

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

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

Thursday,  
April 11, 2024  
9:00 a.m.

BOARD MEMBERS:

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

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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 the Board  
4 meeting of the Texas Department of Motor Vehicles.

5 It is now 9:18 a.m., and I'm calling this Board  
6 meeting for April 11, 2024 to order. I want to note for  
7 the record that the public notice of this meeting,  
8 containing all items on the agenda, was filed with the  
9 Office of Secretary of State on April 3, 2024.

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

14 I want to welcome those who are with us today  
15 for the Board meeting. We are having technical  
16 difficulties; we're not livestreaming. But we will make  
17 the full Board meeting recording available after the  
18 meeting when we're able to do so.

19 If you wish to address the Board or speak on an  
20 agenda item during today's meeting, please make sure you  
21 complete a speaker's sheet at the registration table, and  
22 please identify all the information asked of you on the  
23 sheet, if you're interested in commenting on a certain  
24 topic, what that is or agenda item number, your name and  
25 address, whether you are representing anyone or speaking

1 for yourself. If your comment does not pertain to a  
2 specific agenda item, we'll take your comment during the  
3 general public comment portion of the meeting at the end.

4 In accordance with the department's  
5 administrative rule, comments to the Board will be limited  
6 to three minutes. To assist each speaker, a timer has  
7 been provided at the podium. The timer light will be  
8 green for the first two minutes, yellow when the speaker  
9 has one minute left, and then red when the speaker's time  
10 is up.

11 Individuals cannot accumulate time from other  
12 speakers. Comments should be pertinent to the issues  
13 stated on your comment sheet, and when addressing the  
14 Board, please state your name and affiliation for the  
15 record.

16 There are a few things that will help us to  
17 make this meeting run more smoothly and assist our court  
18 reporter, who is right back there, to get an accurate  
19 record: number one, please identify yourself before  
20 speaking; please speak clearly and slowly; do not speak  
21 over others; and ask the chair for permission to speak and  
22 be sure to get recognized before speaking.

23 I'd like to thank our court reporter who is  
24 transcribing this meeting.

25 Before we begin today, I'd like to remind all

1 presenters and those in attendance of the rules of conduct  
2 at our Board meetings. Under the department's  
3 administrative rule, the chair has the authority to  
4 supervise the conduct of the meetings, and this includes  
5 the authority to determine when a speaker is being  
6 disruptive of the meeting or is otherwise violating the  
7 timing or presentation rules that I just discussed.

8 So with all of that out of the way, I'd like to  
9 now have a roll call of the Board members to establish a  
10 quorum.

11 Member Alvarado, are you present?

12 MR. ALVARADO: Here.

13 MR. BACARISSE: Member Gillman?

14 MS. GILLMAN: Here.

15 MR. BACARISSE: Member Graham?

16 MR. GRAHAM: Here.

17 MR. BACARISSE: Member McRae?

18 MS. McRAE: Here.

19 MR. BACARISSE: Member Omumu?

20 MS. OMUMU: Present.

21 MR. BACARISSE: Member Prewitt?

22 MR. PREWITT: Here.

23 MR. BACARISSE: Member Schlosser?

24 MR. SCHLOSSER: Here.

25 MR. BACARISSE: And let the record reflect that



1 I, Charles Bacarisse, am here too so we have a quorum.

2 Also, let the record reflect that Member Scott  
3 is absent and has submitted his notice of resignation from  
4 this position as a Board member to the Governor's Office.

5 If we would move now to agenda item 2, please  
6 stand and let's honor our country and state with the  
7 pledges of allegiance. I'm going to turn it over to  
8 Member Gillman to lead us in the U.S. pledge, and then  
9 Member Graham will lead the Texas pledge.

10 (The pledges of allegiance, U.S. and Texas,  
11 were recited.)

12 MR. BACARISSE: Thank y'all. Thank you,  
13 Members Gillman and Graham for leading us in those  
14 pledges.

15 Agenda item 3 is chair's reports, and I want to  
16 just take an opportunity, a personal privilege here, to  
17 thank our dear friend and our colleague, Member Paul  
18 Scott.

