR. BACARISSE: Member Prewitt?

1 MR. PREWITT: Aye.

2 MR. BACARISSE: Member Schlosser?

3 MR. SCHLOSSER: Aye.

4 MR. BACARISSE: Member Scott?

5 MR. SCOTT: Aye.

6 MR. BACARISSE: And I, Charles Bacarisse, vote
7 aye as well. It's unanimous. Thank you.

8 We're going to take a little item out of order
9 here. We're going to do agenda item number 8 first before
10 7; we're just kind of flipping them here. This is rule
11 review process overview by General Counsel Laura Moriaty,
12 it's a briefing only.

13 So, Laura, do you want to go ahead?

14 MS. MORIATY: Laura Moriaty, general counsel.

15 We are now taking up rule reviews, three
16 chapters of our rules, Chapter 206, Chapter 215 and
17 Chapter 221, so I wanted to start by giving you a
18 background of what the rule review process is and,
19 frankly, what it isn't.

20 Every state agency that adopts rules is
21 required by Texas Government Code 2001.039 to review those
22 rules every four years, and as a part of that rule review
23 process, the question we're trying to answer is whether
24 the reasons for initially adopting the rules continue to
25 exist.

1 Some options on why those reasons might not
2 exist are that our statutory authority no longer exists or
3 that the realities of how the agency operates or how the
4 industry operates have changed and our rule no longer
5 reflects that reality.

6 So if the agency determines that the reasons
7 for adopting a rule no longer exist, we have to amend or
8 repeal it to fix that problem, and then we have to readopt
9 it, and that concludes the rule review and we will be good
10 for four more years and not have to do this again
11 immediately.

12 Due to turnover in the general counsel position
13 at the DMV, we have not done rule reviews for a long time.

14 We currently are not in compliance on any of our rule
15 chapters with this statute. So we have a plan, an
16 aggressive two-year plan to get back into compliance on
17 this, and we're starting with these chapters 206 and 221,
18 which were last readopted in 2015; and Chapter 215, which
19 was last readopted in 2017.

20 So it's important to think about how much has
21 changed since we last readopted these rules. We've had
22 three legislative sessions that have changed our statutes,
23 we've gone through the Sunset process and it significantly
24 changed our statutes, and we've had the change in the
25 Supreme Court case that caused the Governor's Office to

1 stand up the Regulatory Compliance Division in 2019, which
2 now reviews all agency rules for anti-competitive action
3 that is not specifically authorized by statute from the
4 legislature and essentially vetoes rules if they show
5 unauthorized anti-competitive rulemaking.

6 None of that existed at the time we first
7 adopted these rules, so that's what staff was looking for
8 when we examined the rules to see if there were areas
9 where they no longer matched our statutory authority or no
10 longer matched the agency's current practices. So we're
11 bringing you amendments and repeals today to address those
12 issues.

13 This was, frankly, a huge lift for agency
14 staff. It's taken us about six months. It's taken
15 cooperation across the department, it's been an amazing
16 effort, and I want to thank everybody who has been
17 involved in this, and I appreciate so much all the work
18 that's gone into trying to bring us back into compliance
19 with this statute.

20 So for the rules that we no longer have
21 statutory authority, we have recommended repeals, because
22 the reasons for initially adopting them no longer exist.
23 At the end of this process, I have to assign an
24 attestation that says that we have legal authority for all
25 of the rules that we are readopting. If I can't sign

1 that, we can't readopt the rules, we can't close the rule
2 review process, and we will remain in violation of this
3 statute.

4 So in the course of the review we also noted
5 that the contested case rules were in five separate
6 chapters of our rules and so we decided that that was
7 unnecessary and, frankly, inconvenient, so we have sought
8 to consolidate all of those into one new chapter.

9 So you'll see repeals out of a lot of different
10 chapters today and then a proposed new Chapter 224 which
11 will consolidate our contested case rules and our Lemon
12 Law litigation rules all into one chapter for ease of
13 reference so we can find them.

14 So this is all a plan to get the agency back on
15 schedule of rule reviews. In the future we will be able
16 to stagger them over the four years, so we shouldn't have
17 such a big lift again. This is, I think, going to be our
18 worst load of these; this daunting pile should not be
19 back. But today we have an opportunity to clean up our
20 rules and to come into compliance with this statute, and I
21 sincerely hope that we can take it.

22 So that's all I have, Chairman.

23 MR. BACARISSE: Ms. Moriaty, just for
24 clarification purposes, when you say we're out of
25 compliance as an agency with the statute, which particular

1 statute are you referring to?

2 MS. MORIATY: So I'm specifically referring to
3 Texas Government Code 2001.039 that requires us to do a
4 rule review every four years on every chapter.

5 MR. BACARISSE: That's the same requirement for
6 every state agency?

7 MS. MORIATY: Every state agency. That's
8 right, sir.

9 MR. BACARISSE: Okay. Just getting
10 clarification.

11 MS. MORIATY: Right. But to the extent that we
12 have rules that no longer have statutory authority, we
13 would also be out of compliance with those statutes as
14 well, if we don't amend and repeal.

15 MR. BACARISSE: Amend and repeal. Okay. Thank
16 you.

17 Members, any other questions for Ms. Moriatty on
18 this particular topic?

19 (No response.)

20 MR. BACARISSE: Seeing none, I'll just ask you
21 to continue. This is really agenda item 8.B.

22 MS. MORIATY: Terrific.

23 So in agenda item 8.B, the board is voting on
24 whether to open the rule reviews officially, which means
25 it will publish a notice in the *Texas Register* asking the

1 public comment on whether the reasons for initially
2 adopting these rules continue to exist.

3 Again, this is the beginning of our process for
4 getting back on track, and it will keep us on schedule to
5 have all of these chapters reviewed before the start of
6 the next legislative session.

7 MR. BACARISSE: Can I ask a question, Ms.
8 Moriatty? Again, Chair Bacarisse.

9 MS. MORIATY: Absolutely.

10 MR. BACARISSE: So officially we will open a
11 process by which the public or any interested party or
12 organization may comment on the rule activity that we take
13 action on today. It's the beginning of a process where
14 we'll take comment and then there will be further -- can
15 you describe kind of how that process works? After public
16 comment, what happens?

17 MS. MORIATY: Sure. So specifically for the
18 rule reviews, the public will be able to comment on
19 whether the reasons for initially adopting these continue
20 to exist, but for our repeals and proposals that we are
21 bringing to you today for proposal, those will also go out
22 for public comment, and there the limitation on what the
23 public can comment on is not quite so narrow, they can
24 comment on whether those amendments and repeals are a good
25 idea on their own.

1 So there's two opportunities to comment on the
2 things we're proposing today: They can both bring in
3 general ideas about provisions that are out of date or out
4 of compliance with statute in the rule review provisions,
5 or they can publicly comment on the individual proposed
6 amendments and tell us what they think about those.

7 MR. BACARISSE: So today really is the start of
8 a fairly lengthy and detailed process by which the agency
9 will take comment from public and/or groups or interested
10 parties, what-have-you.

11 Talk to me about how long that process might
12 take on the items that are before us today, just draw me
13 that picture.

14 MS. MORIATY: So we are anticipating if we
15 adopt these provisions, it will be at the April 2024 Board
16 meeting, so you know, five months from now. We have to go
17 through the Regulatory Compliance Division of the
18 Governor's Office; we have to get all of our public
19 comment summarized and bring it back to you, and there
20 will be a solid 30 days of public comment on all of this.

21 MR. BACARISSE: Okay. And once that process
22 then works and then in the April -- ostensibly the April
23 meeting, we will then have these rules back before us with
24 public comment and then what actions happen? Can you walk
25 through it a little further? I want to get the whole

1 picture. Sorry.

2 MS. MORIATY: After we get all of that input
3 from the Governor's Office, from the members of the
4 public, from stakeholders, we will bring you back the
5 rules. They may have revisions in them if staff believes
6 that there are things we need to fix, that there was
7 stakeholder feedback that we need to address.

8 Our power to revise at that point is somewhat
9 limited. We can only address issues that were raised in
10 the initial proposal, but we would be able to adjust some
11 things.

12 And then we would present all of that public
13 comment and feedback to you. There would be an
14 opportunity for people to come and speak to you again at
15 the meeting as well, and then you would have the
16 opportunity to vote on whether to adopt those, but the
17 rule reviews and the proposals and repeals.

18 MR. BACARISSE: Okay. So just for
19 clarification, I want to make sure that we all as members,
20 and myself included, understand that this is the beginning
21 of what will be a very comprehensive process where public
22 and stakeholders and other interested parties have
23 opportunity for input, that input is taken and shared, and
24 there's more discussion before any final decision is made.
25 Would that be fair to say?

1 MS. MORIATY: You're absolutely right.

2 MR. BACARISSE: And we're looking at maybe five
3 to six months.

4 MS. MORIATY: You're right.

5 MR. BACARISSE: Okay. Thank you.

6 I think that's important. Some of this Board
7 is fairly veteran and some of this Board is fairly new --
8 including myself; I still say that I'm new -- so this is
9 the first time I've gone through a rule examination and
10 process like this, so I appreciate your consideration.

11 Members, any other questions on this what we're
12 about to embark on here?

13 (No response.)

14 MR. BACARISSE: No? Okay. Please continue.
15 Is that it?

16 MS. MORIATY: That's it. You're up for a
17 motion now.

18 MR. BACARISSE: So now we can go to number 7,
19 agenda item 7?

20 MS. MORIATY: Oh, you need a motion on this.
21 We have to vote to propose.

22 MR. BACARISSE: Oh, we need a motion on this.
23 I'm sorry. We need to vote to propose to open.

24 MS. MORIATY: Right.

25 MR. BACARISSE: Sorry. Great. So I will

1 entertain a motion on agenda item 8.B.

2 MR. ALVARADO: Chairman.

3 MR. BACARISSE: Yes, Member Alvarado.

4 MR. ALVARADO: I'll make a motion on 8.B, if
5 you're okay with that.

6 MR. BACARISSE: Yes, sir.

7 MR. ALVARADO: I move that the board approve
8 the proposed notice of intention to review 43 Texas
9 Administrative Code Chapters 206, 215 and 221, as
10 recommended by staff, for publication in the *Texas*
11 *Register*. I also move that the board grant the department
12 the authority to make changes to the proposed notice based
13 on non-substantive corrections made by the *Texas Register*.

14 MR. BACARISSE: All right. Is there a second
15 to that motion?

16 MR. PREWITT: Mr. Chairman, I second that
17 motion.

18 MR. BACARISSE: Member Prewitt. Thank you.

19 Any discussion on this motion?

20 MS. GILLMAN: Yes.

21 MR. BACARISSE: Yes, Member Gillman.

22 MS. GILLMAN: I'm sorry. Is this item number
23 10?

24 MR. ALVARADO: 8.B.

25 MR. BACARISSE: No, it's not. It's 8.B.

1 MS. MORIATY: 8.B.

2 MR. BACARISSE: We are voting to open the
3 process.

4 MS. GILLMAN: And not necessarily rule --

5 MS. MORIATY: We'll take up the individual
6 chapters after this; this is just the overall opening of
7 the process.

8 MS. GILLMAN: Okay.

9 MR. BACARISSE: Any other questions? Any
10 further discussion?

11 (No response.)

12 MR. BACARISSE: No public comments on this
13 point?

14 MS. MORIATY: There are none, sir.

15 MR. BACARISSE: Okay. Let's take a vote. I'll
16 call the roll, please.

17 Member Alvarado?

18 MR. ALVARADO: Aye.

19 MR. BACARISSE: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. BACARISSE: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. BACARISSE: Member Omumu?

24 MS. OMUMU: Aye.

25 MR. BACARISSE: Member Prewitt?

1 MR. PREWITT: Aye.

2 MR. BACARISSE: Member Schlosser?

3 MR. SCHLOSSER: Aye.

4 MR. BACARISSE: Member Scott?

5 MR. SCOTT: Aye.

6 MR. BACARISSE: And I, Charles Bacarisse, vote
7 aye as well. It's unanimous. Thank you.

8 MS. MORIATY: Thank you.

9 MR. BACARISSE: We will now go back to agenda
10 item 7, which is under the advisory committee
11 recommendations, Customer Service and Protection, CSPAC,
12 and the Motor Vehicle Regulation Advisory Committee,
13 MVIRAC, for recommendations to the board, and we'll have
14 David Richards to brief us on that.

15 So, Mr. Richards, please.

16 MR. RICHARDS: Good morning, Mr. Chairman,
17 members, Executive Director Avitia. For the record, my
18 name is David Richards. I'm associate general counsel in
19 the Office of General Counsel here at Texas DMV.

20 I have the pleasure of presenting agenda item
21 number 7, which the chairman just mentioned are
22 recommendations made for potential rulemaking by the Motor
23 Vehicle Industry Regulatory Advisory Committee, as well as
24 the Customer Service and Protection Advisory Committee.

25 You'll recall, members, that Sunset Advisory

1 Commission number 1.7 recommended highly that the board
2 appoint and create advisory committees to advise the board
3 with respect to rulemaking, as well as other matters
4 affecting the board's legislative mandate.

5 This past August and September, the MVIRAC and
6 the CSPAC met, both in an introductory meeting, and we
7 kind of laid out what they would be doing or we would like
8 them to do or the board would instruct them to do, and
9 that is part of the rule review that Ms. Moriatty just
10 mentioned, they would be weighing in on that.

11 So they met, as I said, in August and
12 September. The September meetings were more substantive
13 and meaty where they actually brought forward amendments,
14 or at least suggested amendments to the draft rule
15 chapters that that we provided them with.

16 We presented to them Chapter 206, which deals
17 with internal management issues affecting the department
18 and the board, also 215 Motor Vehicle Distribution, 221
19 Salvage Vehicle Dealers, and then finally, as Ms. Moriatty
20 mentioned, our new chapter dealing with adjudicatory
21 procedures practice and procedures -- hard to say.

22 The rule under 46 206.93 allows for or
23 contemplates the presiding officers for the committees to
24 present before the board their recommendations on behalf
25 of their respective committees, and/or provide written

1 materials to the board. Your board materials for this
2 particular item start on page 177 of your board books.

3 I have the distinct pleasure of welcoming our
4 two presiding officers: for the Customer Service and
5 Protection Advisory Committee, Kristin Hoyt, who is the
6 Comal County, New Braunfels, tax assessor-collector; as
7 well as David Blassingame, who is the presiding officer
8 for the MVIRAC.

9 They will be presenting the recommendations. I
10 think you've all been given a copy of those. What we're
11 going to kind of do is in a tag-team fashion, if you will,
12 Ms. Hoyt will lead off; I'm going to provide the staff
13 response to the recommendation.

14 As Ms. Moriaty mentioned, we've got to have
15 statutory authority in order to promulgate a rule, so we
16 want to keep that in mind when you're making
17 recommendations. I will give the response from the staff
18 of the DMV.

19 There are eleven recommendations, so we don't
20 have a lot, and I'm going to go ahead and turn it over to
21 Ms. Hoyt to provide y'all with the first one.

22 MS. HOYT: Good morning.

23 MR. BACARISSE: Good morning. Welcome.

24 MS. HOYT: Thank you for allowing us to be here
25 today.

1 The first section we'll talk about 215.83(1).
2 This is recommended, of course, by both committees.
3 Change the number of days that a license holder has to
4 dispute a denied license renewal from 10 to 15. And if I
5 remember correctly, this was just to clarify. There was
6 some vagueness of the section and different dates
7 throughout, and so they wanted to move it from 10 to 15 to
8 allow for ample time.

9 MR. RICHARDS: And, members, the staff response
10 to that recommendation is that we made that change and
11 incorporated it into the rule chapter.

12 Let me say this, too, to back up. The chapters
13 that we provided them with initially for their review have
14 been altered since that time because of these
15 recommendations, and there have been other revisions done,
16 and so I'm responding to their recommendation based on
17 what they reviewed at the time.

18 Now, David.

19 MR. BLASSINGAME: Good morning. I'm pleased to
20 be here, by the way.

21 Impacted section would be 215.104(c), change
22 the number of days that a franchised dealer is required to
23 file an amendment application from 10 to 15 within a
24 license change.

25 MR. RICHARDS: And, members, I believe you were

1 provided with an updated chart which shows the TxDMV staff
2 response, which is we're unable to incorporate the draft
3 proposal due to Transportation Code 503.006, which
4 requires dealers to notify the department of an address
5 change not later than 10 days after the change occurs, so
6 it runs afoul of what the statute states right now, so we
7 would not be able to make that or incorporate that change
8 at this time.

9 MS. HOYT: Chapter 215.102(e)(2)(G), delete the
10 requirement that an applicant for a distributor license
11 provide the department with the distribution agreement
12 between the manufacturer and the applicant.

13 This was a concern raised in regards to the
14 confidentiality and the proprietary information and the
15 nature of that agreement. So instead, there were
16 recommendations of alternative ways to have that verified.

17 MR. RICHARDS: And, members, the staff response
18 is that we modified the proposal that the advisory
19 committees looked at to add an option for an applicant to
20 complete a questionnaire as an alternative to providing
21 the distributors agreement.

22 We appreciate the comments that were made
23 during the meetings, as Ms. Hoyt just mentioned,
24 confidentiality and whatnot, but the statute in 2301.260
25 requires that we have the contract terms as part of the

1 application, so we made some modifications to accommodate
2 that.

3 So they have the choice of either providing the
4 distributor agreement or the questionnaire that will
5 contain the contract terms, which will keep us in
6 compliance with 2301.

7 MR. BLASSINGAME: Impacted section
8 215.102(e)(2)(E)(I), delete from the required information
9 an application for a manufacturer or distributor license
10 must provide as part of its application the following:
11 "or if offers for sale or sales of a motor vehicle in
12 Texas will solely be over the internet, a list of each
13 out-of-state franchised dealer authorized by the
14 manufacturer or distributor to sell a product online to a
15 Texas citizen, including the dealer's name, physical
16 address and dealer license number issued by the state in
17 which the dealer is located."

18 MR. RICHARDS: Members, what the staff
19 recommends doing is to remove the word "franchised" from
20 before "dealer" because it was causing confusion among
21 some of the members.

22 The impetus behind this rule is that it
23 implements a recommendation made by AAMVA that DMV rules
24 include a consumer protection provision to identify out-
25 of-state dealers who sell over the internet to in-state

1 residents. So it's an AAMVA recommendation that's the
2 genesis behind this particular rule change or addition,
3 but we did remove the word "franchised" from the proposed
4 rule.

5 MR. BACARISSE: Is there a question? I'm
6 sorry, Member Gillman, do you have a question?

7 MS. GILLMAN: Member Scott.

8 MR. BACARISSE: Member Scott has a question.
9 I'm sorry.

10 MS. GILLMAN: Well, I have a question too.
11 What is AAMVA?

12 MR. RICHARDS: It is the American Association
13 of Motor Vehicle Administrators, AAMVA, that we're a
14 member of as an agency.

15 MS. GILLMAN: And they requested this? I'm a
16 little confused.

17 MR. RICHARDS: They didn't actually request it.
18 It's a recommendation that AAMVA made for all states to
19 include a consumer protection provision such as this to
20 protect in-state residents from out-of-state dealers,

21 MS. GILLMAN: You're deleting information an
22 applicant must provide on a dealer license. Am I right?

23 MR. RICHARDS: What we're doing here, we'll
24 keep the provision in to protect consumers. We're just
25 taking out the word "franchised."

1 That was the objection by several franchised
2 dealers on both advisory committees, because in other
3 states it may be a franchised dealer, it may not be a
4 franchised dealer. So that word was taken out to open it
5 up for all types of dealers that sell from out of state
6 into Texas.

7 MS. GILLMAN: Okay. I'm getting a little
8 confused, because on page 178 is the committee
9 recommendations but I don't have anywhere listed the staff
10 recommendations. You're verbally telling me, or maybe I
11 don't know where to see this.

12 MS. MORIATY: I'm sorry. Laura Moriaty,
13 general counsel.

14 You're receiving that as a verbal update from
15 staff; it was also sent to you separately in an email from
16 me.

17 But to clarify this specific provision, we are
18 simply asking that when someone is an applicant that they
19 give us this information so that we can use that
20 information to understand how they're selling and to
21 investigate their sales practices and understand if we
22 want them to be licensed in our state.

23 So this is a way for us to get this
24 information; it does not create new rights for dealers to
25 sell into Texas. There was some confusion that it might

1 do that. It does not. It's simply seeking information as
2 to what this model looks like so that we can use that
3 information to try to make sure that everything is safe
4 for our in-state residents.