19 Member Scott has resigned for personal reasons.  
20 He served on the Board since 2018, including chairing the  
21 Legislative and Public Affairs Committee since 2020.  
22 Member Scott was actively engaged in many important issues  
23 throughout his time on this Board and throughout the many  
24 years that he has served the independent dealers as an  
25 independent dealer. He will be missed for sure by each of

1 us and I can say the agency as well.

2 I personally can't thank him enough for his  
3 good fellowship, his direct and honest counsel to me. He  
4 was a man with an economy of words, which was a good  
5 thing, but when he spoke, you better listen.

6 Member Scott hopes to join us for a Board  
7 meeting in the near future, either in person or remotely,  
8 so we may properly honor and thank him for his service to  
9 the people of Texas and to this agency.

10 Members, anybody else want to chime in and give  
11 us a little bit more thought on Member Scott? If you have  
12 one, you're welcome to.

13 MS. GILLMAN: Yes.

14 MR. BACARISSE: Member Gillman, go ahead,  
15 please.

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

17 Mr. Scott was a fantastic Board member,  
18 attentive, knowledgeable, and brought a lot to the table.

19 He taught me a lot, and we all are better off because of  
20 his attendance here. We'll miss him.

21 MR. BACARISSE: Well said.

22 Thank you, members. I appreciate your moment  
23 there for Member Scott.

24 And now we'll move to agenda item 3.B, which is  
25 appointments to the Legislative and Public Affairs

1 Committee. As a result of our recent change in Board  
2 members, I've made some changes to the Legislative and  
3 Public Affairs Committee assignments.

4 Don't make it too dark, I can't see. A little  
5 mood lighting here, this is great. Turn on the lava  
6 lamps.

7 (General laughter.)

8 MR. BACARISSE: I have appointed Member Sharla  
9 Omumu to serve as a member of the Legislative and Public  
10 Affairs Committee, and I appointed Member Christian  
11 Alvarado to serve as chair of this committee. The  
12 Legislative and Public Affairs Committee consists of  
13 Member Christian Alvarado as chair, members Tammy McRae,  
14 Sharla Omumu, and Darren Schlosser.

15 So I will now turn it over to Executive  
16 Director Daniel Avitia -- this is item number 4 -- to move  
17 us through his section.

18 Mr. Avitia.

19 MR. AVITIA: Chairman, members, good morning.  
20 Chairman, thank you for the opportunity to share a few  
21 words this morning. These are all updates; no action is  
22 necessary here.

23 I'll start with agenda item 4.A, which can be  
24 found on page 8 of your Board materials. The Texas  
25 Independent Automobile Dealer Association invited the

1 TxDMV staff to participate in the TIADA town halls  
2 throughout the state.

3 To date TIADA town halls have been held in  
4 Corpus Christi, two events; in Donna, Abilene, Arlington,  
5 Lubbock, El Paso; and the next town hall is scheduled this  
6 month on the 30th here in Austin.

7 TxDMV leadership and program staff have had the  
8 opportunity to explain elements of the House Bill 718  
9 implementation that will ultimately impact dealers  
10 directly, including mandated use of webDEALER, allocation  
11 of license plates, and plate security requirements and  
12 compliance.

13 The feedback that we have received from these  
14 town halls has been great. Dealers participating in these  
15 events have provided the department with the opportunity  
16 to identify areas of the implementation requiring further  
17 consideration or development to properly address the  
18 dealer community's needs and implementation.

19 Chairman, members, I want to thank TIADA for  
20 inviting us to participate in these important knowledge-  
21 sharing opportunities. With that said, it has been a  
22 great partnership; I look forward to many more.

23 Earl, John, thank you for inviting us and  
24 having us be a part of that.

25 Chairman, members, that concludes my agenda

1 item 4.A. I'm happy to move on.

2 MR. BACARISSE: Thank you.

3 May I just jump in also and briefly recognize  
4 our colleague, Member Gillman. Stacey, thank you for  
5 hosting a meeting on Good Friday at your offices between  
6 the Harris County Tax Office and some of our region's  
7 largest franchised dealers.

8 I think the meeting was candid. I hope it was  
9 helpful for you and your colleagues. Certainly I learned  
10 a lot since I still say that I'm new in this world. We  
11 need many more moments of discussion, I think, with that  
12 tax office in particular, but I am thankful for your  
13 proactive efforts in bringing us together, and I look  
14 forward to more such meetings in the future, hopefully.  
15 So thank you.

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

17 MR. AVITIA: Indeed.

18 MR. BACARISSE: Daniel, please continue.

19 MR. AVITIA: Chairman, thank you.

20 Agenda item 4.B can be found on page 9 of your  
21 briefing materials.

22 The Vehicle Titles and Registration Advisory  
23 Committee, or VTRAC; the Motor Vehicle Industry Regulation  
24 Advisory Committee, or MVIRAC; and the Customer Service  
25 and Protection Advisory Committee, or CSPAC, each met

1 during February and March to consider and make  
2 recommendations on draft rule amendments to Chapter 215,  
3 Chapter 217, Chapter 221. The draft changes were  
4 recommended by staff to implement House Bill 718, House  
5 bill 3297 from the 88th Legislature, and to update Chapter  
6 217 as well.

7 The VTRAC, MVIRAC and CSPAC each provided staff  
8 with valuable feedback and voted on recommendations for  
9 presentation to the Texas Department of Motor Vehicle  
10 Board here today.

11 Chairman, members, and colleagues present and  
12 watching, I want to thank you for your diligence during  
13 this challenging process. As I have stated in past  
14 meetings, rule review is one of my least favorite  
15 activities to undertake in any agency, not just the DMV,  
16 but the work is required, and it's important.

17 I know it makes for a lot of careful reading --  
18 just like for this Board meeting, over 800 pages, my  
19 apologies -- and I certainly appreciate this Board's  
20 efforts all the time, and I thank you all for reading  
21 through the materials, and more importantly, for working  
22 with the department and together as best we can.

23 Chairman, members, that concludes my remarks on  
24 advisory committee meetings.

25 MR. BACARISSE: Thank you.

1 MR. AVITIA: All right. Agenda item 4.C can be  
2 found on page 10 of your briefing materials.

3 At this time the TxDMV would like to recognize  
4 Ms. Donna Willis, the former Lynn County tax assessor-  
5 collector, for her dedication to public service and  
6 certainly her years of collaboration with the Texas  
7 Department of Motor Vehicles. Donna was elected as tax  
8 assessor-collector in 2013, and unfortunately, we lost  
9 Donna last month after her battle with cancer.

10 County Judge Mike Braddock described Donna as a  
11 person who stood up for small towns and a person that  
12 served with heart. Donna was a member of the Tax  
13 Assessor-Collector Association; she served in a leadership  
14 role with TACA and worked very closely with the DMV during  
15 legislative sessions, during monthly meetings, and closely  
16 with DMV staff to develop solutions to challenges in  
17 operations. We will certainly miss Donna.

18 Chairman, members, colleagues in attendance,  
19 let us take a moment to silently honor Ms. Donna Willis.

20 (A moment of silence was observed.)

21 MR. AVITIA: Thank you all.

22 Members, agenda item 4.F can be found on page  
23 11 of your briefing materials.

24 At this time I would like to recognize our  
25 employees who have reached a state service milestone. We

1 always celebrate these employees as our show of  
2 appreciation for their years of service, their passion,  
3 and their dedication to the DMV and certainly the citizens  
4 of the state of Texas.

5 We'll start with 20 years of service, two of  
6 which are in the Executive Director's Office: Ms. Claudia  
7 Leal and Ms. Stacy Steenken, 20 years of service. Next  
8 we'll go with Mr. Rob Blech, who is joining us this  
9 morning -- good morning, Mr. Blech -- Office of General  
10 Counsel; Robert Rice with the Enforcement Division; and  
11 Terina Buentello with the Motor Vehicle Division.

12 Twenty-five years of state service: Mr.  
13 Kenneth Fatheree with the Enforcement Division.

14 And finally, 40 years of state service: Ms.  
15 Alicia Beck with the Motor Carrier Division. Impressive.

16 Chairman, members, I want to share a few words  
17 about two of the recipients that are here with us today.

18 First, I'll start with Mr. Blech with 20 years  
19 of state service. Since Rob arrived at the Texas  
20 Department of Motor Vehicles in 2018, he has been a vital  
21 member of the General Counsel's team as a staff attorney.  
22 He has become the agency's go-to expert in title  
23 litigation and employment law and a valued resource and  
24 mentor to other attorneys within the General Counsel's  
25 Office. Prior to coming to the DMV, Rob honed his skills



1 working for the Texas Attorney General's Office, as well  
2 as the Texas Medical Board.