5 MS. GILLMAN: Okay. All right.

6 MR. GRAHAM: Question.

7 MR. BACARISSE: Yes, Member Graham.

8 MR. GRAHAM: So I'm just thinking about dealers
9 in Louisiana, Oklahoma, New Mexico. If they're going to
10 sell a vehicle online to a Texas consumer, they will need
11 to become licensed?

12 MS. MORIATY: This is a manufacturer or
13 distributor. There are manufacturers that we license in
14 Texas who sell vehicles into Texas, in conformity with the
15 UCC.

16 MR. GRAHAM: Okay. This is manufacturers.

17 MS. MORIATY: We're just trying to find out
18 more information about those practices so that we can
19 understand them and try to protect our folks as much as
20 possible.

21 MR. GRAHAM: Understood. Thank you.

22 MS. OMUMU: Mr. Chairman, I have a question.

23 MR. BACARISSE: Yes, Member Omumu.

24 MS. OMUMU: I was going to wait until the end,
25 but since everybody is asking their questions, I'm going

1 to go ahead with my question.

2 MR. BACARISSE: Jump in.

3 MS. OMUMU: Can we back up to Chapter
4 215.102 (e) (2) (G)? Thanks for deleting the requirement for
5 the distributor agreement, much appreciated. But I do
6 have a question on the questionnaire that will be in lieu
7 of the distributor agreement. Can you give me an example
8 of the questions that will be included in that
9 questionnaire?

10 I know historically for the distributorship
11 that I represent, we've only been required to provide a
12 letter from the manufacturer stating that we are in
13 business with that manufacturer. Never before have we
14 been required to provide, of course, not our distributor
15 agreement which is proprietary, but certainly not anything
16 invasive, any details that we would want to get out to the
17 public.

18 So can you please provide just some examples of
19 what would be included in that questionnaire?

20 MR. RICHARDS: Member Omumu, I have not been
21 apprised of what's going to be in there. I don't know if
22 General Counsel Moriaty knows, or we could check with the
23 MVD director.

24 MS. MORIATY: I would recommend we talk to the
25 MVD director, sir, if we can.

1 MR. BACARISSE: Please, Monique Johnston.

2 MS. JOHNSTON: Good morning. Monique Johnston,
3 director of the Motor Vehicle Division.

4 We have not developed that questionnaire, as
5 the rules, of course, have not been adopted, but it would
6 need to include things that are required, such as the line
7 makes, the agreement between the manufacturer and the
8 dealer, the warranty service work, if they have the
9 ability to do that, those types of things that are
10 required by statute would have to be in the questionnaire,
11 but we have not developed the actual questionnaire yet.

12 MS. OMUMU: Okay. Thank you.

13 MS. JOHNSTON: Thank you.

14 MR. BACARISSE: Members, any other questions to
15 Mr. Richards or Ms. Hoyt or Mr. Blassingame?

16 MS. GILLMAN: I have a question.

17 MR. BACARISSE: Member Gillman.

18 MS. GILLMAN: Can we get a copy -- maybe it's
19 not necessary -- can we get a copy of what you emailed
20 out, because I'm trying to write down the
21 recommendations --

22 MS. MORIATY: Absolutely. We'll get that for
23 you.

24 MS. GILLMAN: -- against what the committee
25 had recommended, and maybe just my note taking is not

1 enough.

2 MS. MORIATY: I can absolutely resend them,
3 Member Gillman, no problem.

4 MS. GILLMAN: Or can we pass it out now?

5 MS. MORIATY: I can also print, yes. Just give
6 me a few minutes.

7 MR. BACARISSE: Right. Any other questions,
8 members?

9 (No response.)

10 MR. BACARISSE: Thank you, Mr. Richards. Thank
11 y'all.

12 So we move to agenda item --

13 MS. MORIATY: I'm sorry. There's some more.

14 MR. BLASSINGAME: We have some more.

15 MR. BACARISSE: Okay. Sorry. Go ahead.

16 MS. MORIATY: But wait, there's more.

17 MS. HOYT: The next impacted section is
18 215.103(a), this was delete the word "only" from the
19 provision. "A service facility is where the franchised
20 dealer only performs warranty repair services and not new
21 motor vehicle sales."

22 I think it was determined that TxDMV was
23 overstating their authority and that they do not have
24 authority to make a determination over non-warranty repair
25 services.

1 MR. RICHARDS: Mr. Chairman and members, we did
2 agree to that change. We took out "only," so it will
3 read: "A service facility is where the franchised dealer
4 performs warranty repair services and not new motor
5 vehicle sales." So the word "only," which was recommended
6 to be deleted, came out.

7 MR. BLASSINGAME: Impacted Section 215.112,
8 remove the repeal of the entire section and maintain to
9 allow for further discussion between AC members and TxDMV
10 staff concerning motor home show limitations and
11 restrictions.

12 MR. RICHARDS: Members, we originally repealed,
13 as Mr. Blassingame said. We cannot, for the reasons that
14 General Counsel Moriaty stated to you in her opening
15 remarks, repeal those. We were taken away, back in the
16 86th regular session, the ability to approve these motor
17 home shows, so our statutory authority to do that was
18 removed.

19 Secondly, as Ms. Moriaty mentioned, under the
20 Administrative Procedures Act, Section 2001.039, we have
21 to legitimately say we have the authority to readopt these
22 rules, there's a reason for them.

23 We don't have that ability under .039, nor is
24 she able to provide a certification as to the authenticity
25 of the rules, because the actual wording, the approval, is

1 no longer there. The whole reason for the rule being
2 created used the word "approve." It's been taken, that
3 was back in 2019; this particular rule has not been in
4 force since 2019.

5 We did not agree, we can't reinstate it, we
6 can't go forward with our rule review by saying, oh, yeah,
7 we're going to keep this in there, when in fact she can't
8 attest to having statutory authority for this rule. So it
9 no longer exists and we disagree with the advisory
10 committees.

11 MS. GILLMAN: I'm sorry. You said, I disagree
12 with the advisory committee to remove the repeal. Does
13 that mean --

14 MR. RICHARDS: I'm sorry if I misstated. They
15 asked for it to be reinstated. The staff in the original
16 draft --

17 MS. GILLMAN: Wait, wait. They, the
18 committees --

19 MR. RICHARDS: The committees.

20 MS. GILLMAN: -- asked for what to be
21 reinstated?

22 MR. RICHARDS: 215.112, which deals with motor
23 home exhibitions, all of that rule to come back. We were
24 proposing that it be repealed because we no longer have
25 statutory authority, in fact haven't had statutory

1 authority --

2 MS. GILLMAN: So the committee asked for the
3 rule to come back.

4 MR. RICHARDS: Correct.

5 MS. GILLMAN: Meaning exist?

6 MR. RICHARDS: Correct.

7 MS. GILLMAN: And your recommendation is to
8 have it not exist, meaning repealed.

9 MR. RICHARDS: It would be repealed. That's
10 correct. And it's based on the lack of statutory
11 authority. It's based on two sections out of the
12 Administrative Procedures Act which don't allow us --

13 MS. GILLMAN: This particular section 215.112
14 is where I think we have further discussion about it in
15 agenda item 10.

16 MR. BACARISSE: That's correct.

17 MS. GILLMAN: And that's why I asked when we
18 made the recommendation to open the floor, I was concerned
19 this one wrapped in. But I do have further discussion and
20 I'm wanting to -- I don't know how to take this little
21 section and say please can we have further discussion.

22 MR. RICHARDS: And there will be, Member
23 Gillman. 215 will be a separate agenda item coming up.
24 This particular agenda item is only to provide the board
25 with the recommendations and staff response to those

1 recommendations about eleven different recommendations
2 that they made for particular amendments to rules.

3 There will be more in-depth discussion to be
4 made on the 215 agenda item coming up, along with there
5 may be public comments as well; I'm not sure. This is
6 just a briefing to let you know what they recommended and
7 what the staff --

8 MR. BACARISSE: We're not taking any action
9 here.

10 MR. RICHARDS: No action here, none at all.

11 MR. BACARISSE: This is merely us being
12 briefed. But, Member Gillman, to your point, when we get
13 to agenda item 10, I expect we'll have a much more fulsome
14 discussion. Is that fair to say?

15 MS. GILLMAN: Yes, sir. Thank you.

16 MR. BACARISSE: Thank you.

17 MR. BLASSINGAME: Impacted Section 215.112,
18 remove and repeal the entire section to maintain to
19 allow -- oh, I'm sorry, next one.

20 Several sections in 215. In Texas Rules of
21 Civil Procedure, Section 21(a) by stating that the notice
22 requirements for the notice of protest will happen in
23 accordance with the TRCP section of 21(a).

24 MR. RICHARDS: Members, that's the Texas Rules
25 of Civil Procedure. That particular recommendation was

1 brought to us by a member of the Enforcement staff to add
2 that. We want to make sure that we broaden or at least
3 allow for various types of notice that could be made. The
4 staff looked at that recommendation and amended language
5 to increase the flexibility by allowing notice to affected
6 parties, dealers or others, as specified in the written
7 instructions from the department.

8 So we'll send something out to these affected
9 parties, whether it be respondent or whomever, stating how
10 they can respond and the types of notice. We're unable to
11 incorporate uniformly throughout Chapter 215 because there
12 are various provisions within Occupations Code 2301 and
13 other chapters of the Transportation Code that would
14 preclude us from doing that. They have other specific
15 requirements.

16 For example, we have under Occupations Code
17 2301.705(b) the requirement for notice must be certified
18 mail, return receipt. So it kind of varies, but where we
19 can, we're going to make sure that the expansion of notice
20 is provided to parties that are dealing with this
21 department.

22 MS. HOYT: Chapter 215.244(6), delete the
23 phrase "required to be" from the definition of the dealer
24 addendum.

25 MR. RICHARDS: That was just a simple change

1 that the staff on the initial draft put the words
2 "required to be" as far as the dealer addendum goes, and
3 we agree with that change, and the words "required to be"
4 have been deleted from the subsequent draft.

5 MS. GILLMAN: I have a question.

6 MR. BACARISSE: Sure, Member Gillman.

7 MS. GILLMAN: Can you read the whole sentence?

8 MR. RICHARDS: Sure. Let me see if I can find
9 it real quick for you.

10 MS. GILLMAN: Where can I find the whole
11 sentence?

12 MR. RICHARDS: I'm looking at it, Member
13 Gillman, and I believe you don't have this draft, but I
14 can read it to you real quick.

15 MS. GILLMAN: Just that one sentence so I can
16 understand it.

17 MR. RICHARDS: It's on a definition for
18 dealership addendum. "A form that is displayed on the
19 window of a motor vehicle when a dealership installs the
20 special features, equipment, parts or accessories or
21 charges for services not already compensated by the
22 manufacturer or distributor for work required to prepare a
23 motor vehicle for delivery to a buyer."

24 It would have said "A form that is required to
25 be displayed." We took that out. There was an exception

1 made in our two committees to those words "required to
2 be."

3 MS. GILLMAN: So are you saying that we used to
4 have to have an addendum and now we don't have to have an
5 addendum?

6 MR. RICHARDS: No. The addendum is currently
7 language; it's just the only thing they added were the
8 words "required to be displayed."

9 MS. GILLMAN: Now if you take out, we don't
10 have to require -- we are not required anymore.

11 MR. RICHARDS: Well, yes and no. You're
12 required to do this, but they --

13 MS. GILLMAN: Required to have an addendum?

14 MR. RICHARDS: Right. It's just saying it's a
15 definition, "A form that's displayed" simply. The
16 drafters of this provision thought we needed to add
17 "required to be" and that may have been due to enforcement
18 concerns that they were encountering; I'm not sure.

19 MS. GILLMAN: The word "required to be
20 displayed."

21 MR. RICHARDS: Right. The words "required to
22 be."

23 MS. GILLMAN: Not required to be displayed.

24 MR. RICHARDS: It's going to stay the way it is
25 that it currently exists and not have the words "required

1 to be."

2 MS. GILLMAN: I'm so sorry; I'm confused.

3 MR. RICHARDS: Again, currently the definition
4 says, "A form that is displayed on a window of a motor
5 vehicle..." What was recommended by staff in the initial
6 draft was "A form that is required to be displayed on the
7 a window of a motor vehicle..." And exception was taken
8 by members of the advisory committees and the dealership
9 community to adding the words "required to be."

10 They wanted the definition as it currently
11 exists to remain the same, which I just read.

12 MS. GILLMAN: Okay.

13 MR. RICHARDS: Thank you.

14 MR. BLASSINGAME: Section 224.620(g), add the
15 words "dealer installed" options so the dealers are only
16 accountable for reimbursement to a complainant,
17 manufacturer, converter or distributor for
18 dealer-installed options that are deemed to be defective.

19 MR. RICHARDS: That particular change was made
20 to the subsequent draft. It was based on comments made by
21 a couple of our franchised dealer members that it needs to
22 set forth that it's dealer-installed options that are
23 going to hold a dealer liable, and not just other options
24 that are installed along the line. So they wanted that
25 clarified and we made that change.

1 Also, did we miss yours, Kristin? Oh, no, we
2 got the "required to be." Never mind.

3 Go ahead. I'm sorry.

4 MR. BLASSINGAME: Section 224.405(d), add
5 "notwithstanding the terms of 224.400(b)" so that (d)
6 reads: "Notwithstanding the terms of 224.400(b), a party
7 must appeal to the board an order granting or denying a
8 motion for a cease and desist order."

9 MR. RICHARDS: And the department looked at
10 that recommendation and we made clarifying changes and
11 added rules to set out the specific procedures for both
12 interlocutory orders and appeals to the board of
13 interlocutory orders, including cease and desist orders.

14 MR. PREWITT: Point of information.

15 MR. RICHARDS: Yes, sir.

16 MR. PREWITT: The actual verbiage read "may
17 appeal" instead of "must appeal." I thought I heard "must
18 appeal" in the statement.

19 MR. BLASSINGAME: It should be "may appeal."

20 MR. PREWITT: Okay. Thank you. For the
21 record, thank you.

22 MR. BLASSINGAME: Section 224.406(c), add
23 "Notwithstanding the terms of 224.400(b)" so that (c)
24 reads: "Notwithstanding the terms of 224.400(b), a party
25 affected by a statutory stay imposed by Occupations Code,

1 Chapter 2301, may initiate a proceeding before the board
2 to modify, vacate or clarify the extent and application of
3 the statutory stay."

4 MR. RICHARDS: Members, just for your
5 edification, the original draft that the advisory
6 committees looked at, 224.400(b) deals with SOAH's
7 jurisdiction and the fact that if something goes there,
8 SOAH has jurisdiction.

9 One of our attorney members on the MVIRAC
10 brought out the fact that there are certain interlocutory
11 orders that could be appealed back to the board, so he
12 asked that that "notwithstanding" language be added to
13 make it clear that interlocutory orders involving cease
14 and desist orders or a statutory stay could be appealed
15 back to the board, even though SOAH had the case.

16 We have since, as with the section that was
17 mentioned by Mr. Blassingame previously, made clarifying
18 changes and added rules to take care of this in our
19 subsequent draft, so we did agree with the committee.

20 And that, I believe, ends my presentation. Are
21 there any further questions on item 7?

22 MS. GILLMAN: I have a question on the last
23 one.

24 MR. BACARISSE: Go ahead, Member Gillman.

25 MS. GILLMAN: Thank you, Mr. Chairman.

1 What is a statutory stay? I don't know what
2 that is.

3 MR. RICHARDS: Under your statute you have the
4 ability to issue a statutory stay. And effectively that
5 means to the dealer, the affected respondent, not to do
6 anything to change the current status of the case. In
7 other words, kind of like be on your best behavior and
8 continue doing what you're obligated to do, don't do
9 anything differently. That's kind of a layman's
10 definition.

11 MS. GILLMAN: And so what this is doing is --
12 I'm reading at the top of page 179 -- that somebody, the
13 agency may initiate a proceeding before the board to
14 modify, vacate, or clarify the scope of that statutory
15 stay. Is that what you mean?

16 MR. RICHARDS: Right.

17 MS. GILLMAN: Okay. Thank you for telling me.

18 MR. RICHARDS: Sure. Any other questions?

19 MS. GILLMAN: I've got just one comment.

20 MR. BACARISSE: Sure, go ahead.

21 MS. GILLMAN: While I can see that this is a
22 very large task and it's a lot to take in, a lot of tiny
23 word changes. But I did receive feedback from some
24 committee members that it was confusing, challenging, so
25 much information, hard to digest, went too fast -- those

1 are some. They didn't know exactly if they were doing the
2 right thing because it was so much.

3 And so similarly, just in this process, while
4 this piece of paper you handed out with the red and green,
5 you're agreeing with the committee or not agreeing, is
6 helpful, and I don't know, maybe -- I don't know how to
7 say other than the feedback that I heard from the
8 committee was it was difficult. So I don't know whatever
9 you could do to make it less difficult and confusing in
10 the future.

11 MR. BACARISSE: I think the one thing to keep
12 in mind is that we are on the very, very front-front-front
13 end of this process, and there will be ample time to read
14 and digest and understand and sit with and live with all
15 of this and then write comment and give comment and have a
16 voice in the process.

17 So it is a lot. It is absolutely, for me too,
18 because I don't live in this, so I'm going to have to do
19 some studying as well. But we're at the front end.

20 Let me recognize the executive director, Mr.
21 Avitia.

22 MR. AVITIA: Chairman, thank you. I appreciate
23 the time.

24 I'll just start out with saying rule review is
25 probably one of my least favorite things to do in this

1 entire world. It is a daunting task. It is a lot of
2 work.

3 And I want to thank both Presiding Officer
4 Blassingame and Presiding Officer Hoyt for your time, your
5 commitment and your leadership to both your committees.
6 Again, it is a lot of work. It's a heavy lift, so I
7 appreciate your help and your support of the agency as
8 well. Thank you both.

9 MR. BACARISSE: I was remiss in not saying
10 that. I second his comments. Thank you.

11 MR. RICHARDS: Thank you, members.

12 MR. BACARISSE: Thank you, David, appreciate
13 it.

14 Okay. So now we're moving on to agenda item 9,
15 and Mr. Richards is continuing to work us through agenda
16 item 9 which is Chapter 206.

17 MR. RICHARDS: Chairman Bacarisse, members,
18 Executive Director Avitia. For the record, my name is
19 David Richards, associate general counsel in the Office of
20 General Counsel at DMV.

21 This is one of the chapters that we provided to
22 the advisory committees and they looked at the chapter,
23 found no recommended changes. This particular chapter is
24 more cleanup than anything else. It deals with the
25 internal workings of the department and the board

1 regarding several different matters.

2 And the basic thrust behind these rules, in
3 particular this particular chapter, which is Management,
4 is to bring agency rules in alignment with statute, remove
5 language that's redundant with statute, cite statutory
6 authority when it's helpful to the reader. And again,
7 we're trying to make this reader-friendly, as well as
8 board-friendly and agency-friendly.

9 These rules were written a long time ago, as
10 our general counsel stated, so we're trying to modernize
11 language, improve readability, clarify or delete unused
12 archaic terms that are no longer used when making rules,
13 and also shore up on our definitions where we can. So as
14 you might suggest or guess, these are cleanup provisions
15 that we're dealing with.

16 We're also repealing Subchapter D, and this
17 particular subchapter, as Ms. Moriarty mentioned earlier,
18 that deals with contested cases. There's another
19 subchapter that has some provisions that deal with
20 contested cases as well; those are going to be repealed
21 and then they're going to be subsumed in the new Chapter
22 224, which will house all of our contested case rules.

23 One thing I did want to point out that is a
24 little bit more substantive and meaty is a provision that
25 deals with internal risk monitoring regarding internal

1 users of the RTS system we have here at DMV. We set forth
2 certain factors that will determine whether a user of RTS
3 is a priority concern or a priority risk or non-priority.

4 Again, this is all part of the determination of fraud, as
5 well, that's being conducted under our watch.

6 A person's priority status, if you will, the
7 assignment of that, we're going to look at transaction
8 volume, past violations of agency rules, procedures
9 within the last five years, title error investigations
10 performed by the department on titles issued by a
11 particular RTS user, public complaints received against
12 the RTS user, any discrepancies in data reflecting a
13 particular RTS users transactions is another thing.