3 We are truly fortunate, Rob, that you have  
4 joined the DMV team, so now you only have 20 more years  
5 before you can retire. Rule of 40, sir.

6 (General laughter.)

7 MR. AVITIA: Next we have Ms. Alicia Beck with  
8 40 years of state service. Alicia first came to the Texas  
9 DMV as a temporary employee for the Motor Carrier Division  
10 after retiring from TCEQ in 2016. She later became an  
11 employee for the department in 2017. Much of Alicia's  
12 career has been spent in state government service.

13 Alicia, thank you for your years of service and  
14 your dedication to the DMV and the citizens of the state  
15 of Texas.

16 And finally, members, we have two retirees:  
17 Ms. Jennifer Schrier with the CRD Division, 31 years of  
18 state service; and Ms. Brenda Shelton with the Enforcement  
19 Division, 23 years of great service.

20 Chairman, members, please join me in  
21 congratulating each of these recipients today.

22 (Applause.)

23 MR. AVITIA: Members, if you'll join me at the  
24 front of the dais for an opportunity to take a photo with  
25 Alicia and Rob, please.

1 (Pause for presentation and photos.)

2 MR. BACARISSE: Okay. Members, we'll now move  
3 to agenda item number 5, which is our contested case, and  
4 before we move to that oral presentation from the parties  
5 to the case, General Counsel Laura Moriaty will present  
6 the procedural history and summary of the case for us.

7 So, Laura, let me give you the floor.

8 MS. MORIATY: Good morning, Chairman, Board.  
9 I'm Laura Moriaty, general counsel for the Department of  
10 Motor Vehicles.

11 The contested case you'll be deciding today is  
12 a franchise relocation protest case that arose from  
13 Doggett Ford's protest of Chastang Ford's relocation.  
14 Doggett Ford and Chastang Ford are both franchised Ford  
15 dealers in Houston.

16 This case has already gone through a hearing at  
17 SOAH that happened on March 27 through 31 and April 3  
18 through 4 of 2023, so it's been a whole year. The  
19 administrative law judge in that case issued a proposal  
20 for decision on October 17, 2023, and found that there was  
21 good cause for Chastang's relocation.

22 Doggett Ford filed exceptions on November 1 and  
23 Chastang replied to those exceptions. The ALJ reviewed  
24 the exceptions but did not make any changes in response to  
25 them and turned the case over to us on November 9, 2023.

1           But since then, the parties have decided that  
2 they want to settle this case, so they have made a motion  
3 and brought an agreed order before y'all. So the agreed  
4 order, if y'all accept it, would dismiss this case  
5 entirely.

6           So the first question you're going to consider  
7 today is whether to accept that agreed order. If you vote  
8 to accept the agreed order, we will not have to discuss or  
9 consider the proposal for decision, the agreed order will  
10 become final, and the case will be dismissed.

11           On the other hand, if you vote to reject the  
12 agreed order, then we will take up the proposal for  
13 decision and decide whether to accept the ALJ's findings  
14 of fact and conclusions of law, and the question you will  
15 be answering then is whether there is good cause for  
16 Chastang Ford's relocation.

17           Both parties to this case have timely requested  
18 to make oral presentations to you this morning, and each  
19 party has requested to use a portion of their presentation  
20 time to discuss the agreed order first. They will be able  
21 to reserve the rest of their time in case they need to  
22 present the proposal for decision to you later, but we  
23 will start with their presentations on the agreed order.

24           So if there are no questions for me, I will  
25 turn it back over to Chairman Bacarisse.

1 MR. BACARISSE: Members, any questions for Ms.  
2 Moriaty on this point?

3 (No response.)

4 MR. BACARISSE: Otherwise, thank you.

5 Under the Board's rules, a party that timely  
6 submitted this request to make an oral presentation will  
7 be allotted up to 15 minutes to do so.

8 In this case, the protestant and applicant both  
9 submitted timely requests to make oral presentation today,  
10 and this case is a little different, thankfully, because  
11 of the parties have submitted an agreed order to settle  
12 the case for the Board's consideration.

13 Both parties have requested to speak to the  
14 Board about that agreed order, as Laura said, and they  
15 have the option to use a portion of that time to talk  
16 about the agreed order and then reserve the remainder of  
17 their 15 minutes.

18 After the parties have presented the agreed  
19 order, I will ask for motions on that agreed order. If  
20 the agreed order passes by a majority vote, we will then  
21 be done with this agenda item, but if the agreed order  
22 fails, that motion fails, we'll then turn to considering a  
23 proposal for decision in the contested case. If that  
24 happens, the parties will have the reserved remainder of  
25 their 15-minute presentation time to present to the Board

1 on the PFD.

2 During oral presentations, time spent by a  
3 party responding to Board questions is not counted against  
4 the party's time. The timer light on the podium will be  
5 green for the first 14 minutes, yellow when there's one  
6 minute left, and then red when the party's time is up.

7 And I would also like to remind the Board  
8 members and the parties that the Board's decision must be  
9 based solely on evidence contained within the  
10 administrative record from the State Office of  
11 Administrative Hearings, and if a Board member asks a  
12 question about evidence that is not in the SOAH  
13 administrative record for this case, the parties should  
14 respond by saying the question is about evidence that's  
15 not in the administrative record.

16 Protestant Doggett Group, LLC d/b/a Doggett  
17 Ford, is represented by Mark Allan Bankston, who will now  
18 make Doggett Ford's oral presentation on the agreed  
19 proposed order.

20 MR. BANKSTON: Mr. Chairman, may I approach?

21 MR. BACARISSE: Please. We'd love for you to  
22 be up here. Make sure that mic is on, it will be a little  
23 green ring; I see it's red now, but make sure that's on,  
24 just push the button down on that mic. There you go.  
25 Welcome.

1 MR. BANKSTON: Mr. Chairman, good morning,  
2 distinguished members of the Board. My name is Mark Allan  
3 Bankston with the law firm of Johnson Deluca Kurisky &  
4 Gould in Houston. I'm honored to be here this morning to  
5 address you behalf of Doggett Auto Group, LLC d/b/a  
6 Doggett Ford.

7 This is a relocation protest, as Ms. Moriaty  
8 said. Chastang applied to move from 6200 North Loop in  
9 Houston to 3625 Eastex Freeway in Houston. Doggett timely  
10 filed a protest because it was a little bit more than two  
11 miles closer to Doggett Ford, and the parties vigorously  
12 litigated that matter.

13 We attended mediation, tried to get it worked  
14 out at that point but were not able to, so we proceeded to  
15 administrative before the administrative law judges at the  
16 State Office of Administrative Hearings.

17 A proposal for decision was issued, we filed  
18 some exceptions, as Ms. Moriaty said, which the ALJs ruled  
19 upon, and subsequent to that, the parties entered into an  
20 agreement to lay their axes and stop fighting and get back  
21 to selling cars.

22 So we would respectfully request that the board  
23 grant the joint motion to dismiss and enter the final  
24 order of dismissal with prejudice pursuant to the parties'  
25 binding settlement agreement.

1 And I will reserve the balance of my time.

2 MR. BACARISSE: Thank you, Mr. Bankston.

3 Members, any questions that you have for Mr.

4 Bankston on this?

5 (No response.)

6 MR. BACARISSE: Seeing none, thank you, sir, I  
7 appreciate it.

8 MR. BANKSTON: Thank you.

9 MR. BACARISSE: And the Applicant Chastang  
10 Enterprises-Houston, LLC d/b/a, doing business as Chastang  
11 Ford, is represented by Leon Komkov, who will now make the  
12 oral presentation for Chastang Ford.

13 So welcome to the podium, welcome to the DMV,  
14 sir.

15 MR. KOMKOV: Thank you, sir.

16 Good morning, Mr. Chairman, members of the  
17 Board.

18 I'm really here, I hope, to be a resource if  
19 anyone had any questions. The parties, to sort of  
20 paraphrase the great Chief Joseph: We shall fight no more  
21 forever. We don't desire to fight; we do desire to get  
22 back to selling cars.

23 We respectfully request the Board enters the  
24 agreed order of dismissal of this protest. Thank you.

25 MR. BACARISSE: Thank you, Mr. Komkov.

1 Any questions, Board members?

2 (No response.)