14 And if it's a priority assignment, the
15 inspection or the review will be not less than twice a
16 year, non-priority is not less than once a year. The
17 inspections may be made virtually or in person or both, so
18 that's incorporated into new chapter, the review of
19 Chapter 206. We had a rule dealing with that but it
20 really pretty much recited the statute and didn't really
21 outline how we're going to do this and implement it. So
22 that particular rule, 206.151 lays out how we're going to
23 approach internal users to prevent fraud.

24 Any questions?

25 MR. BACARISSE: Members, any questions on this

1 particular item?

2 (No response.)

3 MR. BACARISSE: I hear none.

4 MR. RICHARDS: This is an action item.

5 MR. BACARISSE: Yes, it is, so I would
6 entertain a motion on agenda item 9, if I may, please.

7 Member Scott.

8 MR. SCOTT: Paul Scott, for the record.

9 I move the board approve the proposed
10 amendments of rule section and repeals for 43 Texas
11 Administrative Code, Chapter 206, concerning cleanup, as
12 recommended by staff for publication in the *Texas*
13 *Register*. I also move that the board grant the department
14 the authority to make changes to the proposed sections
15 based on non-substantive corrections made by the *Texas*
16 *Register*.

17 MR. BACARISSE: Is there a second for Member
18 Scott's motion?

19 MS. OMUMU: I second.

20 MR. BACARISSE: Member Omumu.

21 Laura, any public comments or any further
22 discussion with the board first on this?

23 MS. MORIATY: No, sir, no public comments on
24 item 9.

25 MR. BACARISSE: Okay. Thank you.

1 Are there any further questions, discussion?

2 (No response.)

3 MR. BACARISSE: Okay. Then I'll call the vote,
4 please.

5 Member Alvarado?

6 MR. ALVARADO: Aye.

7 MR. BACARISSE: Member Gillman?

8 MS. GILLMAN: Aye.

9 MR. BACARISSE: Member Graham?

10 MR. GRAHAM: Aye.

11 MR. BACARISSE: Member Omumu?

12 MS. OMUMU: Aye.

13 MR. BACARISSE: Member Prewitt?

14 MR. PREWITT: Aye.

15 MR. BACARISSE: Member Schlosser?

16 MR. SCHLOSSER: Aye.

17 MR. BACARISSE: Member Scott?

18 MR. SCOTT: Aye.

19 MR. BACARISSE: And I, Chair Bacarisse, vote
20 aye as well. It's unanimous. Thank you.

21 MR. RICHARDS: Thank you, members.

22 So we'll now move to agenda item 10, and I
23 would ask Monique Johnston, who is already at the podium,
24 to walk us through this agenda item.

25 MS. JOHNSTON: Chairman, members, Director

1 Avitia, good morning. For the record, I'm Monique
2 Johnston, director of the Motor Vehicle Division.

3 Today we're asking the board's permission to
4 begin the formal rulemaking process to make changes to
5 Chapter 215, Motor Vehicle Distribution, in Title 43 of
6 the Texas Administrative Code. This rule is listed on
7 your agenda item as number 10 and the details found are
8 beginning on page 220 of your board book.

9 The rule package proposes amendments, new
10 sections and repeals to Chapter 215 and is proposed in
11 conjunction with the notice of intent to rule review in
12 compliance with Government Code 2001.039, which Ms.
13 Moriarty already presented to the board this morning under
14 agenda item 8. This chapter has not been reviewed, as our
15 general counsel has said, since 2017, which was before
16 eLICENSING -- that is our online licensing system -- was
17 implemented. In total the department is proposing
18 amendments or repeals to 122 of the 154 existing sections,
19 with five new sections proposed being added.

20 In proposing Chapter 215 amendments and
21 repeals, the department has the following goals: to
22 implement statutory changes and add language consistent
23 with statutes in other chapters in Title 43 of the Texas
24 Administrative Code; to delete language describing actions
25 for which the department no longer has rulemaking

1 authority; to deter fraud or abuse by expanding
2 fingerprinting requirements to our drive-a-way operators
3 who hold in-transit licenses; and to modify language to be
4 consistent with current practice including the use of
5 records or electronic systems.

6 It's also going to: amend certain application
7 requirements consistent with regulatory best practices;
8 clarify existing requirements; increase temporary tag
9 allocations for franchised dealers based on the
10 department's experience over the past couple of years, and
11 to modernize language and improve readability to clarify
12 and delete unused, archaic or inaccurate definitions,
13 terms and references, and to improve readability and
14 understanding; also to repeal rules that are concurrently
15 proposed to be included in the new Chapter 224, which will
16 be later presented under agenda item number 16.

17 I would like to highlight four of the most
18 significant Chapter 215 proposals, the first being
19 legislative implementation. Proposed amendments would
20 implement Senate Bill 422 from the 88th Legislature
21 regular session from 2023 which amended Occupations Code
22 55.004, 55.0041, and 55.005, affecting licensing of
23 military service members.

24 SB 422 requires state agencies to adopt rules
25 to allow military service members who hold out-of-state

1 licenses to engage in a business or occupation in Texas
2 for which a license is required. Under these amended
3 provisions, once a military service member, a military
4 veteran, or a military spouse applies for a license and
5 provides documentation, the Texas licensing agency must
6 act within 30 days to determine if the applicant is
7 currently licensed in good standing in a jurisdiction that
8 has substantially equivalent licensing requirements and
9 issue an authorization or a Texas license.

10 The second point I'd like to highlight is the
11 proposed fingerprinting requirements. On June 30, 2022,
12 the board adopted fingerprint requirements for GDN
13 applicants and holders effective September 1, 2022. On
14 October 12, 2023, the board adopted a rule that would
15 allow fingerprinting requirements to be added for other
16 license types. That went into effect on November 2, 2023.

17 Fingerprint requirements have proven to be a
18 very effective way to prevent fraud and protection in two
19 very important ways: by verifying identity and also by
20 allowing the department to obtain a complete criminal
21 history, including not only the DPS background searches
22 but the search from the Federal Bureau of Investigations.
23 This proposal would expand fingerprint requirements to
24 drive-a-way operators who apply or renew an in-transit
25 license under Transportation Code, Chapter 503.

1 The third item I'd like to highlight is
2 proposed new sections. New sections are proposed to this
3 document and clarify for manufacturers, distributors,
4 converters and franchised dealers current licensing
5 application requirements, procedures for issuing industry
6 license plates, and sanctions for violating department
7 rules. And they also document for drive-a-way operators
8 application requirements and procedures for issuing
9 industry license plates.

10 The fourth item I'd like to highlight are the
11 proposed repeals. Repeals that are proposed are to
12 implement statutory changes in Senate Bill 604 from the
13 86th legislature that was in 2019, and that is the ability
14 to approve or regulate the shows was eliminated. That's
15 for shows and exhibitions.

16 We're also wanting to move an existing rule to
17 the subchapter designated for that specific license type
18 and to move the adjudicative rules in Subchapters B, G, I
19 and J to the proposed new Chapter 224, which is proposed
20 concurrently for the board in agenda item 16.

21 In September 2023, the department provided an
22 early draft of these rules to the two department advisory
23 committees, the Motor Vehicle Industry Regulation Advisory
24 Committee, MVIRAC, and the Customer Service and Protection
25 Advisory Committee, CSPAC. Committee members voted on

1 formal motions and provided informal comments on other
2 provisions.

3 Input from both committees was incorporated in
4 the proposed rule package under the following sections:
5 215.83 which is License Applications, Amendments and
6 Renewals; 215.102 which is Application Requirements;
7 215.103 which is Service Only Facility; 215.132 which is
8 Definitions; 215.144 which is Records; 215.244 which is
9 Definitions; and 215.250 which is Dealer Price
10 Advertising, Savings Claims and Discounts.

11 Both committees recommended that 215.112, Motor
12 Home Show Limitations and Restrictions not be repealed,
13 but as I mentioned earlier, the department does not have
14 the statutory authority for this rule. The department
15 cannot complete its rule review with provisions that lack
16 statutory authority still in effect because Government
17 Code 2001.039(3) and 2001.024(a)(3)(D) require that the
18 agency repeal and not readopt any provisions that lack
19 statutory authority. In the future should the legislature
20 amend the statute to authorize the department to have
21 approval and restrictions on competition, then the
22 department could propose the rule at that time.

23 MVD requests your approval to proceed with
24 publication in the *Texas Register* so we may receive public
25 comments and move forward with the formal rulemaking

1 process.

2 This concludes my remarks, and I'm happy to
3 answer any questions you have.

4 MR. BACARISSE: Members, any questions for Ms.
5 Johnson?

6 Go ahead, Member Graham.

7 MR. GRAHAM: I just want to make sure in
8 215.1 -- and hopefully I'm in the right spot and I'm
9 keeping up with the right thing because trying to do this
10 is really hard on a small laptop -- but I believe that is
11 the terminology change, removing the word "motor" from
12 motor vehicle.

13 MS. JOHNSTON: Motor in motor vehicle, yes?

14 MR. GRAHAM: I wish I'd have wrote the page
15 down in the board book but I was going so fast I didn't.
16 And my question, I mean, I'm sure the intent of that is
17 because we license lots of things, including things that
18 don't have motors, so I just want to make sure that there
19 are no implications on any statutory definition of what
20 constitutes a motor vehicle.

21 MS. JOHNSTON: No, sir. I think it's more of
22 consistency in language throughout the chapter. Yes, sir.

23 MR. GRAHAM: I suspected that, but it's a very
24 important question and I just wanted to clarify.

25 MS. JOHNSTON: Very good question.

1 MR. GRAHAM: And regarding the shows and
2 exhibitions, so this was kind of news to me that that
3 occurred in 2019. I wasn't really aware of that. Was
4 that language in the Sunset Commission report?

5 MS. JOHNSTON: The language to repeal? To
6 eliminate the approvals?

7 MR. GRAHAM: Authority of the DMV?

8 MS. JOHNSTON: Yes, that's correct, sir.

9 MR. GRAHAM: So that was in the Sunset report?

10 MS. JOHNSTON: Correct.

11 MR. GRAHAM: And it's been a minute since I've
12 read it, but is it clear -- if I go back and re-read it,
13 am I going to know where it's at, or do I need to get you
14 to tell me?

15 MS. JOHNSTON: I can tell you briefly some of
16 the excerpts from it, if you'd like.

17 MR. GRAHAM: I'll jot it down, please.

18 MS. JOHNSTON: In the Sunset Commission they
19 criticized the board strongly for having developed and
20 proposed rules for shows and exhibitions that would have
21 made certain manufacturers' business models more
22 difficult, if not impossible to carry out in Texas by
23 prohibiting manufacturers from showing their vehicles and
24 offering test drives in shows and exhibitions. They also
25 said it was not the board's role to create policy when the

1 legislature has not chosen to adopt that policy.

2 Another thing they noted in the report was that
3 when board members attempt to affect the market in which
4 they also participate, they risk, at minimum, the
5 appearance of being anti-competitive, which not only puts
6 the department at risk of costly litigation but also
7 jeopardizes the reputation of the board as a policy-making
8 body and the integrity of the regulatory process.

9 They also noted that permitting shows and
10 exhibitions did not serve any purpose, that the
11 requirement is an extra bureaucratic hoop with minimal
12 added consumer or public protection benefit and creates an
13 unnecessary layer of regulation for licensees and the
14 department since the activity that aims to prevent, such
15 as conducting vehicle sales activities outside of a
16 dealership, are already prohibited for most licensees by
17 other laws and statutes.

18 They also noted that even without this extra
19 step, the department could still investigate alleged
20 violations at a show or exhibition since the law already
21 requires participants to be licensed by the department.

22 Another thing they noted was that the approval
23 process does not add any additional experience or public
24 safety requirements needed to protect consumers or the
25 public, and show and exhibition complaints reflect

1 violations for not providing advance written notice of
2 participation in an event and demonstrate no risk for
3 public safety. In 2018, prior to this being repealed, the
4 statute being repealed, there were only six violation
5 complaints that were filed in regard to shows and
6 exhibitions.

7 MR. GRAHAM: Okay. That was a lot. So I'm
8 sitting here, what's going through my mind -- and I'm not
9 a lawyer and I'm usually not accused of being eloquent
10 either -- but so read the very first sentence of what you
11 started.

12 MS. JOHNSTON: From the Sunset report?

13 MR. GRAHAM: Uh-huh.

14 MS. JOHNSTON: The Sunset Commission --

15 MS. GILLMAN: I'm sorry, Monique. Is what you
16 read something that I could read in the book?

17 MS. JOHNSTON: I don't believe in the board
18 book we include a copy of the Sunset report.

19 MR. GRAHAM: Yeah, it's from the Sunset report
20 in 2018.

21 MS. MORIATY: It's from the Sunset report that
22 she's quoting it. How can we get you a copy?

23 MR. GRAHAM: It's on the Sunset Commission's
24 site.

25 MS. MORIATY: Google it from the Sunset

1 Commission's website, the last report on the DMV.

2 MS. JOHNSTON: So the first was that the Sunset
3 Commission criticized the board strongly for having
4 developed a proposed rule for shows and exhibitions that
5 would have made certain manufacturers' business models
6 more difficult, if not impossible to carry out in Texas by
7 prohibiting manufacturers from showing their vehicles or
8 offering test drives at shows and exhibitions.

9 MR. BACARISSE: Monique, I just happen to carry
10 around my pocket Sunset.

11 MS. JOHNSTON: All right. Keep that in your
12 jacket pocket.

13 (General talking and laughter.)

14 MR. BACARISSE: Member Gillman, I submit for
15 your review that document, and there's a little red tag on
16 the spot where I think you may have most interest. So I
17 apologize for the interruption.

18 MS. GILLMAN: Impressive, Mr. Chair.

19 MR. GRAHAM: I thought I had mine still in my
20 bag.

21 MR. BACARISSE: I was looking at you, Brent.
22 All right. Sorry.

23 MR. GRAHAM: And so really where I'm going with
24 this is historically this agency had authority to some
25 degree, depending on, I suppose, rulemaking and whatnot.

1 And in 2301.358 it specifically, in my opinion -- and I
2 guess that's all up for interpretation -- lays out that
3 the agency has a responsibility in this realm, and I don't
4 need to read it to you, y'all know this better than me.
5 And I was certainly here during that special time with
6 Sunset.

7 (General laughter.)

8 MR. BACARISSE: That's one way to describe that
9 sort of exam.

10 MR. GRAHAM: And I'll just leave it there.

11 MS. MORIATY: Chairman, if I could, I could
12 walk through from statutory perspective what happened in
13 2019, if that would be helpful, Member Graham.

14 MR. BACARISSE: Member Graham, it's up to you.

15 MR. GRAHAM: In regards to this?

16 MS. MORIATY: The specific change that happened
17 due to the Sunset Commission's recommendations.

18 MR. GRAHAM: Well, we may need to get there.

19 I'll just kind of finish my thought.

20 MR. BACARISSE: You're broadly speaking.

21 MS. MORIATY: Okay.

22 MR. GRAHAM: Yeah, broadly speaking, we had
23 this responsibility, then they said a whole bunch of stuff
24 which you just read that said a lot -- although, I guess
25 everybody can argue about what it really says to some

1 degree. And so now I'm left wondering does that mean that
2 there should not be shows and exhibits anymore, does that
3 mean so if there are, it's unregulated and fair game.

4 I'm trying to get my head around what this
5 means because, you know, as a dealer I think about a
6 dealer from Denton coming to a dealer from Sherman and
7 renting a lot right next door and filling that lot up with
8 vehicles, and the concerning part is that could be a
9 problem. And so I'm just sort of trying to make sure I've
10 got my head around it and that I'm reading it right and
11 that I remember where all the stuff is, and so I think
12 probably there's people with questions.

13 MR. BACARISSE: I think on that particular
14 point -- Bacarisse, for the record -- we may be conflating
15 two different issues. Could you speak to that?

16 MS. JOHNSTON: Correct. So the section that's
17 being repealed was expressly limited to motor home shows
18 that required department approval. So that's the rule
19 that's being repealed in this and that's what we don't
20 have statutory authority for. And in regards to shows and
21 exhibitions at this time, currently someone just has to
22 notify us timely before the show that they're
23 participating in the show; that's what the requirement is
24 under the current statute.

25 MR. BACARISSE: The idea that you may have this

1 sort of infringement upon dealer territories and so forth,
2 that's actually addressed in the contract between the
3 manufacturer and the franchised dealer. Am I correct?

4 This is Bacarisse again. Sorry, back there.

5 Is that correct?

6 MS. JOHNSTON: Are you referring to like if
7 they decide they're going to display vehicles, rent a lot?

8 MR. BACARISSE: What Member Graham just said.

9 MS. JOHNSTON: They can't sell at that location
10 if they're not licensed.

11 MR. BACARISSE: They can't be there. It
12 violates the agreement between the distributor, the
13 manufacturer and the franchised dealer.

14 MS. JOHNSTON: And that would be between the
15 manufacturer and the franchisee.

16 MR. BACARISSE: Right. That's in the contract
17 between --

18 MS. OMUMU: Mr. Chairman, I'll add color to
19 that.

20 MR. BACARISSE: Member Omumu.

21 MS. OMUMU: So it's not necessarily in the
22 dealer agreement, I don't believe, but I mean, as a
23 courtesy we require our dealers to notify the distributor
24 before they would exhibit vehicles in another dealer's
25 PMA.

1 MR. BACARISSE: And you do that by contract, or
2 how do you do that?

3 MS. OMUMU: Not contract, they have to notify
4 us before they're allowed. You have to get the other
5 dealer's permission to exhibit because you can't sell
6 legally in another dealer's PMA, you have to sell in your
7 location. Right? That's by the dealer agreement.

8 But if you wanted to place vehicles for exhibit
9 in another dealer's PMA, you have to get that dealer's
10 permission to do so. That's a requirement by us.

11 MS. JOHNSTON: And that's handled in the
12 contracts between the manufacturers and the dealers.

13 MR. BACARISSE: And I realize it could differ
14 between manufacturer and manufacturer. Right?

15 MS. JOHNSTON: Correct.

16 MR. BACARISSE: I just wanted to clarify that.
17 Member Gillman.

18 MS. GILLMAN: I'd like to provide some color on
19 it.

20 MR. BACARISSE: Please.

21 MS. GILLMAN: I would say that, no, not
22 necessarily in manufacturer-dealer agreements is there
23 regulation on where dealers or manufacturers have a
24 display or exhibit; it is not necessarily. And in fact,
25 there has been in the past where the manufacturer has

1 wanted to set up shop -- I'm saying set up shop -- to
2 display vehicles and actually sell vehicles, which
3 violates --

4 MR. BACARISSE: Adjacent to a dealer?

5 MS. GILLMAN: Yes. That has happened.

6 And so in my view what somebody said was
7 correct. You have to be a licensed dealer to set up a
8 shop and approved by the DMV and you have to get an
9 approved license for an address, have a building, posted
10 hours and signage, and that is a requirement. And if
11 you're approved as a dealer, it's a privilege to be that.

12 If me, as a dealer, decide to just take 20 of
13 my Hondas and put them somewhere else that I am not
14 licensed, that might be a show or exhibit but it is
15 intended to be a temporary situation. Now, that
16 temporary, I don't know how long, it might be one month if
17 I display trucks at the Houston Livestock Show and Rodeo,
18 it might be a full year at Minute Maid Park in an
19 agreement with the Astros to have a Honda Lounge, or
20 whatever. But it is important, I feel, that the agency
21 understands that staff and enforcement understand that you
22 have had the authority and it's super important that you
23 maintain the authority to enforce where a dealer or a
24 manufacturer is doing business.

25 So with that said, I feel like the agency has

1 the authority on the books right now to say if you're not
2 licensed for this address with a facility that's approved,
3 you can't just set up shop anywhere you want. So if we
4 do -- we, the board -- if we allow the agency to have no
5 authority on shows and exhibits, that means that me, as a
6 dealer, I can put and sprinkle Hondas anywhere I want in
7 the state, anywhere I want, and just have a display
8 without any time limit, without DMV having to enforce
9 anything. I can just put vehicles around for as long as I
10 want, right next to my competition.

11 And I respect this Sunset Commission's
12 recommendations but I don't think that Sunset intended for
13 dealers to be able to just sprinkle their vehicles around
14 anywhere without any parameters and guidelines. The
15 manufacturer works very hard -- if it's okay, can I keep
16 going?

17 MR. BACARISSE: You have the floor.

18 MS. GILLMAN: The manufacturer works very
19 hard -- I'm just going to take Houston, for example -- to
20 place dealers around the city geographically where
21 populations are growing or receding. The agency has
22 always had a 15-mile distance between dealers, that's
23 generally speaking -- I'm sure that there's plenty of
24 exceptions that have happened along the way, a protest
25 process takes place in those cases -- but generally

1 speaking, 15 miles apart, and that is to serve Texans well
2 so that they can buy a car and get it serviced in the area
3 where they are.

4 But dealers invest dollars in facilities,
5 signage, meeting manufacturer requirements, space and
6 parking, and all of this in conjunction with the DMV.
7 It's a regulated industry, and I feel like the DMV has
8 contributed to making dealers better because of it. And I
9 feel like if you take the wording from Sunset to just
10 strike, delete rules with regards to shows and
11 exhibitions, you are creating Wild West conditions that I
12 do not think is the intent of Sunset or the DMV.

13 I think you should, in fact, with respect to
14 this shows and exhibits -- the reason I'm so passionate
15 about it is because by just repealing and having nothing
16 more to do with it, you're allowing dealers to just put
17 cars wherever you want, dealers or manufacturers, for an
18 unlimited period of time. That's not the case.

19 I still want to put cars at Minute Maid Park as
20 long as I have a contract with the Astros, but that's a
21 time period. And even on your own form that me, as a
22 dealer, I have filled out many times because I love shows
23 and exhibits -- on the form it has a beginning date and an
24 ending date that you're supposed to fill in. And
25 generally, there is no protest when dealers and

1 manufacturers comply like that.

2 I think that we should consider -- and I know
3 it has been explained to me that this process today is
4 just rule review, allowing public comment to come, but I
5 think that this is a very important aspect of our code and
6 it really needs clarification and a fix before you just
7 delete. And I'm asking for staff to meet with
8 stakeholders to develop better language to regulate
9 dealers and manufacturers in this area. And I know that
10 you've said specifically Sunset is against it, but I feel
11 like you can take the good things that Sunset wanted to do
12 and yet not have the Wild West happen.

13 And so that's my request with respect to this
14 shows and exhibitions, Mr. Chairman.

15 MR. BACARISSE: Great.

16 MS. MORIATY: Mr. Chairman, if I may?

17 MR. BACARISSE: Sure. Laura Moriaty.

18 MS. MORIATY: I'd just like to clarify that
19 this is not just based -- this is Laura Moriaty, general
20 counsel, for the record. I'm so sorry. This is not just
21 based on Sunset's recommendation. Sunset had the statute
22 changed as part of that in 2019.

23 MR. BACARISSE: Through their committee.

24 MS. MORIATY: Through the legislative process.
25 The legislature has changed the statute in 2301.358 and

1 where it used to give the department authority to permit
2 shows, we now only are allowed to receive notice. And our
3 rulemaking authority only allows us to make rules about
4 the powers that the legislature gives us in 2301.

5 So since we no longer have the power to permit,
6 we cannot make rules about permitting exhibitions, we
7 cannot make rules necessary to permit exhibitions, we
8 cannot set parameters on exhibitions, all we can do is
9 receive notice, so we could make a rule about the form of
10 the notice.

11 But as Sunset said, right, shows and
12 exhibitions are an extra bureaucratic hoop with minimal
13 added consumer or public benefit or protection. The
14 question would be why are we adding extra hoops to a
15 notice requirement that is in statute. So it's not just a
16 Sunset recommendation anymore, it's a statute, and we
17 can't not abide by it. We can't create a rule that is in
18 violation of that statute.

19 MR. BACARISSE: I think that it might be
20 interesting -- and I'll let you all discern how best to do
21 it -- as the Legislative and Policy Committee begins to
22 think about what we, as an agency, want to bring forward
23 in the next session, Chairman Scott, we could think very
24 clearly and carefully about trying to recapture some of
25 the ability to regulate that was taken away from us, and

1 we'll let the legislature decide whether or not to revisit
2 that issue or not. But we have to be careful about the
3 way in which we approach the legislature.

4 We have constituent groups that have strong
5 opinions on this matter, I'm fully aware, and I want to
6 make sure -- to Member Gillman's comments, I want to make
7 sure that we can adequately regulate the auto dealing and
8 other transportation dealing franchised owners and so
9 forth. But there's a balance, maybe -- I don't know if we
10 can find it with members of the legislature, but perhaps
11 we could, with Member Scott's committee and Keith and the
12 executive director here and all of you.

13 That's a conversation that we can really maybe
14 hammer out in the Legislative and Policy Committee to see
15 whether or not -- separate and apart from rule review,
16 whether or not we could, we want to, we can, we should try
17 maybe, or not, to approach the legislature and try to
18 recapture, to Member Gillman's point, some of our
19 regulatory capabilities without being anti-competitive --
20 big challenge.

21 Member Scott.

22 MR. SCOTT: Thank you, Mr. Chairman. Paul
23 Scott, for the record.

24 I agree with what you're saying, that there
25 needs to be some work done on this, from my perspective.

1 We've always had this understanding or belief that
2 manufacturers could not sell directly to the public, they
3 had to go through a franchised dealer. And many people
4 see this shows and exhibitions situation as just an end
5 run around our ability to require or not allow direct
6 sales.

7 And I don't know if the legislature, that was
8 the intent -- I don't know if you can explain that and see
9 if there's a modification that's due. But I think my
10 position is this whole situation here is being used to end
11 run around our ability to regulate direct sales. That's
12 my opinion.

13 Now, the whole idea that you can have a show, I
14 look at this, you don't even have to tell anybody that
15 you're going to have a show, you can have a permanent
16 exhibition. You know, you can go to the Galleria, I
17 guess, and have an exhibition or a show that opens today
18 and ends whenever, there's no limit. I just see this as,
19 again, the vehicle that's being used to get around the
20 requirement that a manufacturer not be allowed to sell
21 directly to a consumer.

22 Now, that's an argument that needs to be made.
23 I don't know what the solution is, but that's how I see
24 this. And I don't know if there's anything that the
25 agency can do about that or that the agency wants to do

1 about that.

2 You know, if you have one group, you have a
3 manufacturer or a group of manufacturers that find a way
4 to circumvent the authority of the agency, then who's
5 next? So it needs some clarification and there needs to
6 be some time spent on it is how I see it.

7 MS. GILLMAN: I have a solution, a possible
8 solution.

9 MR. BACARISSE: Well, we're at the front end of
10 a lot of things today that we're not going to fix this
11 issue today. We're just not. We can talk about it but
12 we're not going to fix it today.

13 We've got all these rules that we need to
14 continue moving through so we can get to the front end of
15 this process.

16 MS. GILLMAN: Well, with respect to staff
17 changes, I have a recommendation. If it's okay, I would
18 recommend -- because, Laura, at the very beginning you
19 said we change this if reasons no longer exist for it to
20 be on the books. Well, I submit reasons do exist, and
21 very strong reasons exist for this rule to maintain, and
22 so I propose actually a readoption with amendments, with
23 changes that staff work with stakeholders in the near
24 future.

25 MS. MORIATY: If I may, sir?

1 MR. BACARISSE: Yeah, Laura.

2 MS. MORIATY: First, I want to point out that
3 this rule is limited --

4 MR. BACARISSE: Laura Moriaty, for the record.

5 MS. MORIATY: Oh, sorry. Laura Moriaty, for
6 the record. I'll get better at it someday.

7 (General laughter.)

8 MR. BACARISSE: That's all right.

9 MS. MORIATY: I just want to point out that
10 this rule is expressly limited to motor home shows that
11 require department approval, and because our ability to
12 approve has been removed, we cannot readopt this rule. We
13 cannot amend this rule and fix it.

14 MR. BACARISSE: The statute doesn't exist.

15 MS. MORIATY: The statute does not exist.

16 MR. BACARISSE: That's why I was saying we go
17 through legislative policy.

18 MS. MORIATY: Exactly. We need a statutory
19 change to give us this authority before we can do those
20 things.

21 And to the extent -- as Member Scott mentions,
22 to the extent that he feels that this is being used by
23 manufacturers as a means to show vehicles and get around
24 dealer responsibilities, I want to note, first, that you
25 still cannot sell at a show or exhibition. That's a

1 separate statute that will remain enforceable, is
2 enforceable.

3 But if we want to make a rule -- we can't make
4 a rule that's going to remove market players from anything
5 without express legislative intent, and we don't have that
6 here. In fact, we have express legislative intent to take
7 it away from us, and that's the problem. We have got to
8 get the legislative intent reestablished with a clear
9 statute before we can make rules in this arena.

10 And in the meantime, if we try to keep this old
11 stuff on the books, all we are doing is handicapping
12 ourselves and keeping ourselves in violation of the
13 statute that requires us to do a rule review every four
14 years because we can't readopt the thing. So I'm pleading
15 that we look carefully at what our statutory authority
16 actually is right now, what the legislature actually did,
17 and focus on what we can do at this point, which is to
18 come into compliance with the statutory review
19 requirement.

20 MS. OMUMU: On that note, Mr. Chairman, I'd
21 like to make a motion, please, sir.

22 MR. BACARISSE: Yes, Member Omumu, sure.

23 MS. OMUMU: I move that the Board approve the
24 proposed amendments, new rule sections and repeals for 43
25 Texas Administrative Code, Chapter 215, concerning

1 fingerprinting, legislative implementation and cleanup, as
2 recommended by staff, for publication in the *Texas*
3 *Register*. I also move that the board grant the department
4 the authority to make changes to the proposed sections
5 based on non-substantive corrections made by the *Texas*
6 *Register*.

7 MR. BACARISSE: Is there a second?

8 MR. PREWITT: Second.

9 MR. BACARISSE: Member Prewitt.

10 MS. GILLMAN: I have a friendly amendment.

11 MR. BACARISSE: Is there further discussion?

12 (No response.)

13 MR. BACARISSE: I'm sorry. Before we have
14 discussion, Member Gillman, you have a friendly amendment.

15 MS. GILLMAN: Yes, sir. Thank you, Mr.
16 Chairman.

17 Very similar language, Member Omumu, except I'd
18 like to move that the board approve for publication in the
19 *Texas Register* proposed amendments, new rule sections and
20 repeals, 43 Texas Administrative Code, Chapter 215, as
21 recommended by staff, except for the repeal of 215.112. I
22 move that the board does not repeal 215.112.

23 I also move that the board grant the department
24 to make changes to the proposed sections based on non-
25 substantive corrections made by the *Texas Register*.

1 MR. BACARISSE: Do you accept that friendly
2 amendment?

3 MS. OMUMU: Mr. Chairman, no, because as
4 described by our general counsel, we don't have
5 legislative authority to make any decisions on that. So
6 I'm going to have to deny that friendly appeal.

7 MR. BACARISSE: Thank you.

8 Any further discussion?

9 (No response.)

10 MR. BACARISSE: Laura, are there any public
11 commenters signed up on this?

12 MS. MORIATY: There are, sir. Laura Moriaty,
13 general counsel.

14 First up would be William Daniel from the Texas
15 Recreational Vehicle Association.

16 MR. BACARISSE: Great. Please come to the
17 podium.

18 MR. DANIEL: Chair, members, good morning, good
19 day. Thank you for allowing me to speak. I'm the general
20 counsel of the Texas Recreational Vehicle Association.
21 I'm here today on its behalf, and I'm substituting for its
22 executive director, Phil Elam, who is dealing with a
23 family medical matter.

24 Jumping straight into the conversation that's
25 been going on, we would agree that this rule as currently

1 written cannot be enforced because the statute has been
2 amended. However, we do believe that this rule can be
3 amended to conform to statute and needs to be. We need to
4 keep in mind that the motor home show and exhibit rule is
5 a narrow exception to the rest of Chapter 2301 which is
6 set up and is supposed to be liberally construed to have a
7 sound distribution and selling system in Texas. This is a
8 narrow exception, but we risk, as has already been
9 discussed, the exception swallowing the rule.

10 And as one example, Section 2301.355 of the
11 statute requires -- and this is the case for franchised
12 dealers but there's a similar one for used vehicle
13 dealers -- that a dealer must have a separate license for
14 each location at which it operates and which it sells
15 vehicles. So given the example that came before one of
16 the advisory committees, suppose someone rents a vacant
17 lot for seven years and goes out there, puts vehicles
18 there, and in the case of RVs, starts selling them there,
19 and says, no, no, this is not an unlicensed, illegal
20 dealer location, this is a show.

21 There's no doubt that the board has authority
22 to adopt rules under 2301.355 to enforce the requirement
23 that the dealer operate from its licensed locations and to
24 prevent the kind of sham that has been discussed by the
25 board and that the advisory board put forth. Clearly this

1 seven-year show is not what the legislature intended. And
2 that's just one example. There are other provisions that
3 would authorize rules and to prevent the here today, gone
4 tomorrow, fly-by-night operator that having no rule is
5 going to allow.

6 And competition, sure, we welcome it, but legal
7 competition, not from someone pulling this kind of sham.
8 If you don't want to compete, you shouldn't be an auto
9 dealer.

10 So the Recreational Vehicle Association, the
11 auto dealers and the motorcycle dealers have started the
12 process by putting forward a proposed revision, and we
13 look forward to working with the agency to adopt a
14 modification of this rule that will be authorized by
15 statute and achieve the statutory goal.

16 Thank you for your time, and I'll answer any
17 questions.

18 MR. BACARISSE: Thank you. And we, too, look
19 forward to working together with you on this process.
20 Thank you.

21 Members, any questions?

22 (No response.)

23 MR. BACARISSE: Thank you. Appreciate your
24 time.

25 MR. DANIEL: Thank you.

1 MR. BACARISSE: Laura, is there another?

2 MS. MORIATY: There sure is, sir. Laura
3 Moriaty, for the record.

4 Next up is Karen Phillips from the Texas
5 Automobile Dealers Association. Ms. Phillips has signed
6 up for three separate subsections, but since it's only one
7 agenda item, she will have three minutes.

8 MR. BACARISSE: Okay. Ms. Phillips, good
9 afternoon. Thank you for being here.

10 MS. PHILLIPS: Good afternoon. I didn't
11 realize I would only get three minutes for three issues or
12 three proposed rules, but thank you for the time. Karen
13 Phillips with TADA.

14 First of all, I think that because we've had
15 such a lively discussion having to do with the show and
16 exhibits, I'm just going to start out with that. If you
17 go back to the Sunset report that has been so widely
18 discussed, you will note that in that discussion it says
19 even without this extra step -- that means even without
20 the approval process -- the department could still
21 investigate alleged violations at a show or exhibit since
22 the law already requires participants to be licensed by
23 the department.

24 And in a box on this page 42, the Sunset
25 Commission says, "A show involves multiple motor vehicle

1 dealer participants and takes place on a specific day or
2 days, while an exhibition is an ongoing vehicle display."

3 So I think that even the Sunset Commission would concur
4 that shows are supposed to be limited in duration,
5 exhibits should also be limited in duration.

6 I would also point to the fact that on your
7 notice form, you all are already having a rule because the
8 rule is defined with respect to the statute as a statement
9 of general applicability that implements, interprets or
10 prescribes law or policy. That tracks the Administrative
11 Procedures Act with respect to the definition of a rule.

12 On your participation notification
13 instructions, you state: Not all public displays qualify
14 as a show or exhibit. And then you list three types of
15 shows or exhibits that in y'all's opinion do not qualify
16 for the need for a notice. You also state that there are
17 important reminders that you have to be licensed for all
18 vehicle lines, sales cannot be occurring at these various
19 exhibits, and of course, we have Blue Law violations that
20 cannot occur. And I'm happy to provide you with that form
21 that you all already ask all of us to have to provide.

22 Now would you also look at the second page.
23 The second page has to do with an entity -- and we
24 obtained this under an open records request -- that has
25 listed their event dates from 12/01/22 to 12/31/2032. So

1 we have already an entity that is -- this is very
2 current -- has already stated that they're going to have
3 an event for ten years and one month. I do not believe
4 that that is the definition of a show, nor do I believe
5 that that's the definition of an exhibit, either by Sunset
6 standards, and of course, you have rulemaking authority
7 under 155.2301.155.

8 So I would encourage you again to understand
9 that you have rulemaking authority on this issue, and we
10 need to have some parameters and guardrails and
11 definitions. Thank you.

12 MR. BACARISSE: Thank you, Ms. Phillips, we
13 appreciate that very much.

14 MS. GILLMAN: Can I ask a question of Ms.
15 Phillips?

16 MR. BACARISSE: Oh, yeah, I'm sorry. Ms.
17 Phillips, you may have a question or two here. I think
18 Member Gillman has one for you.

19 MS. GILLMAN: You just said, your last sentence
20 was you do have authority, and I think you cited 155.

21 MS. PHILLIPS: 2301.155. It says, The
22 authority to adopt rules under this chapter is vested in
23 the board. In accordance with this chapter and the rules
24 and decisions and orders of the board, the board shall
25 adopt rules as necessary or convenient to administer this

1 chapter -- meaning the entire Chapter 2301 -- and to
2 govern practice and procedure before the board.

3 You have a generic and general rulemaking
4 authority, and then you have a definition as to what a
5 rule is which is a statement that implements, interprets
6 or prescribes law or policy.

7 MR. BACARISSE: Thank you.

8 Ms. Moriaty, how have you been reading that
9 particular statute?

10 MS. MORIATY: So the problem I see, Chairman --
11 Laura Moriaty, for the record -- is that this is no longer
12 in Chapter 2301, so it's not part of this chapter that we
13 can administer the permitting of shows.

14 The definitions -- we could try to define show
15 and exhibitions, that is administering this chapter, but
16 we can't define them in a way that eliminates competitors.

17 So to the extent that Ms. Phillips is suggesting this
18 applicant here should be eliminated by creating a finite
19 show, that would be something we could not do because we
20 do not have express statutory authority to eliminate
21 competitors. And this is precisely what the Sunset
22 Commission was talking about when it pointed out that we
23 were making rules around shows and exhibitions that would
24 have defined certain competitors out of existence.

25 That's the same ask you're hearing here, and we

1 need statutory authority for that. You're going to
2 eliminate a competitor, the legislature is who gets to do
3 that, and so we need them to tell us that that's what we
4 need to do, or else we will just get vetoed by the
5 Governor's Regulatory Compliance Division.

6 MS. PHILLIPS: May I respond?

7 MR. BACARISSE: Certainly.

8 MS. PHILLIPS: First and foremost, as we go
9 back to what the Sunset Commission stated, shows and
10 exhibits are to be finite with respect to a few days and
11 that's what the Sunset Commission stated: A show involves
12 multiple motor vehicle dealer participants and takes place
13 on a specific day or days, an exhibition is an ongoing
14 one.

15 With respect to defining and having specific
16 rules with respect to what a show or exhibit is and to
17 making certain that a show or exhibit is not ad infinitum
18 forever and ever, that doesn't mean I'm eliminating
19 competition or eliminating any particular entity, that
20 just means that I am very succinctly saying this is what a
21 show is and this is what an exhibit is.

22 MR. BACARISSE: Member Scott.

23 MR. SCOTT: Paul Scott, for the record.

24 So this is an actual form that we actually
25 signed off on, this one right here?

1 MS. MORIATY: I don't have it in front of me,
2 sir, but I believe it's probably an authentic document.

3 MS. PHILLIPS: It is. It was under an open
4 records request that I obtained through the agency.

5 MR. SCOTT: It surprises me that we would -- if
6 we assume that because it has a start and close date, then
7 we assume that we have some authority in that area, or
8 maybe they only give us notice?

9 MS. MORIATY: They're just giving us notice.
10 If we tried to deny this or tell them they couldn't do it,
11 we wouldn't have any authority to stop them.

12 MR. SCOTT: We don't even have the authority to
13 put a limitation on the duration? We have a license, our
14 license expires.

15 MS. MORIATY: So to the extent that we could
16 put -- so Ms. Phillips quotes the Sunset report but she
17 doesn't note that exhibitions in the Sunset report have no
18 day limit on them.

19 MR. SCOTT: Right.

20 MS. MORIATY: So even the Sunset report
21 anticipated that there would be shows and exhibitions that
22 were not finite, and in fact, an effort to make the finite
23 was the concern that spurred the Sunset Commission to
24 really look at this area.

25 We can put rules about the definition of show

1 and exhibit if we are not eliminating competitors.
2 However, because there are competitors in the marketplace
3 right now that use long term exhibitions as part of their
4 business model, if we make a definition that eliminates
5 those competitors without legislative authority to
6 eliminate those competitors, then we don't have actual
7 authority for that and we will not pass the Regulatory
8 Compliance Division review.

9 MR. SCOTT: I would say -- this is just a
10 comment, I guess -- when we say there are folks out there
11 that have long term shows as a part of their business
12 model, I would say, of course, provided they're allowed to
13 do that, why wouldn't you.

14 The other thing is, it's come up a couple of
15 times or I've heard it a couple of times, people have to
16 be licensed. I'm confused because is Tesla licensed in
17 Texas?

18 MS. MORIATY: So the statute requires that you
19 have to be licensed to have a show or exhibition and
20 that's in the statute, our rule is not creating that
21 requirement.

22 MR. SCOTT: Right. But my question is --

23 MS. MORIATY: Yes, we have manufacturers who
24 are licensed in Texas who conduct long term shows and
25 exhibitions.

1 MR. SCOTT: And I know that. I know that they
2 have licenses to be in Texas, but they have a license that
3 specifically allows them to have long term shows.

4 MS. MORIATY: So manufacturers, like any other
5 licensed entity, can conduct a show or exhibition under
6 this statute.

7 MR. SCOTT: Okay. Thank you.

8 MR. BACARISSE: Did someone else have a
9 question of Ms. Phillips?

10 (No response.)

11 MR. BACARISSE: Seeing none, thank you, Ms.
12 Phillips, appreciate it. Thank you very much.

13 MS. PHILLIPS: Thank you.

14 MR. BACARISSE: All right. So we have a motion
15 and a second.

16 MS. MORIATY: One more public commenter, sir.
17 I'm sorry.

18 MR. BACARISSE: Sorry. Okay.

19 MS. MORIATY: Bruce Bennett is our final
20 commenter.

21 MR. BACARISSE: Great. Mr. Bennett, good
22 afternoon.

23 MR. BENNETT: Good afternoon. For the record,
24 I'm Bruce Bennett, I'm here representing myself. I'm a
25 lawyer practicing a good bit before the commission,

1 representing dealers primarily.

2 I just have a few comments. This is small ball
3 compared to what you've been dealing with. This concerns
4 two of the proposed rules, 215.105 on page 308 of your
5 book.

6 This is about notification once there's been a
7 license application filed, and I thought it might be
8 helpful to broaden the type of notice that's given. It
9 talks about, I think, mail and I think it ought to be -- I
10 would suggest it would be regular mail, certified mail,
11 and by electronic means. I don't know who y'all have been
12 doing with the mail, but the mail has been pretty dadgum
13 unreliable here in the last year, so if it can be done
14 electronically, and I think the statute would allow it.
15 That would be a recommendation, and I will put this in
16 writing once the comment period begins.

17 The second one is on page 309 of your board
18 book, the time for filing a protest. It seems like the
19 sentence is kind of awkward. I mean, when I read it, it
20 seems like it's saying I've got to file it on the 15th
21 day, and I know it's not intended, it's no later than the
22 15th day after notice goes out. So I'll provide some
23 suggested language on that as well.

24 And then back to the notification, also the
25 clients are always asking me when is something going to

1 happen. Over at the TCEQ when an application is filed, it
2 says in their rules they'll review it within a certain
3 time period and then they'll tell you if it's
4 administratively complete, if you've provided all the
5 information or not. I may suggest maybe some dates for
6 that too, just because I can tell my client where are we
7 in the process, people want to know that.

8 Thank you very much for your time, I really
9 appreciate it.

10 MR. BACARISSE: Hold on.

11 Members, any questions on these issues?

12 (No response.)

13 MR. BACARISSE: I think you raised some great
14 points, we appreciate it.

15 MR. BENNETT: Thank you very much.

16 MR. BACARISSE: Thank you. Yes, sir.

17 Are there any other public comments on this
18 item?

19 MS. MORIATY: No, sir, no more public comments.

20 MR. BACARISSE: Great. So we do have a motion
21 and a second on the floor. Any further questions?

22 MR. GRAHAM: Just a final comment.

23 MR. BACARISSE: Yes, Member Graham.

24 MR. GRAHAM: I believe that there's obviously a
25 lot of unknown around what we discussed here today, and I

1 think, if I'm not wrong, the friendly amendment was to
2 pull that which was not accepted.

3 MR. BACARISSE: That's right.

4 MR. GRAHAM: Okay. And so out of respect to
5 staff, I feel compelled to vote against it because of that
6 reason, just wanted to voice that.

7 MR. BACARISSE: Any members, that's their
8 prerogative.

9 MR. GRAHAM: Thank you.

10 MR. BACARISSE: So I will call the question.
11 Do we need to restate the motion, members? Are we good?
12 Do we know what we're voting on?

13 (No response.)

14 MR. BACARISSE: So in that case, let me go
15 ahead and call the vote.

16 Member Alvarado?

17 MR. ALVARADO: Aye.

18 MR. BACARISSE: Member Gillman?

19 MS. GILLMAN: Nay.

20 MR. BACARISSE: Member Graham?

21 MR. GRAHAM: Nay.

22 MR. BACARISSE: Member Omumu?

23 MS. OMUMU: Aye.

24 MR. BACARISSE: Member Prewitt?

25 MR. PREWITT: Aye.

1 MR. BACARISSE: Member Schlosser?

2 MR. SCHLOSSER: Aye.

3 MR. BACARISSE: Member Scott?

4 MR. SCOTT: Aye.

5 MR. BACARISSE: And I, Chair Bacarisse, vote
6 aye as well. So that is passed, and there's two nays and
7 six yeases. Thank you. My math brain is slow.

8 And I think that we certainly need to work with
9 our interest groups, the public as we work on these new
10 regulations. We're going to do that with all of them.
11 This one is very important and it's very key to a lot of
12 our franchised dealers and others in the state, and at the
13 end of the day, I think you need to focus on the
14 legislature if you want to see this change.

15 Agenda item 11 is an action item, and we're
16 just going to ask Monique to walk us through that one.

17 MS. JOHNSTON: Hello again. Monique Johnston,
18 director of the Motor Vehicle Division, for the record.

19 Today we're asking the board's permission to
20 begin the formal rulemaking process to make changes to
21 Chapter 221, Salvage Vehicle Dealers in Title 43 of the
22 Texas Administrative Code. The rule item is listed on
23 your agenda as item number 11, and the details may be
24 found beginning on page 476 of your board book.

25 This rule package proposes amendments, repeals

1 to Chapter 221 and is proposed in conjunction with a
2 notice of intent to review rules in compliance with
3 Government Code 2001.039, presented to the board this
4 morning as agenda item number 8. This chapter has not
5 undergone a rule review since 2015, and every section in
6 this chapter has one or more proposed amendments.

7 In proposing the Chapter 221 amendments and
8 repeals, the department has the following goals: to
9 implement statutory changes and add conforming language;
10 to deter fraud and abuse by expanding fingerprint
11 requirements to salvage dealers and setting minimum
12 standards for business operations; to modify language to
13 be consistent with statutes and other chapters in Title
14 43; to modify language to be consistent with current
15 practice, including use of records or electronic systems;
16 to clarify existing language; to improve readability by
17 the use of consistent terminology; to clarify or delete
18 unused, archaic or inaccurate definitions, terms and
19 references to improve understanding and readability; and
20 to repeal rules that are concurrently proposed to be
21 included in the new Chapter 224.

22 I'd like to highlight four of the most
23 significant proposals in Chapter 221. Legislation
24 implementation. Proposed amendments will implement Senate
25 Bill 422, which we had discussed in the previous item,

1 affecting licensing of military service members, as I
2 described before.

3 Proposed amendments would conform language with
4 the Sunset Bill 604 from the 86th Legislature which
5 eliminated salvage dealer license endorsements and House
6 Bill 1667 from the 86th Legislature which allowed holders
7 of an independent motor vehicle dealer general
8 distinguishing number issued under Transportation Code 503
9 to act as a salvage vehicle dealer. HB 1667 added
10 Occupations Code 2302.009 and amended 2302.101, granting
11 these dealers the ability to perform salvage activities
12 without obtaining a salvage dealer license, but at the
13 same time requires these dealers to comply with
14 Occupations Code 2302.

15 Proposed fingerprinting requirement. As
16 previously mentioned, fingerprints have proven to be a
17 very effective way to prevent fraud. The proposal would
18 expand fingerprint requirements to new and renewal license
19 applicants for a salvage dealer license.

20 Fee consistency. The department compared GDN
21 and salvage dealer application requirements and is
22 proposing amendments related to fees for consistency. A
23 proposed amendment to 221.13, License Terms and Fees,
24 would allow the department to charge salvage vehicle
25 dealers a \$25 license amendment fee. A \$25 license

1 amendment fee is prescribed in Occupations Code
2 2301.264(e) for Occupations Code Chapter 2301 and
3 Transportation Code Chapter 503 holders.

4 A proposed amendment to 221.115 would allow
5 flexibility for the director to approve an application
6 refund in certain circumstances, which currently is not
7 possible under this rule.

8 Proposed repeals are delete 221.48, Scrapped
9 and Destroyed Motor Vehicle, which duplicates 217.86,
10 Dismantling, Scrapping and Destruction of Motor Vehicles,
11 and to move the adjudicative rules in Subchapter E to
12 proposed new Chapter 224, which you will hear about under
13 agenda item number 16.

14 In September 2023, the department provided an
15 early draft of these rules to two department advisory
16 committees, the MVIRAC, Motor Vehicle Industry Regulation
17 Advisory Committee, and the Customer Service and
18 Protection Advisory Committee, CSPAC. These members of
19 the two advisory committees did not have any comments on
20 Chapter 221.

21 MVD is requesting your approval to proceed with
22 publication in the *Texas Register* so we can receive public
23 comments and move forward with the rulemaking process.

24 That's the conclusion of my remarks. So do you
25 have any questions for me?

1 MR. BACARISSE: Members, any questions for
2 Monique on this particular proposal?

3 (No response.)

4 MR. BACARISSE: Okay. Hearing none, are there
5 any public comments on this agenda item, Ms. Moriatty?

6 MS. MORIATY: No, sir, no public comments.

7 MR. BACARISSE: Okay. Thank you.

8 I would now entertain a motion on agenda item
9 11.

10 MR. SCHLOSSER: Member Schlosser, for the
11 record.

12 I move that the board approve the proposed
13 amendments and repeals to 43 Texas Administrative Code,
14 Chapter 221, concerning SB 422, fingerprinting, and
15 cleanup, as recommended by staff, for publication in the
16 *Texas Register*. I also move that the board grant the
17 department the authority to make changes to the proposed
18 sections based on non-substantive corrections made by the
19 *Texas Register*.

20 MR. BACARISSE: And is there a second for that
21 motion?

22 MS. GILLMAN: I second.

23 MR. BACARISSE: Member Gillman, thank you.

24 Any further discussion, members, on the motion?

25 (No response.)

1 MR. BACARISSE: If not and there are no public
2 comments, we'll go ahead and call the roll on the vote.

3 Member Alvarado?

4 MR. ALVARADO: Aye.

5 MR. BACARISSE: Member Gillman?

6 MS. GILLMAN: Aye.

7 MR. BACARISSE: Member Graham?

8 MR. GRAHAM: Aye.

9 MR. BACARISSE: Member Omumu?

10 MS. OMUMU: Aye.

11 MR. BACARISSE: Member Prewitt?

12 MR. PREWITT: Aye.

13 MR. BACARISSE: Member Schlosser?

14 MR. SCHLOSSER: Aye.

15 MR. BACARISSE: Member Scott?

16 MR. SCOTT: Aye.

17 MR. BACARISSE: And I, Chair Bacarisse, vote
18 aye as well. It's unanimous. Thank you.

19 Then we move to now agenda item 11 -- sorry,
20 12. Let's do 11 again; that was fun.

21 (General laughter.)

22 MR. BACARISSE: Mr. Archer is here to walk us
23 through agenda item number 12. Thank you.

24 MR. ARCHER: Yes, sir. Good afternoon, Chair
25 Bacarisse, Executive Director Avitia, members of the

1 board. For the record, my name is Jimmy Archer, and I'm
2 the director of the Motor Carrier Division.

3 This is item number 12 on today's agenda, and
4 the materials are found beginning on page 546 of your
5 board books.

6 For the board's consideration, I am presenting
7 these proposed amendments to 43 Texas Administrative Code,
8 Chapter 217 concerning registration reciprocity
9 agreements, for approval for publication in the *Texas*
10 *Register*. The proposed rule amends Section 217.56 and is
11 necessary to incorporate by reference a current edition of
12 the International Registration Plan, or IRP, dated January
13 1, 2022.

14 The proposed amendments are also necessary to
15 clarify language, make the terminology consistent with
16 other department rules, delete certain language regarding
17 the process for an appeal under Section 217.56, and refer
18 to proposed new Chapter 224 of this title related to
19 adjudicative practice and procedure for an appeal of the
20 department's decision against a vehicle registrant
21 regarding an assessment, cancellation or revocation of
22 217.56.

23 Enforcement Director Corrie Thompson will
24 present the proposed amendments for the new Chapter 224
25 under item 16 of your board agenda.

1 I ask the board approve these rule amendments
2 for publication and comment, and I'm happy to answer any
3 questions you might have.

4 MR. BACARISSE: Members, any questions for Mr.
5 Archer on this particular agenda item?

6 (No response.)

7 MR. BACARISSE: Seeing none, any public comment
8 on this particular agenda item, Ms. Moriatty?

9 MS. MORIATY: No, sir, no public comment.

10 MR. BACARISSE: All right. With that being the
11 case, then I would entertain a motion on this particular
12 agenda item.

13 MR. ALVARADO: Mr. Chairman, I'd like to make a
14 motion.

15 MR. BACARISSE: Yes, Member Alvarado.

16 MR. ALVARADO: I move that the board approve
17 the proposed amendments to 43 Texas Administrative Code,
18 Chapter 217, Section 217.56 concerning cleanup, as
19 recommended by staff, for publication in the *Texas*
20 *Register*. I also move that the board grant the department
21 the authority to make changes to the proposed section
22 based on non-substantive corrections made by the *Texas*
23 *Register*.

24 MR. BACARISSE: Thank you.

25 Is there a second for that motion?

1 MR. GRAHAM: Second.

2 MR. BACARISSE: Member Graham, thank you.

3 Any further discussion on this item, members?

4 (No response.)

5 MR. BACARISSE: Hearing none, I'll call for the

6 vote, please.

7 Member Alvarado?

8 MR. ALVARADO: Aye.

9 MR. BACARISSE: Member Gillman?

10 MS. GILLMAN: Aye.

11 MR. BACARISSE: Member Graham?

12 MR. GRAHAM: Aye.

13 MR. BACARISSE: Member Omumu?

14 MS. OMUMU: Aye.

15 MR. BACARISSE: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. BACARISSE: Member Schlosser?

18 MR. SCHLOSSER: Aye.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: And I, Chair Bacarisse, vote

22 aye as well. Unanimous. Thank you.

23 MR. GRAHAM: Getting some traction.

24 MR. BACARISSE: We're moving through it, that's

25 all right. It's all good.

1 Mr. Archer, just continue on to the next agenda
2 item.

3 MR. ARCHER: Yes, sir. Thank you. For the
4 record, Jimmy Archer.

5 This is item 13 on today's agenda and the
6 materials are found beginning on page 561 of your board
7 book.

8 For the board's consideration, I'm presenting
9 these proposed rule amendments to 43 Texas Administrative
10 Code, Chapter 218 for approval for publication in the
11 *Texas Register*.

12 The proposed rule amendment is necessary to
13 implement House Bill 2190, which was passed last session
14 which replaces the word "accident" with "collision" in
15 Transportation Code Section 643.105. The proposed rule
16 amendment is also necessary to delete language regarding
17 adjudicative practice and procedure and refer to proposed
18 new Chapter 224 of this title relating to adjudicative
19 practice and procedure.

20 The department is also proposing the repeal of
21 Sections 218.73, 218.75, 218.76, 218.77 and 218.78 because
22 the language from these sections would be incorporated
23 into the new proposed Chapter 224 of this title.

24 Enforcement Director Corrie Thompson will
25 present the proposed amendments for the new Chapter 224

1 under item 16 of your board agenda.

2 And I ask the board approve these amendments
3 for publication and comment, and I'm happy to answer any
4 questions you may have.

5 MR. GRAHAM: I have a question.

6 MR. BACARISSE: Thank you, Mr. Archer.

7 Member Graham, I think, has a question.

8 MR. GRAHAM: Yes, sir.

9 Mr. Archer, in your professional opinion, by
10 replacing the word "accident" with "collision," does that
11 infer you can have an accident without a collision, or a
12 collision without an accident?

13 MR. ARCHER: You're asking for my legal opinion
14 or my opinion personally?

15 MR. GRAHAM: I'm really not asking anything at
16 all; I was just having a little fun with it. We needed a
17 laugh. But let's go ahead and answer, if you want.

18 MR. ARCHER: I have to say I'm not advised, as
19 a legislator would often say.

20 (General laughter.)

21 MR. GRAHAM: Okay. Sorry, just had to have a
22 little fun for a minute.

23 MR. BACARISSE: But it is an interesting
24 question.

25 MR. GRAHAM: It is an interesting question, but

1 not one for today.

2 MR. ARCHER: I personally don't believe you can
3 do that, but I think physics would make it necessary to
4 have a collision.

5 MR. BACARISSE: Members, any other questions of
6 Mr. Archer?

7 (No response.)

8 MR. BACARISSE: Hearing none, I suppose there's
9 no public comment on this particular agenda item, Ms.
10 Moriarty?

11 MS. MORIATY: No public comment, sir.

12 MR. BACARISSE: Okay. Thank you. Sorry to
13 have you have to answer that question, but better not.

14 MS. MORIATY: Still no public comment, sir.

15 MR. BACARISSE: Very good.

16 I'll now call the vote, please.

17 MR. GRAHAM: You need a motion.

18 MR. BACARISSE: Hey, how about a motion. I
19 just want to vote.

20 MR. GRAHAM: I feel so strongly about it, I'd
21 like to make a motion, Mr. Chairman.

22 MR. BACARISSE: Do you want to do it?

23 MR. GRAHAM: Yes, I do.

24 MR. BACARISSE: Member Graham, please make a
25 motion.

1 MR. GRAHAM: All right. I move that the board
2 approve the proposed amendments and repeals to 43 Texas
3 Administrative Code 218, concerning HB 2190 and cleanup,
4 as recommended by staff, for publication in the *Texas*
5 *Register*. I also move that the board grant the department
6 the authority to make changes to the proposed sections
7 based on non-substantive corrections made by the *Texas*
8 *Register*.

9 MR. BACARISSE: And is there a second for his
10 motion?

11 MS. OMUMU: Second.

12 MR. BACARISSE: Member Omumu.

13 You see, Member Graham, this was an accident
14 without a collision.

15 (General laughter.)

16 MR. GRAHAM: It's possible.

17 MR. BACARISSE: All right. So now I would like
18 to call the vote, if I may.

19 Member Alvarado?

20 MR. ALVARADO: Aye.

21 MR. BACARISSE: Member Gillman?

22 MS. GILLMAN: Aye.

23 MR. BACARISSE: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. BACARISSE: Member Omumu?

1 MS. OMUMU: Aye.

2 MR. BACARISSE: Member Prewitt?

3 MR. PREWITT: Aye.

4 MR. BACARISSE: Member Schlosser?

5 MR. SCHLOSSER: Aye.

6 MR. BACARISSE: Member Scott?

7 MR. SCOTT: Aye.

8 MR. BACARISSE: And I, Chair Bacarisse, vote
9 aye as well. Thank you.

10 So we move to agenda item 14, and again Mr.
11 Archer will walk us through this Chapter 219 item.

12 MR. ARCHER: Yes, sir. This is Jimmy Archer,
13 for the record.

14 This is item number 14 on today's agenda, and
15 the materials are found beginning on page 589 of your
16 board book.

17 For the board's consideration, I'm presenting
18 these proposed rule amendments to 43 Texas Administrative
19 Code, Chapter 219, relating to oversize and overweight
20 vehicles and loads, for approval for publication in the
21 *Texas Register*. The proposed amendments to Chapter 219
22 are necessary to delete the language regarding
23 adjudicative practice and procedure and refer to proposed
24 new Chapter 224 of this title.

25 The department is also proposing the repeal of

1 219.22, because current subsection (a) repeats language
2 found in statute and current subsection (b) is not
3 expressly authorized under the Transportation Code Chapter
4 623. In addition, the department is proposing the repeal
5 of Sections 219.124 and 219.127 because the language from
6 these sections will be incorporated into proposed new
7 Chapter 224 of this title.

8 Again, Enforcement Director Corrie Thompson
9 will present the proposed amendments for the new Chapter
10 224 under item 16 of your board agenda.

11 And I ask the board approve these rule
12 amendments for publication and comment, and I'm happy to
13 answer any questions you may have.

14 MR. BACARISSE: Members, any questions for Mr.
15 Archer on this item 14?

16 (No response.)

17 MR. BACARISSE: Seeing none, any public
18 comment?

19 MS. MORIATY: No public comment, sir.

20 MR. BACARISSE: Thank you.

21 So in that case, I would entertain a motion on
22 agenda item 14.

23 MR. SCHLOSSER: Member Schlosser, for the
24 record.

25 MR. BACARISSE: Yes, sir.

1 MR. SCHLOSSER: I move the board approve the
2 proposed amendments and repeal to 43 Texas Administrative
3 Code, Chapter 219, concerning cleanup, as recommended by
4 staff, for publication in the *Texas Register*. I also move
5 that the board grant the department the authority to make
6 changes to the proposed sections based on non-substantive
7 corrections made by the *Texas Register*.

8 MR. BACARISSE: And is there a second to that
9 motion?

10 MR. SCOTT: Second.

11 MR. BACARISSE: Member Scott, great. Thank
12 you.

13 And I will call for the vote, please.

14 Member Alvarado?

15 MR. ALVARADO: Aye.

16 MR. BACARISSE: Member Gillman?

17 MS. GILLMAN: Aye.

18 MR. BACARISSE: Member Graham?

19 MR. GRAHAM: Aye.

20 MR. BACARISSE: Member Omumu?

21 MS. OMUMU: Aye.

22 MR. BACARISSE: Member Prewitt?

23 MR. PREWITT: Aye.

24 MR. BACARISSE: Member Schlosser?

25 MR. SCHLOSSER: Aye.

1 MR. BACARISSE: Member Scott?

2 MR. SCOTT: Aye.

3 MR. BACARISSE: And I, Chair Bacarisse, vote
4 aye as well. It's unanimous. Thank you.

5 So we move to agenda item 15, and we'll have
6 Ms. Quintero walk us through this item.

7 Good afternoon.

8 MS. QUINTERO: Good afternoon, Chairman,
9 members, Executive Director Daniel Avitia. My name is
10 Annette Quintero. I'm the Vehicle Titles and Registration
11 Division director.

12 I am presenting agenda item 15 for you, it's on
13 page 604 of your board book. This is an action item for
14 the board to approve the publication of proposed
15 amendments to Rule 217.63, relating to the digital license
16 plate fees and payment, for public comment.

17 Digital license plates are optional electronic
18 display devices eligible for use on commercial vehicles.
19 They can be purchased from Reviver after the vehicle is
20 registered with a Texas metal license plate.

21 The amendment seeks to modify the fee schedule
22 and the amount of the license plate from \$95 to \$45. This
23 fee will occur upon initial application and at annual
24 renewal.

25 Statutory 504.154 authorizes the department to

1 establish a fee in an amount necessary to cover
2 administrative costs incurred that relate to the issuance
3 of a digital license plate and exceed the administrative
4 costs incurred for the issuance of a physical license
5 plate.

6 This concludes my presentation. I am here if
7 you have any questions.

8 MR. BACARISSE: Any questions of Ms. Quintero
9 on this agenda item, members?

10 (No response.)

11 MR. BACARISSE: We're good?

12 I'll entertain a motion on agenda item 15, if I
13 may have one, or 16, whatever we're on -- 15, sorry.

14 MS. GILLMAN: I have a motion.

15 MR. BACARISSE: Member Gillman.

16 MS. GILLMAN: I move that the board approve the
17 proposed amendments to 43 Texas Administrative Code,
18 Chapter 217, Section 217.63, concerning digital license
19 plates, as recommended by staff, for publication in the
20 *Texas Register*. I also move that the board grant the
21 department to make changes to the proposed section based
22 on non-substantive corrections made by the *Texas Register*.

23 MR. BACARISSE: Is there a second for this
24 motion?

25 MR. SCOTT: Second.

1 MR. BACARISSE: Member Scott, thank you.

2 And is there public comment on this motion?

3 MS. MORIATY: Yes, sir, there is public
4 comment.

5 MR. BACARISSE: Okay, great.

6 MS. MORIATY: We have Neville Boston from
7 Reviver.

8 MR. BACARISSE: Mr. Boston, welcome. Glad
9 you're here today.

10 MR. BOSTON: I have a digital plate. If
11 anybody has ever seen it, I could pass it around.

12 MR. BACARISSE: Pass it around, please.

13 MR. BOSTON: Good afternoon, Chairman, board
14 members and Executive Director Avitia. My name is Neville
15 Boston and I represent Reviver. We make the digital
16 license plates and the platform, and I want to thank you
17 for the opportunity to address you.

18 I founded the company in 2009 and the idea
19 around the company was to streamline registration renewal
20 and compliance on all vehicles. Since 2009, the company
21 has grown from an idea to about \$150 million and we are
22 currently selling in Arizona, California, Michigan and
23 Texas for commercial fleets. We also have legislation in
24 Colorado, Illinois and Georgia and Florida for
25 governmental vehicles, and we have legislation in process

1 in New York, New Jersey and Pennsylvania. And we intend,
2 probably by 2025, to be in the top ten vehicle markets
3 across the country.

4 Now, in regards to Texas, we started the
5 process in 2016 -- am I good time-wise?

6 MR. BACARISSE: Yeah, keep going.

7 MR. BOSTON: We started the process back in
8 2016. We actually passed legislation for a pilot in 2017.
9 In 2019 we passed new legislation to be able to put these
10 out to commercial vehicles. So from 2019 to 2020 went
11 through an RFP process, 2021 -- well, the end of 2020 we
12 actually got it signed and then 2021 through today, we're
13 working on an integration process.

14 The big sticking point for us was the \$95 fee
15 that was incurred -- that we had to pay. Basically what
16 happens is if you're dealing with commercial fleets,
17 everything is extremely cost-sensitive, and the \$95 fee
18 for them was a non-starter, so getting it down to \$45 is a
19 big deal. But I will say this, it's a renewable fee which
20 means that we can't really bury the fee, it's something
21 that's going to come back up.

22 And just for clarity and for an example, in
23 California we have about 70,000 vehicles. If we had that
24 \$45 fee there, we would have brought in about \$3.1 million
25 from that. In Texas we have eight plates; if we had

1 25,000 plates, we would have taken in on that fee about
2 \$1.125 million. And the point I'm making is that if we
3 have the fee reduced and it's a one-time fee -- and this
4 is not something that you're voting on right now -- we
5 would be able to expand it and pay off the money that was
6 taken to actually help get the program put in place, so
7 that's the thinking behind it.

8 That's all I have to say.

9 MR. BACARISSE: Thank you. We appreciate your
10 time.

11 Members, any questions for Mr. Boston? Member
12 Gillman.

13 MS. GILLMAN: This might be a question for the
14 State of Texas. I assume that this plate is more
15 expensive than a metal plate.

16 MR. BOSTON: It is.

17 MS. GILLMAN: And is there an estimate of how
18 much it costs per plate?

19 MR. BOSTON: For fleets it's different because
20 we have --

21 MS. GILLMAN: Per plate.

22 MR. BOSTON: Per plate?

23 MS. GILLMAN: Just for one.

24 MR. BOSTON: For one plate, okay. So about
25 \$399.

1 MS. GILLMAN: And so who is -- and we're
2 charging \$45?

3 MR. BOSTON: Yes.

4 MS. GILLMAN: And so I guess it's the State of
5 Texas -- who is making up the other \$350 for this cost?

6 MR. BOSTON: Okay. So let me actually help you
7 with that. So the plate cost, what we charge for the
8 plate, when we have a fleet, that cost is amortized over a
9 certain amount of years. When it comes to like the fleet
10 customers that we have, there's not another fee -- Texas
11 is the only state that charges a fee. All the rest of the
12 states don't charge a fee for the plate, so there's a
13 digital plate fee that we're paying. So when you're
14 saying the \$399, who makes that up, that would be the cost
15 that the actual fleet customer would pay.

16 Because what the plate does, it tracks their
17 vehicles. You're able to update it remotely. There's a
18 lot of benefits, there's a benefit structure around it.

19 MS. GILLMAN: I get the benefits, it's cool,
20 it's neat-o, but I just was trying to understand who is
21 paying the \$350 extra.

22 MR. BOSTON: The customer.

23 MS. GILLMAN: But if the customer is only
24 paying \$45.

25 MR. BOSTON: No, no, no. The \$45 is on top of

1 that.

2 MR. GRAHAM: If you want to take this home,
3 you've got to pay \$399 plus \$45 annually.

4 MS. GILLMAN: Okay, all right, got it. The
5 customer is paying for it.

6 MR. BOSTON: Yes.

7 MS. GILLMAN: Okay. Thank you.

8 MR. BOSTON: Sure.

9 MR. BACARISSE: Great. Any other questions for
10 Mr. Boston?

11 Member Schlosser?

12 MR. SCHLOSSER: Member Schlosser, for the
13 record.

14 This is coming from a law enforcement
15 perspective on the digital license plate. Without going
16 into details, this is not on passenger vehicles yet, we're
17 only dealing with commercial vehicles.

18 MR. BOSTON: Correct.

19 MR. SCHLOSSER: What has been your discovery of
20 these new digital plates that are counterfeit? So how has
21 that come into play with your vehicles that are running on
22 the road with digital license plates? Have you discovered
23 any counterfeits?

24 MR. BOSTON: We haven't. Because one of the
25 things that we can do is we can put a watermark behind it.

1 That was one of the things that we had talked with the
2 Texas DMV about is putting a watermark for extra safety
3 and security.

4 We actually have a law enforcement liaison, Kip
5 Loving, who in the last two years has trained about 30,000
6 police professionals across the country. He's been to
7 Texas several times to do trainings with law enforcement
8 officers.

9 So we have a process that we put in place to
10 help support law enforcement kind of across the board, and
11 anything that we do is basically tied to that thinking to
12 make sure that we're in complete compliance and are
13 thinking about the latest issues that may come up. So
14 when he does his training, he does training in addition to
15 digital plates but also connected vehicles and all the
16 things that happen in accordance to that.

17 MR. SCHLOSSER: Just as a view of how this can
18 perhaps become a negative issues is if somebody makes a
19 counterfeit plate which is super difficult to on visual
20 inspection see it's a counterfeit plate -- if they make it
21 look like your product, they could, in essence, commit a
22 robbery in one place with one plate, go to the next place,
23 commit a different robbery with a different plate, and so
24 on and so on by basically an app used to control and
25 manipulate the counterfeit plate from inside their vehicle

1 and never even go outside. Currently, with metal plates,
2 you have to get out, take a plate off, put a new plate on,
3 or do some sort of means to cover and conceal that plate.

4 So that's my only concern with this going
5 forward with the process is having that be an issue that
6 law enforcement is already having problems with temp tags
7 and various other counterfeit metal license plates, much
8 less a digital component as well. It's just a very
9 concerning aspect for me as a law enforcement person.

10 MR. BOSTON: I mean, I would say this, we've
11 actually worked with DOJ, we've worked with FBI, just
12 about law enforcement in regards to safety and security
13 when it comes to the plates. In the nine years that the
14 company has been around and the five years since the
15 plates have been out on the road, we've had no issues
16 whatsoever with any counterfeiting or anything like that.

17 And from a safety and security aspect, I would
18 say that these plates have more. A vehicle is stolen, you
19 can actually put stolen on the plate, Amber alerts, any
20 kind of inclement weather alert. If the plate is taken
21 away from the backing, it would automatically say
22 "Detached" and then there's a way to actually track the
23 plate as well. So when it comes to safety and security,
24 it's something that we're on top of all the time.

25 And then as far as counterfeiting, we haven't

1 seen anybody and we haven't seen any technology that's
2 done that to date, and we continue to monitor that. But
3 you know, we've been working hand in glove with law
4 enforcement for the last seven, eight years in regards to
5 this.

6 MR. SCHLOSSER: Okay.

7 MR. GRAHAM: Quick question.

8 MR. BACARISSE: Member Graham, sure.

9 MR. GRAHAM: So there's no minimum for a fleet,
10 you know, a fleet of one, fleet of ten. If a fleet wants
11 to engage with this, they don't have to be a certain size
12 fleet. Right?

13 MR. BOSTON: Just whatever is in statute. We
14 didn't put the -- whatever is in statute as far as what
15 constitutes a fleet is what a fleet is.

16 MR. BACARISSE: Annette is shaking her head no.

17 MS. QUINTERO: Annette Quintero, for the
18 record.

19 There is no limit or minimum.

20 MR. GRAHAM: Okay. That's good to know. So if
21 Stacey wants this just for her car.

22 MR. BACARISSE: Because it has a UT seal on it.

23 MR. GRAHAM: This one has the UT seal, but if
24 you're a fleet, you know, how with the fleet plates it's
25 the logo, would it be your company logo? How would that

1 work?

2 MR. BOSTON: No. It would be whatever legal
3 plates are in Texas. So that is a rendition.

4 MR. BACARISSE: Well, we would go through that
5 process of approval, you know, like we'll put the Diaper
6 Man logo on that fleet, you know what I'm saying.

7 MR. GRAHAM: Well, like we're in the process of
8 getting our fleet registered with the DMV and we're
9 telling them what logo.

10 MR. BACARISSE: Right, but you're going to
11 bring that here and we're going to approve it. You can't
12 just slap one on it. You know what I'm saying.

13 MR. GRAHAM: Right. But I'm saying, would that
14 be how this would look.

15 MR. BOSTON: Yes.

16 MR. BACARISSE: Digitize the Graham logo.

17 MR. GRAHAM: All right, very good. That's
18 cool.

19 MS. GILLMAN: Neat-o.

20 MR. GRAHAM: I'll hand that back.

21 MR. BACARISSE: Any other questions for Mr.
22 Boston?

23 MS. GILLMAN: I'm really good.

24 MR. BACARISSE: Are we good?

25 All right. Mr. Boston, thank you for being

1 here.

2 Ms. Quintero, please.

3 MS. QUINTERO: I want to make one correction.

4 Annette Quintero, for the record.

5 I'm sorry, I misspoke, Member Graham. There is
6 a minimum of 12 fleet vehicles.

7 MR. BACARISSE: Twelve.

8 MR. GRAHAM: Okay. So, Stacey, you can't just
9 get one, you've got to get 12.

10 MR. BACARISSE: You probably already have 12.

11 (General talking and laughter.)

12 MR. BACARISSE: All right. Any other
13 questions, members?

14 (No response.)

15 MR. BACARISSE: We do have a motion and a
16 second on the board here, so I'll call the vote.

17 Member Alvarado?

18 MR. ALVARADO: Aye.

19 MR. BACARISSE: Member Gillman?

20 MS. GILLMAN: Aye.

21 MR. BACARISSE: Member Graham?

22 MR. GRAHAM: Aye.

23 MR. BACARISSE: Member Omumu?

24 MS. OMUMU: Aye.

25 MR. BACARISSE: Member Prewitt?

1 MR. PREWITT: Aye.

2 MR. BACARISSE: Member Schlosser?

3 MR. SCHLOSSER: Aye.

4 MR. BACARISSE: Member Scott?

5 MR. SCOTT: Aye.

6 MR. BACARISSE: And I, Charles Bacarisse, vote
7 aye as well.

8 We're going to do item 16 and then we're going
9 to take a little break, like five minutes. Thank you.
10 Just fair warning.

11 Hello, Ms. Thompson.

12 MS. THOMPSON: Hello. My notes say good
13 morning, but good afternoon, Chairman, members of the
14 board, Director Avitia. I am Corrie Thompson, I'm
15 director of the Enforcement Division, and I'm presenting
16 agenda item 16 for you. It begins on page 610 of your
17 board book and it is our last rule proposal of today, so
18 I'm sure you are all thankful for that.

19 And what's before you is a recommendation to
20 approve the publishing of our new Chapter 224, relating to
21 Adjudicative Practice and Procedure, in the *Texas Register*
22 for public comment.

23 So this item is proposing new sections and it
24 would also consolidate into one chapter all of the
25 department's contested case rules. And you've heard a

1 number of people come before you today mentioning repeals
2 in Chapter 206, 215, 217, 221, 218, 219 -- sorry, Jimmy, I
3 didn't mean to leave you out. When they mentioned those
4 repeals floating into this chapter, this is what they were
5 referring to.

6 So this change is, of course, being proposed to
7 organize everything into one chapter for organizational
8 purposes but for ease of reference, but also to ensure
9 consistency with current SOAH rules and current department
10 practices, also to add new rules that are needed to
11 address statutory requirements or department procedures,
12 and then finally, to just improve overall readability.
13 And our proposed new Chapter 224 includes a couple of new
14 sections that I'm going to run through with you really
15 quickly.

16 So Subchapter A is going to contain all the
17 definitions and rules that would apply to all contested
18 cases generally, unless expressly excluded from that
19 chapter or found in another subchapter. Then Subchapter B
20 is going to contain all of the things that pertain to
21 motor vehicle cases, salvage cases and trailer license
22 holders.

23 Then Subchapter C is going to cover all of our
24 contested cases between motor vehicle industry license
25 holders and applicants, so people who refer to protest

1 cases where the department is not a party to the case
2 would be covered in that subchapter. Subchapter D applies
3 to our motor carrier and our oversize/overweight vehicle
4 and load enforcement cases.

5 Then Subchapter E is going to describe
6 contested cases generally that got referred out to the
7 State Office of Administrative Hearings when somebody has
8 requested a hearing in response to sanction allegations
9 charged by the department. And that section is also going
10 to discuss the rules pertaining to the transfer of
11 jurisdiction, both to and from SOAH when it comes back to
12 the department for a final decision, as you had in the
13 contested case that you heard today.

14 Then finally, we're going to have Subchapter F
15 that describes the rules that apply when a board or a
16 board delegate reviews a Lemon Law or a warranty
17 compliance case that's brought by a consumer. So E, all
18 the ones to SOAH jurisdiction back and forth, F, Lemon Law
19 cases and warranty performance.

20 So we did bring this before -- I know you've
21 heard it a couple of times -- the advisory committees, the
22 Motor Vehicle Industry Regulation Advisory Committee, also
23 referred to as MVIRAC, as well as the Customer Service and
24 Protection Advisory Committee as well. So they got a
25 preview of these rules and we did incorporate some of the

1 comments that they made in those committee meetings into
2 this rule chapter, and so you will see that in 224.52
3 relating to cease and desist orders, delegation of
4 authority in 224.162, statutory stay rule in 224.192,
5 appeal of an interlocutory order in 224.260, and relief of
6 Lemon Law decisions.

7 So there is no financial impact associated with
8 the creation of this new chapter and these new sections.
9 Again, we're moving everything out of those other rules
10 for readability and for organizational purposes so that
11 when somebody does come before us with a contested matter,
12 it's easy for them to find and understand how the
13 department is going to handle their case.

14 So I would ask the board to approve the
15 publication of the proposed new Chapter 224 for
16 publication in the *Texas Register* so that we can receive
17 public comment and input on that, but I'm happy to answer
18 any questions you may have.

19 MR. BACARISSE: Members, any questions?

20 Member Gillman.

21 MS. GILLMAN: Thank you, Mr. Chairman.

22 Corrie, can you provide any differences between
23 what the committee recommended and what staff recommended?

24 MS. THOMPSON: It was in the specifics that
25 were run through, I believe, in agenda item 7 related to

1 the advisory committee input and the chart that you had.

2 MS. GILLMAN: Same red and green?

3 MS. THOMPSON: Correct, yes, ma'am. So you'll
4 see some of the references toward the end that relate to
5 Chapter 224.

6 MS. GILLMAN: Because I'm so sensitive to
7 number 215 -- am I right in that, 215?

8 MS. THOMPSON: Right. There's nothing in this
9 chapter that pertains to anything necessarily that came
10 out of 215, so these are all procedural rules. This is
11 things like when we send a notice of department decision,
12 what does that notice have to contain, when do we send a
13 final order, the procedure for processing a motion for
14 rehearing, things like that.

15 You will also see in this chapter that we've
16 added in things from our disciplinary matrix that
17 discusses the aggravating and mitigating factors that are
18 considered by the department when determining how we
19 handle the assessment of a sanction in a case.

20 MS. GILLMAN: Thank you.

21 MR. BACARISSE: Members, any other questions of
22 Ms. Thompson?

23 (No response.)

24 MR. BACARISSE: Seeing none, I would entertain
25 a motion on agenda item 16.

1 MS. OMUMU: Mr. Chairman, I'd like to make a
2 motion, please.

3 MR. BACARISSE: Member Omumu.

4 MS. OMUMU: I move that the board approve the
5 proposed new 43 Texas Administrative Code, Chapter 224,
6 concerning adjudicative practice and procedure, as
7 recommended by staff, for publication in the *Texas*
8 *Register*. I also move that the board grant the department
9 the authority to make changes to the proposed sections
10 based on the non-substantive corrections made by the *Texas*
11 *Register*.

12 MR. BACARISSE: And is there a second to that
13 motion?

14 MR. SCOTT: Second.

15 MR. BACARISSE: Member Scott.

16 Any further discussion, members?

17 (No response.)

18 MR. BACARISSE: Or any public comments?

19 MS. MORIATY: We do have a public comment, sir.
20 Bruce Bennett would like to comment.

21 MR. BACARISSE: Welcome back, Mr. Bennett.

22 MR. BENNETT: Thank you.

23 For the record, I'm still Bruce Bennett and I'm
24 still representing myself.

25 I just want to talk a little bit about proposed

1 rule 224.198 and that's on page 691 of your book, and it's
2 specific subsection (c) and this is concerning in a
3 contested case when it comes back from SOAH and you're
4 reviewing the PFD, it's the written materials and there's
5 a 15-page limit, and I'm not here to re-fight that battle.

6 What I would ask and what I will propose in
7 writing during the comment period is that a proposed final
8 order for your consideration or a draft motion for board
9 action for your consideration not count against the
10 15-page limit, that we can put that in the addendum. I
11 think most of the time SOAH gets it right but sometimes
12 they don't. And when they don't get it right, it's a very
13 complicated process for you.

14 And I think allowing us to have those proposed
15 orders -- we need space to explain what went wrong but
16 then to have a proposed motion and a proposed order I
17 think would be very helpful to you. It would make it more
18 efficient and wouldn't take up as much time, hopefully.

19 So that's the intent behind this request that
20 I'll be making is to let us just put the proposed order
21 and maybe a draft motion in the addendum, not count
22 against the 15 pages; we can use the ten pages to explain
23 why you should adopt the order. So that's the proposal.

24 Thank you again for your time.

25 MR. BACARISSE: Any questions of Mr. Bennett,

1 members?

2 (No response.)

3 MR. BACARISSE: Mr. Bennett, thank you,
4 appreciate it.

5 MR. BENNETT: Thank you.

6 MR. BACARISSE: In this case, I will now call
7 for the vote on this agenda item.

8 Member Alvarado?

9 MR. ALVARADO: Aye.

10 MR. BACARISSE: Member Gillman?

11 MS. GILLMAN: Aye.

12 MR. BACARISSE: Member Graham?

13 MR. GRAHAM: Aye.

14 MR. BACARISSE: Member Omumu?

15 MS. OMUMU: Aye.

16 MR. BACARISSE: Member Prewitt?

17 MR. PREWITT: Aye.

18 MR. BACARISSE: Member Schlosser?

19 MR. SCHLOSSER: Aye.

20 MR. BACARISSE: Member Scott?

21 MR. SCOTT: Aye.

22 MR. BACARISSE: And I, Chair Bacarisse, vote
23 aye as well. Unanimous.

24 We're now going to take about a five-minute
25 break, so it is 1:13 and this meeting is in recess for a

1 few moments until called back by the chair.

2 (Whereupon, a brief recess was taken.)

3 MR. BACARISSE: It is now 1:23 in the
4 afternoon, and I'm calling back to order the public
5 meeting of the Texas DMV. So thank you all for coming
6 back, appreciate that.

7 We're now on agenda item 17, which is Board
8 Governance Documents update, so let me just go through a
9 few things. Do you want me to go to the podium so you can
10 get on me, or may I do it from here?

11 (General laughter.)

12 MR. BACARISSE: In agenda item 17, we're
13 looking at four board policies that cover how the board
14 actually manages itself. So those four are: operational
15 boundaries which establish the board's responsibility for
16 setting policy direction for the department; governance
17 policy which establishes the board's governing style, how
18 the board achieves each objective, and how each member is
19 a part of that process.

20 And then number three is strategic planning,
21 and we want to establish expectations and processes for
22 department staff to develop the biennial strategic plan
23 for the department. And then number four, board vision,
24 goals and objectives and how we can address the
25 maintenance of the department's goals and objectives, the

1 vision, mission, values and goals.

2 So none of those have really been addressed in
3 many, many years. The operational boundaries were last
4 updated September 13 of 2012, governance was last updated
5 on October 12 of 2011, strategic planning was last updated
6 on October 12 of 2011 as well. And the board vision,
7 goals and objectives were last updated April 7 of 2016.
8 So I think it's well past time to address all those
9 things.

10 These amendments that are proposed today in
11 your board book would update, streamline, modernize the
12 policies and make them more consistent in tone and
13 terminology and making them also reflect current
14 practices.

15 In the future, to keep these governance
16 policies more consistently up to date, I've asked staff to
17 plan to review these policies every four years and to
18 ensure that the board members are engaged with those
19 latest versions. I've also asked staff to engage the
20 three standing committees to conduct these reviews and
21 updates as well and make recommendations for amendments to
22 the full board.

23 So that is the presentation. And just would be
24 happy to entertain any questions, and either I, or
25 somebody who knows more than me, can answer them.

1 So any questions from the members on number 17?

2 MS. GILLMAN: Mr. Chairman.

3 MR. BACARISSE: Yes, Member Gillman.

4 MS. GILLMAN: Your very last comment was "and
5 to keep the committees." Is that what you said?

6 MR. BACARISSE: Well, yeah, what I was thinking
7 was we want to ask the committees to conduct these
8 reviews, have a hand in the reviews and updates as it
9 pertains to their areas, and they can make recommendations
10 for amendments to the governing policies to the full
11 board as well.

12 MS. GILLMAN: I have not been part of a
13 discussion to review the effectiveness of the committee
14 process, so I'm sort of speaking out of turn, but I just
15 kind of wanted to lay it out there that sometimes the
16 committees meet and make decisions and it is like there
17 are red and green. I just would love to see the language,
18 first of all, that committee is not a substitute for
19 collaboration with stakeholders in general.

20 MR. BACARISSE: Oh, no, no. We're talking
21 about internal processes here.

22 MS. GILLMAN: Oh, we're not talking about the
23 outside committees?

24 MR. BACARISSE: No, just how we govern
25 ourselves here, internal to the board.

1 MS. GILLMAN: What committees?

2 MR. BACARISSE: Well, you know, we have the
3 Legislative and Public Affairs Committee, Projects and
4 Operations, Finance Committee, internal.

5 MS. GILLMAN: Delete everything I just said.
6 Strike from the record everything I just said.

7 MR. BACARISSE: Well, you may have some
8 thoughts about those things in the future.

9 MS. GILLMAN: No, I don't. No thoughts.

10 MR. BACARISSE: I'd love to get input from
11 y'all at any point in this process, obviously. I want to
12 make sure that what we do as a board, you feel confident
13 in the way in which we do our business here as a board,
14 and I want you to have confidence and faith in that
15 process. And obviously, the board really hasn't looked at
16 these things in quite a while. So predates most of us, I
17 think, so it's high time we do these things.

18 Look forward to your input at some point via
19 email to me in my DMV account, that would be great. Or
20 phone call, conversation, whatever strikes you -- you know
21 that I'm open. Thank you.

22 So that is an action item, I guess. We vote on
23 this. Okay. So we're going to vote on the beginning of a
24 process of these things.

25 MS. MORIATY: Actually, so you're voting on the

1 changes that are presented in your board materials.

2 Sorry. Laura Moriaty, for the record.

3 MR. BACARISSE: Yes. Thank you, refer to the
4 board book.

5 Do we have a motion on this item?

6 MS. GILLMAN: What number is this?

7 MR. BACARISSE: This is agenda item 17.

8 MS. GILLMAN: Seventeen.

9 MR. PREWITT: Mr. Chairman, I'll make a motion,
10 unless somebody else wants to.

11 MR. BACARISSE: Member Prewitt.

12 MR. SCOTT: I've got 17.

13 MR. PREWITT: Oh, there you go, Member Scott
14 will make the motion.

15 MR. BACARISSE: Member Scott.

16 MR. SCOTT: I move that the board approve the
17 updates to the board's policies for TxDMV operational
18 boundaries, TxDMV board governance, TxDMV board strategic
19 planning, and TxDMV board vision, goals and objectives, as
20 presented by the chairman.

21 MR. BACARISSE: Thank you.

22 And is there a second for that motion?

23 MS. OMUMU: Second.

24 MR. BACARISSE: All right, Member Omumu.

25 Is there any further discussion?

1 (No response.)

2 MR. BACARISSE: There can't be any public
3 comments on this, Laura, really?

4 MS. MORIATY: No, sir, no public comments.

5 MR. BACARISSE: All right, good.

6 I'd now call the vote.

7 Member Alvarado?

8 MR. ALVARADO: Aye.

9 MR. BACARISSE: Member Gillman?

10 MS. GILLMAN: Aye.

11 MR. BACARISSE: Member Graham?

12 MR. GRAHAM: Aye.

13 MR. BACARISSE: Member Omumu?

14 MS. OMUMU: Aye.

15 MR. BACARISSE: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. BACARISSE: Member Schlosser?

18 MR. SCHLOSSER: Aye.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: And I, Chair Bacarisse, vote
22 aye as well. It's unanimous. Thank you.

23 This will be a great process. Thank y'all.

24 Agenda item 18, we're going to ask Ms. Quintero
25 to come back up and discuss some specialty plate designs.

1 MS. QUINTERO: Good afternoon, Chairman,
2 members, Executive Director Daniel Avitia. My name is
3 Annette Quintero. I'm the Vehicle Titles and Registration
4 Division director.

5 This is agenda item 18, which can be found on
6 page 747 of your board book. This is an action item
7 before you. It is a request for board approval or denial
8 of four specialty plate designs in accordance with the
9 board's statutory authority.

10 The following proposed plate designs are from
11 My Plates, the state's specialty license plates marketing
12 vendor, and were posted for public comment in November
13 2023.

14 The first plate you see is Florida A&M
15 University, a new plate design proposed under
16 Transportation Code 504.851; 1,046 people liked this
17 design and 626 did not.

18 The next plate is a premium embossed black and
19 gold, a new plate design. It is also proposed under
20 Transportation Code 504.851; 1,105 people liked this
21 design and 338 did not.

22 The next plate is premium embossed black and
23 yellow, also a new plate design proposed under
24 Transportation Code 504.851; 892 people liked this design
25 and 445 did not.

1 The last plate you see on the board is premium
2 embossed blue and gold. Again it is a new plate design;
3 752 people liked this design and 560 did not.

4 This concludes my presentation on this action
5 item. I'm available to take any questions.

6 MR. BACARISSE: Members, any questions for Ms.
7 Quintero on these plates?

8 (No response.)

9 MR. BACARISSE: So I just have a question. I
10 guess I'm color blind. The second plate from the top is
11 black and gold and the bottom plate is navy and gold. Is
12 that correct?

13 MS. QUINTERO: That's correct.

14 MR. BACARISSE: Okay. Thanks.

15 Navy, it's a deep navy.

16 MS. QUINTERO: It's hard to tell in that light.

17 MR. BACARISSE: Great. Thank you.

18 MS. GILLMAN: Mr. Chairman.

19 MR. BACARISSE: Yes, Member Gillman.

20 MS. GILLMAN: I have a motion.

21 MR. BACARISSE: Yes, ma'am.

22 MS. GILLMAN: I move that the board approve the
23 specialty designs, as presented by staff.

24 MR. BACARISSE: Is there a second to that
25 motion?

1 MR. PREWITT: I second.

2 MR. BACARISSE: Member Prewitt, thank you.

3 Any discussion on this agenda item, members?

4 (No response.)

5 MR. BACARISSE: Any public comments, Laura?

6 MS. MORIATY: No, sir, no public comments.

7 MR. BACARISSE: All right. I will call the

8 vote.

9 Member Alvarado?

10 MR. ALVARADO: Aye.

11 MR. BACARISSE: Member Gillman?

12 MS. GILLMAN: Aye.

13 MR. BACARISSE: Member Graham?

14 MR. GRAHAM: Aye.

15 MR. BACARISSE: Member Omumu?

16 MS. OMUMU: Aye.

17 MR. BACARISSE: Member Prewitt?

18 MR. PREWITT: Aye.

19 MR. BACARISSE: Member Schlosser?

20 MR. SCHLOSSER: Aye.

21 MR. BACARISSE: Member Scott?

22 MR. SCOTT: Aye.

23 MR. BACARISSE: And I, Chair Bacarisse, vote

24 aye as well. It's unanimous. Thank you.

25 MS. QUINTERO: Thank you.

1 MR. BACARISSE: Some cool looking plates.

2 MR. GRAHAM: If we ever had a plate that has
3 more dislikes than likes, are we going to kill it?

4 MR. AVITIA: Yes.

5 MR. GRAHAM: I don't think it's ever happened,
6 but I just wanted to ask.

7 MR. BACARISSE: There's some that have been
8 really close.

9 MR. GRAHAM: Yeah, there's one on here pretty
10 close, the one you talked about.

11 MR. BACARISSE: Yeah.

12 MR. GRAHAM: Anyway, just kind of wanted to
13 know what we're thinking there.

14 MR. BACARISSE: Good point.

15 So now we're on agenda item 19, and we'll have
16 a briefing -- well, this is an action item.

17 Mr. Richards, please go forward.

18 MR. RICHARDS: Thank you, Mr. Chairman,
19 members, Executive Director Avitia. David Richards, for
20 the record, Office of General Counsel.

21 Agenda item number 19 is an action item. It's
22 the appointment of potential members to the Household
23 Goods Rules Advisory Committee.

24 You recall back in October of this year, you
25 passed rules to create a Household Goods Rules Advisory

1 Committee. Your rules under Chapter 206.93 set forth
2 various requirements such as achieving geographical
3 diversity, as well as members from the industry and
4 members that are consumers of the industry services.

5 We've achieved that, we think, with eight
6 members on the list that Executive Director Avitia
7 provided that's on page 754 of your board book. We have
8 four members that are members of the industry and four
9 that are not members of the industry that are essentially
10 consumers of those services. We expect and have already
11 received other applicants that we'll bring to you at your
12 next board meeting.

13 As you recall, we have a 24-member limit to our
14 advisory committees. And like I said, I think we've
15 achieved a good balance between members of the industry
16 and non-members and geographical area. I think we have
17 about four different geographical areas of the state that
18 are represented right now.

19 It's been somewhat difficult to get members to
20 serve but we'll continue doing that. I think we have at
21 least maybe eight more that we can bring to you next time.

22 That concludes my presentation in the interest
23 of time. And again, this is an action item.

24 MR. BACARISSE: Members, any questions for Mr.
25 Richards on this item?

1 (No response.)

2 MR. BACARISSE: Hearing none, I would entertain
3 a motion on agenda item 19. Thank you.

4 MR. PREWITT: Mr. Chairman, I have a motion.

5 MR. BACARISSE: Yes, Mr. Prewitt.

6 MR. PREWITT: I move the board appoint all
7 individuals from the list of potential members to serve on
8 the Household Goods Rules Advisory Committee.
9 Department's executive director provided the list of
10 potential members in the board book materials dated
11 December 14, 2023.

12 MR. BACARISSE: And is there a second for that
13 motion?

14 MR. GRAHAM: Second.

15 MR. BACARISSE: Member Graham, thank you.

16 Any other discussion on this item?

17 (No response.)

18 MR. BACARISSE: Any public comments on this
19 item? It doesn't look like it.

20 MS. MORIATY: No, sir, no public comments.

21 MR. BACARISSE: So I'll call the roll for this
22 item.

23 Member Alvarado?

24 MR. ALVARADO: Aye.

25 MR. BACARISSE: Member Gillman?

1 MS. GILLMAN: Aye.

2 MR. BACARISSE: Member Graham?

3 MR. GRAHAM: Aye.

4 MR. BACARISSE: Member Omumu?

5 MS. OMUMU: Aye.

6 MR. BACARISSE: Member Prewitt?

7 MR. PREWITT: Aye.

8 MR. BACARISSE: Member Schlosser?

9 MR. SCHLOSSER: Aye.

10 MR. BACARISSE: Member Scott?

11 MR. SCOTT: Aye.

12 MR. BACARISSE: And I, Chair Bacarisse, vote
13 aye as well. It's unanimous. Thank you.

14 Agenda item 20 is Legislative and Public
15 Affairs Committee update. And the chair of that committee
16 is Member Paul Scott, so let me turn it over to Chair
17 Scott for an update.

18 MR. SCOTT: Good afternoon, Mr. Chairman,
19 Executive Director Avitia, and members.

20 The Legislative and Public Affairs Committee
21 met yesterday to receive updates on legislation and
22 projects. Members Alvarado and Schlosser also attended
23 the meeting. We have the meeting presenters here today,
24 so let me know if you have any questions as we move
25 through this update and we can call on them to respond.

1 The director of the Government and Strategic
2 Communications, Keith Yawn, began the meeting by reviewing
3 legislative activity since the end of the regular session
4 in May of this year. Although the legislature has
5 convened in four called special sessions since then, none
6 of the activities have related to specific department
7 operations. While it is possible that the governor could
8 call additional special sessions, at this time we do not
9 expect motor vehicle items to be included in the official
10 call.

11 Mr. Yawn then provided an update on the status
12 of bill implementation projects. The department has made
13 significant progress implementing the laws enacted by the
14 legislature during the last regular session. As of the
15 end of November, 37 bills have been fully implemented and
16 an additional 18 bills will not require active
17 implementation efforts.

18 That leaves 22 projects in progress. The
19 majority, or 18 of these projects, are bills that are not
20 yet effective and implementation work is underway. Three
21 of the projects are functional for customers and
22 stakeholders, but still moving through the rule adoption
23 process for final completion.

24 The final in-process project is the
25 implementation of Senate Bill 2102, which extends the

1 initial vehicle registration period for certain rental
2 vehicles. TxDMV is currently awaiting final action by
3 other impacted state agencies that are necessary before
4 TxDMV can complete our implementation work. The Texas
5 Department of Public Safety and the Texas Commission on
6 Environmental Quality are working through changes in their
7 operations related to vehicle inspection programs that are
8 necessary before the department can conduct our
9 implementation activities.

10 The committee also received updates on the
11 progress of implementing House Bill 718 and Senate Bill
12 224. House Bill 718 eliminates paper tags and permits
13 issued by the department beginning in July of '25. The
14 department is currently undertaking numerous internal
15 development projects related to this bill, including
16 drafting proposed rules, researching available metal plate
17 inventory, management systems, and design compliance
18 review and enforcement programs. Rules related to the
19 implementation must be adopted by the end of next year,
20 and staff expects to begin releasing drafts for
21 stakeholder input in February.

22 The department also understands the uncertainty
23 that many dealers, tax assessors and other stakeholders
24 feel concerning this implementation, and is taking
25 available opportunities to get in front of stakeholder

1 audiences to educate them about ongoing work and the
2 bill's requirements.

3 Senate Bill 224 addresses increases in
4 catalytic converter theft and related crimes. The bill
5 requires the Motor Vehicle Crime Prevention Authority,
6 MVCPA, to develop and implement a multi-agency catalytic
7 converter crime detection and prevention plan. The MVCPA
8 Board has been working with external stakeholders and
9 other impacted regulatory agencies this fall to develop a
10 plan, including holding a stakeholder workshop before
11 Thanksgiving to hear reports given on recent catalytic
12 converter crime rate trends and discuss the draft plan.
13 These discussions continued during their regular board
14 meeting last week.

15 The final item Mr. Yawn presented was the
16 proposed plan for developing statutory change
17 recommendations fo the 89th Texas Legislature.
18 Transportation Code Section 1001.025 authorizes the TxDMV
19 Board to recommend statutory changes that would improve
20 the operation of the department.

21 Next month the Government and Strategic
22 Communication Division will begin working with the
23 department program divisions to identify potential
24 statutory changes for our consideration. Potential
25 changes will be reviewed by impacted department offices

1 and presented to the Legislative and Public Affairs
2 Committee in June of 2024. Using board and stakeholder
3 input, the department will refine the recommendations
4 before final consideration and approval by the board in
5 August of 2024. Following board approval, the
6 recommendations will be presented to legislative offices.

7 The committee then heard a briefing on the new
8 facility updates from Chief Financial Officer Glenna
9 Bowman and Director of Motor Vehicle Titles and
10 Registration Annette Quintero. Department staff are
11 currently working with the Texas Public Finance Authority,
12 TPFA, the Texas Facilities Commission, and private vendors
13 to complete financing and contractual agreements to
14 implement the construction of the Camp Hubbard renewal
15 project.

16 Final comments on the TPFA agreements have been
17 returned to the TPFA's bond counsel for final review. TFC
18 is reviewing a TxDMV-requested change to its standard
19 service contract and hopes to complete the agreement this
20 month. Once the agreement is signed, TFC can move forward
21 with procuring the construction manager for the project.
22 The Phase Zero enabling project, which will move the data
23 center from Building 5 to Building 6, should begin in
24 January.

25 The Dallas and Houston expansion plans continue

1 to advance with the continued partnership with TFC. They
2 have completed the space study request, lease requirements
3 have been written and are currently under review, and the
4 TxDMV staff are currently reviewing eight locations
5 proposed by TFC.

6 The Vehicle Titles and Registration Division
7 has completed the service-mapping phase of the long range
8 facilities plan and is currently reviewing transaction
9 data which they expect to complete on December 31.

10 Phase 3 of the project is the regional service
11 center location. Phase 4 is a project cost analysis and
12 is expected to begin in January of 2024. Phase 5 is the
13 development of the final recommendation for presentation
14 to the 89th Legislature and is expected to begin in March
15 of 2024 and continue through June of 2024.

16 The last item that the committee heard was an
17 update on the Registration and Titling System, RTS,
18 replacement and ecosystem modernization effort from Chief
19 Information Officer Wendy Barron. The update included a
20 description of the background and intent of the project
21 and updates on the current status to date. Software
22 updates on existing systems have been started and are in
23 progress. A statement of work draft is being finalized
24 and our external assessment of the RTS environment and
25 procurement will be initiated by December of 2023.

1 Demand submitted to DIR Data Center Services
2 Technology Solutions, or TSS, to conduct an internal
3 assessment of the RTS environment. The first meeting with
4 the TSS team was held December 4, 2023. The contract
5 manager procurement is complete and the contractor started
6 on December 4, 2023.

7 Mr. Chairman, thank you for the opportunity to
8 provide this update on the important work the committee
9 deliberated yesterday. As mentioned, department staff are
10 available to answer any remaining questions board members
11 have on these projects.

12 MR. BACARISSE: Great. Thank you, Chairman
13 Scott and staff, as well.

14 Members, do you have questions for Chairman
15 Scott?

16 MS. GILLMAN: I have one question.

17 MR. BACARISSE: Yes, Member Gillman.

18 MS. GILLMAN: I'm on page 758. One question
19 relating to House Bill 3297, it's about in the middle of
20 the page, relating to elimination of vehicle safety
21 inspections for non-commercial vehicles. When is that
22 supposed to go into effect, do you know?

23 MR. GRAHAM: January 1, 2025.

24 MR. BACARISSE: Keith Yawn, are you familiar
25 enough with this piece of legislation?

1 Can you see that there?

2 MR. GRAHAM: No. Just what I recall from the
3 bill, January 1, '25.

4 MR. BACARISSE: We'll get him to verify.

5 MR. YAWN: Good afternoon. Keith Yawn,
6 director of Government and Strategic Communications, Mr.
7 Chairman, committee members.

8 Member Gillman, House Bill 3297 is required to
9 go into effect in January of 2025.

10 MS. GILLMAN: Thank you. And last question,
11 just for my knowledge, the Enforcement and the contested
12 case JNC Auto today, one of the aspects was not doing an
13 inspection timely. Is that offense and this new
14 regulation, is is the same inspection that we're talking
15 about?

16 MR. YAWN: I'd have to defer to Enforcement to
17 answer that question, I believe.

18 MR. GRAHAM: I think so.

19 MR. BACARISSE: Corrie is going to come up and
20 help cover that point.

21 MS. GILLMAN: So the requirement to do
22 inspections is --

23 MR. BACARISSE: Hold on just a second, Member
24 Gillman, let's let Corrie get up here.

25 Okay. Go ahead.

1 MS. THOMPSON: Corrie Thompson, director of the
2 Enforcement Division.

3 So the violation that you're referring to in
4 the case was about not being allowed to issue a tag until
5 it has the safety inspection on it unless there's
6 exception in statute for why you wouldn't need to do the
7 safety inspection. So the bill that you're referring to,
8 the safety inspection portion is going away, but for the
9 16 emissions counties, the inspection requirement is going
10 to remain the same.

11 And so I believe that that holds true, that if
12 you're in one of those emissions counties when you're
13 issuing that plate, that that inspection would still have
14 had to occur before issuance.

15 MS. GILLMAN: And if you're outside of the 16,
16 then you do not have to have a safety inspection.

17 MS. THOMPSON: You would not have the safety
18 inspection requiring going forward after the effective
19 date.

20 MS. GILLMAN: And I know Harris County is one
21 of the 16 counties that's going to still require it, and
22 he was in Harris County. But I just kind of wanted to
23 make sure this was the same inspection.

24 MS. THOMPSON: Yes.

25 MS. GILLMAN: Okay. Thank you.

1 MR. BACARISSE: Great. Any other questions for
2 Member Scott or the staff on agenda item 20?

3 (No response.)

4 MR. BACARISSE: If not, I just want to thank
5 you, Chairman Scott, for your good work on that committee
6 and leading it. Thank you.

7 We'll move now to agenda item 21, which is
8 Finance and Audit. And I'm going to ask Annette Quintero
9 to come back up here and we're going to discuss some
10 various elements of Finance and Audit.

11 MS. QUINTERO: Annette Quintero, Vehicle Titles
12 and Registration Division director.

13 Bear with me for just one moment.

14 MR. BACARISSE: I came up fast on you.

15 (General laughter.)

16 MS. QUINTERO: It did, it came up much faster.

17 This item is a briefing item only, relating to
18 the queuing system software we use in the regional service
19 centers. We are due to renew that contract and have
20 posted a solicitation and are pending award to Nemo-Q, the
21 vendor. We are asking for the board to grant Executive
22 Director Daniel Avitia authority to approve that contract
23 and execute that contract with Nemo-Q.

24 MR. BACARISSE: And it's for all of our
25 regional service centers?

1 MS. QUINTERO: Correct.

2 MR. BACARISSE: Every service center is going
3 with this new vendor.

4 MS. QUINTERO: Correct. They service all of
5 our regional service centers and will service our two new
6 service centers as well.

7 MR. BACARISSE: I just have a question. Does
8 the new contract allow for setting appointments on your
9 smartphone?

10 MS. QUINTERO: It absolutely does.

11 MR. BACARISSE: Good.

12 MS. MORIATY: Mr. Chairman, if I can clarify.
13 This is an action item. It says briefing item on the
14 screen but that is wrong. I'm sorry about that.

15 MR. BACARISSE: It's an action item,
16 absolutely. We have to give Daniel the authority to sign
17 the contract.

18 MS. QUINTERO: Yes.

19 MR. BACARISSE: Members, any other questions of
20 Ms. Quintero about this particular new bid and what it
21 will do?

22 MR. GRAHAM: Mr. Chairman, I'll make a motion.

23 MR. BACARISSE: Member Alvarado, do you have a
24 question, are you good?

25 MR. ALVARADO: Yes.

1 MR. BACARISSE: All right. Member Graham,
2 please.

3 MR. GRAHAM: I move that the board delegate to
4 the department's executive director the authority to
5 approve and execute the contract with Nemo-Q for the
6 provision of queue management services at the regional
7 service centers.

8 MR. BACARISSE: All right. Very good. Is
9 there a second to that motion?

10 MS. GILLMAN: I'll second.

11 MR. BACARISSE: Member Gillman, thank you.

12 All right. Is there any further discussion on
13 this?

14 (No response.)

15 MR. BACARISSE: Any public comment, Laura?

16 MS. MORIATY: No, sir, no public comment.

17 MR. BACARISSE: Okay, great. I'll call the
18 vote.

19 Member Alvarado?

20 MR. ALVARADO: Aye.

21 MR. BACARISSE: Member Gillman?

22 MS. GILLMAN: Aye.

23 MR. BACARISSE: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. BACARISSE: Member Omumu?

1 MS. OMUMU: Aye.

2 MR. BACARISSE: Member Prewitt?

3 MR. PREWITT: Aye.

4 MR. BACARISSE: Member Schlosser?

5 MR. SCHLOSSER: Aye.

6 MR. BACARISSE: Member Scott?

7 MR. SCOTT: Aye.

8 MR. BACARISSE: And I, Chair Bacarisse, vote
9 aye as well. So thank you.

10 And thank you, Ms. Quintero.

11 MS. QUINTERO: Thank you.

12 MR. BACARISSE: Agenda item 21.B is the annual
13 financial report, and so I'll ask Eric Horn to brief us on
14 that.

15 And so the floor is yours.

16 MR. HORN: Yes, sir, thank you. Good
17 afternoon, Mr. Chairman, members of the board, Executive
18 Director Avitia.

19 For the record, my name is Eric Horn. I'm the
20 director of Accounting Operations for TxDMV. Today I'll
21 be going over the highlights of our fiscal 2023 annual
22 financial report.

23 I'd just like to pause and take a moment to
24 recognize my financial reporting staff who, over the first
25 quarter of fiscal '24 put all this together for us,

1 submitted it one week ahead of the deadline. So excellent
2 work by my team there.

3 The annual financial report, commonly referred
4 to as the AFR, is a net summary of accounting transactions
5 within a fiscal year. For FY23, this covers transactions
6 occurring between September 1, 2022, through August 31,
7 2023. A copy of the report is available in your board
8 book beginning on page 768.

9 This report is required by statute to be
10 submitted to our oversight agencies by November 20 of each
11 year. And as I mentioned, we did submit that early.

12 I'll begin by discussing the changes year over
13 year in our Exhibit I, our combined balance sheet or
14 statement of net assets. We did have two material changes
15 in fiscal '23 that I'd like to discuss with you.

16 The first change was due to the State of Texas
17 implementing Governmental Accounting Standards Board, or
18 GASB, Statement Number 96, Subscription-based Information
19 Technology Arrangements, which requires state agencies to
20 reclassify long term software as a service contract of
21 \$500,000 and greater and intangible right-to-use assets.
22 These assets are then amortized over the life of those
23 contracts, and the remaining balance of those contracts
24 are now recorded on our balance sheet as liabilities.

25 As part of this implementation, TxDMV

1 accounting personnel worked closely with the Comptroller's
2 Office, as well as TxDMV staff from our purchasing and
3 ITSD teams, very closely over the last two fiscal years to
4 identify contracts that met these criteria.

5 In total, there were five software contracts
6 that were reclassified for TxDMV systems such as
7 eLICENSING, TxPROS, TxIRP and the Commercial Vehicle
8 Information Exchange Window, or CVIEW. Additional
9 information on these contracts is contained in Note 2,
10 Note 5, and Note 8 in the AFR.

11 The second material change for fiscal '23 was
12 due to the transfer of Camp Hubbard property from TxDOT.
13 This transfer included the land, which is shown on our
14 balance sheet at the historical cost of around \$957,000,
15 and this is a non-depreciable asset. Buildings and
16 building improvements, totaling \$29.37 million, were also
17 transferred, along with \$21.2 million in accumulated
18 depreciation. Additionally, facilities and other
19 improvements of \$1.74 million was transferred, with the
20 corresponding \$443,000 in accumulated depreciation.

21 The two material changes were primary drivers
22 resulting in \$34.1 million increase, or 10.1 percent, in
23 our net assets year over year.

24 I will now discuss Exhibit II of the AFR which
25 is our income statement. Total revenue for fiscal '23 was

1 \$1.96 billion, an increase of 3.25 percent year over year
2 versus fiscal '22. The breakdown of which fund we
3 deposited the revenue to is: \$1.758 billion to the State
4 Highway Fund, Fund 6; \$190.7 million to TxDMV Fund 10.
5 And between those two funds, 99 percent of the revenue
6 that's collected for each of those funds is related to
7 license fees and permits. The remaining \$15.1 million is
8 related to MVCPA appropriations and our general revenue
9 fund, Fund 1.

10 Total expenditures, following adjustments, for
11 fiscal '23 was \$209.39 million, an increase of \$31.94
12 million year over year. This large increase is once again
13 primarily driven by those two material changes we talked
14 about on the balance sheet that we had in fiscal '23.

15 The software as a service reclassification
16 accounted for a \$16.5 million increase in our debt service
17 expense. This increase has been fully offset in the other
18 funding sources section in Exhibit II.

19 The transfer of Camp Hubbard property was also
20 a primary driver which led to an increase of \$5.19 million
21 in depreciation expense year over year. An additional
22 driver was also in our salaries and wages and other
23 payroll-related costs as a result of salary increases, the
24 SB 30, as well as increased leave balances and fewer
25 vacancies that we had in fiscal '23.

1 This concludes my remarks, and I'm available
2 for any questions that you may have.

3 MR. BACARISSE: Thank you, Horn.

4 Are there any questions for Mr. Horn, members?

5 (No response.)

6 MR. BACARISSE: Thank you very much. Good
7 report.

8 MR. HORN: Thank you.

9 MR. BACARISSE: Agenda item 21.C is the
10 Internal Audit Division status update, and I'd like to
11 call up Salem Chuah, and he will make his presentation for
12 us.

13 So the floor is yours, sir.

14 MR. CHUAH: Thank you. Good afternoon, Chair
15 Bacarisse, board members, Executive Director Avitia. For
16 the record, my name is Salem Chuah. I am the director of
17 the Internal Audit Division for the department.

18 Item 21.C is a briefing item to provide you
19 with a status update on the Internal Audit Division's
20 activities pertaining to internal engagements, external
21 engagements, and administrative items.

22 Starting with internal engagements, we are in
23 the reporting phase for our audit on the regional service
24 centers, known as the RSCs. We've concluded our site
25 visits of the four RSCs within the audit scope, so

1 Abilene, Dallas, El Paso, and Houston. Observed key
2 processes while onsite, talked with customers to gain
3 their perspectives, administered an internal culture
4 questionnaire, and reviewed a sample of bonded title
5 applications to determine uniformity amongst the practices
6 at the RSCs.

7 The audit report is currently with the Vehicle
8 Titles and Registration Division for management responses.

9 And we really much appreciate the collaboration and the
10 RSC employees allowing us to go in and observe their
11 processes while they're helping our customers.

12 We also completed our quality assurance
13 improvement program review. The highlights and reports
14 start on page 817 of your board materials. Auditing
15 standards require the Internal Audit Division, IAD, to
16 maintain a quality assurance and improvement program and
17 to evaluate our own function annually for conformance to
18 auditing standards, so this review is a look back at
19 fiscal year 2023.

20 Looking at key results here, we found the IAD
21 met compliance and performance standards based on
22 reviewing audit documentation on completed engagements.
23 We also found that IAD met or exceeded all key performance
24 indicators. Specifically, we validated all audit
25 recommendations within 90 days of implementation,

1 completed 90 percent of the approved audit plan, completed
2 four educational and outreach efforts, and achieved scores
3 ranging from 88 percent to 100 percent in our end-of-
4 engagement survey questions.

5 Further, we maintained a level 4 on the
6 capability model. Some examples that demonstrate this
7 level include: participating in professional
8 organizations; engaging in educational efforts; and
9 providing insight on organizational risks to the Executive
10 Director's Office and management, as appropriate. Lastly,
11 we tracked 57 fraud, waste and abuse complaints.

12 After our review we did make two
13 recommendations to ourselves, and that is to continue
14 tracking all of the recommendations, ensuring that we are
15 getting timely status updates from the divisions, as well
16 as making sure we are continuing to communicate with the
17 divisions throughout our audit life cycle.

18 On external engagements, the Comptroller of
19 Public Accounts completed its statewide desk audit of
20 payment approval authority and security. There were 131
21 state agencies and institutions selected for this desk
22 audit. The objective was to determine whether employees
23 who could approve payments were properly authorized and
24 that agencies timely notified the Comptroller of
25 terminated employees so that their access and signature

1 authorization for payments could be removed. The
2 department had no finding, so really positive results from
3 that.

4 Moving on to administrative reports, we
5 received seven proposals in response to our request for
6 qualifications. We're currently in the process of
7 evaluating those proposals.

8 Lastly, if I can get the next slide, please, we
9 welcomed two new team members to the Internal Audit
10 Division.

11 First -- Angel, if you could stand up -- we
12 have Angel Flores. Angel joined us in October and was
13 previously in audit management for Medicaid Services at
14 the Health and Human Services Commission. He has over 24
15 years of internal audit experience at various Texas state
16 agencies.

17 Angel has a bachelor in business administration
18 and a master of science and project management from St.
19 Edward's University. He is a certified government audit
20 professional, and is working on obtaining his certified
21 internal auditor certification. In his spare time, Angel
22 enjoys boating, running, reading about Texas history, and
23 attending sporting events with his wife and friends.

24 Next slide, please. Next we have Sonja
25 Murillo. She also joined us in October and was previously

1 an internal auditor at the Texas Parks and Wildlife
2 Department and an external auditor with the Health and
3 Human Services Commission, Office of the Inspector
4 General. Sonja has a bachelor of arts in accounting from
5 St. Leo University and is a certified fraud examiner. In
6 her spare time, Sonja enjoys attending concerts, off-
7 roading, camping, and spending time with her family.

8 We're very excited to welcome both to the
9 Internal Audit Division as well as the department.

10 And this concludes my briefing item. I'm happy
11 to answer any questions.

12 MR. BACARISSE: Members, any questions for
13 Salem?

14 MS. GILLMAN: I have one question.

15 MR. BACARISSE: Yes, Member Gillman.

16 MS. GILLMAN: Thank you.

17 Salem, you always seem to do a really good job,
18 very thorough and it's a big task, these audits that
19 you've been doing. I asked you long, long ago when you
20 were going to audit the RSCs and talk to customers, I
21 said, Are you going to include dealers because we are a
22 customer? And you said, No, not at this time.

23 And so I just wanted to say the next time, if
24 the opportunity presents itself, will you please include
25 the dealers, because we are customers. And I just think

1 it's an opportunity to get feedback and learn and see what
2 might could be improved going forward, especially coming
3 off of COVID, that was kind of nightmarish. And so maybe
4 there are lessons to be learned there.

5 MR. CHUAH: Thank you, Member Gillman. We
6 could have a project where we specifically talk to
7 dealers. I will say in this RSC audit and being outside
8 and just trying to get people and talk to them, we did get
9 a few dealers in that process of just standing outside the
10 regional service centers and trying to solicit feedback,
11 so there are some. But we can do a targeted project on
12 dealer comments.

13 MS. GILLMAN: For your consideration.

14 MR. CHUAH: Thank you, Member Gillman.

15 MR. BACARISSE: Members, any other questions of
16 Salem here?

17 (No response.)

18 MR. BACARISSE: Super job. Thank you, sir, we
19 appreciate it very much.

20 Are there any questions for other staff?

21 (No response.)

22 MR. BACARISSE: Welcome, new staff, we're
23 excited you're here. Salem is really excited you're here.
24 Help has arrived, that's good. Thank you.

25 Number 24, public comment. Is anyone left?

1 MS. MORIATY: No, sir, there is no public
2 comment.

3 MR. BACARISSE: Hurrah, hurrah.

4 We're not going to go into executive session,
5 so we get to the fun part, which is entertaining a motion
6 to adjourn. Is there a motion to adjourn?

7 MR. GRAHAM: So moved.

8 MR. BACARISSE: All in favor aye.

9 (A chorus of ayes.)

10 MR. BACARISSE: Opposed nay.

11 (No response.)

12 MR. BACARISSE: Thank you.

13 This meeting of the Texas DMV is adjourned at
14 2:04 p.m.

15 (Whereupon, at 2:04 p.m., the meeting was
16 adjourned.)

C E R T I F I C A T E

1
2
3 MEETING OF: TxDMV Board

4 LOCATION: Austin, Texas

5 DATE: December 14, 2023

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 223, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Motor Vehicles.

11 DATE: December 29, 2023
12
13
14
15
16

17 /s/ Nancy H. King
18 (Transcriber)
19

20 On the Record Reporting &
21 Transcription, Inc.
22 7703 N. Lamar Blvd., Ste 515
23 Austin, Texas 78752
24