3 MR. BACARISSE: Seeing none, Laura, are there  
4 any public comments on this item.

5 MS. MORIATY: Laura Moriaty, general counsel.  
6 No, sir, we have no public comments.

7 MR. BACARISSE: Okay. Thank you.

8 I will now entertain a motion on the proposed  
9 agreed order on agenda item 5.

10 I'm sorry, Member Omumu.

11 MS. OMUMU: I'd like to make a motion.

12 MR. BACARISSE: Oh, you would? Okay. Please  
13 go right ahead and make a motion.

14 MS. OMUMU: I move that the Board enter an  
15 agreed final order incorporating the findings of fact and  
16 conclusions of law that the parties proposed in the final  
17 order of dismissal with prejudice. I also move that the  
18 contested case before us today be dismissed with  
19 prejudice. I further move that the department licensing  
20 staff continue processing Chastang Ford's application for  
21 relocation with this protest resolved.

22 Thank you.

23 MR. BACARISSE: And is there a second to that  
24 motion?

25 MS. McRAE: I second, Chairman.



1 MR. BACARISSE: Vice Chair McRae, thank you.

2 And any other questions on the motion, any

3 discussion on the motion?

4 (No response.)

5 MR. BACARISSE: Seeing none, I will now call

6 for the vote on this item.

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 McRae?

14 MS. McRAE: 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: And I, Member Bacarisse, vote

22 aye as well. So that's unanimous.

23 Gentlemen, thank you all. Go forth and sell

24 lots of cars. Thank y'all for your time this morning.

25 Now moving on the agenda, I want to explain

1 what I'd like to do, members, if you're kosher with it. I  
2 would like to take agenda item -- let me get this right  
3 here -- I'd like to take agenda item 6 out of order and  
4 just hold it and run all the way through the rest of the  
5 agenda,

6 And we'll do it after agenda item 14, so that  
7 doing things in that order would allow the Board to see  
8 whether the proposed rule repeals will pass before we  
9 adopt the rule review so that we can remove any provisions  
10 from the rule review adoption that lack legal authority  
11 and are not repealed, if that makes sense, or maybe that's  
12 clear as mud. You could ask our general counsel to  
13 interpret that statement, but I think this will help  
14 things move in an orderly fashion if you'll allow.

15 So with the permission of the Board, I'd like  
16 to now move to agenda item number 7. Thank you, members.

17 Let me recognize Mr. Richards at this point for  
18 agenda item number 7.

19 MR. RICHARDS: Good morning, Mr. Chairman,  
20 Board members, Executive Director Avitia. For the record,  
21 my name is David Richards. I'm associate general counsel  
22 for the agency.

23 I am presenting today on agenda item 7, which  
24 is a rule adoption for Chapter 206 pertaining to  
25 management of the agency. You'll find it on page 173 of

1 your board book.

2 The recommendation by staff is that you adopt  
3 new Section 206.101, which is the public access or comment  
4 requirements before advisory committees. We have a  
5 similar provision also that is in 206.22 that deals with  
6 public comment or access to Board meetings, so it pretty  
7 much mirrors that. We're also proposing amendments to 206  
8 and repeals to 206, as well.

9 As I said, 206.101 deals with public access to  
10 advisory committees. We ask for adoption of that. We're  
11 offering amendments pursuant to a rule review under  
12 2001.039 of the Government Code to clean up language,  
13 remove archaic language, and make it more reader-friendly  
14 and a host of other reasons for making amendments.

15 We are proposing repeal of Subchapter D in 206  
16 which deals with contested cases. As y'all may recall, we  
17 consolidated all our contested case rules in new Chapter  
18 224, so the repeal would be necessary.

19 We had one comment to these rules received from  
20 TIADA. One had to do with a non-substantive change, the  
21 placement of the word "and" in a clause. We took care of  
22 that; we agreed with the recommended change.

23 And secondly, there was one substantive change  
24 which will allow the public that want to comment or make a  
25 comment or speak before the Board on an agenda item to do

1 that before a motion is made.

2 Previously that was after a motion was made and  
3 it was sometimes a foregone conclusion that the vote was  
4 going to take place. This way the public and stakeholders  
5 can comment and maybe a Board member will change his or  
6 her motion based on that comment. So we think it's a  
7 great change suggested by TIADA, and we recommend approval  
8 for final adoption, and we've made the necessary changes  
9 to the rule text.

10 That ends my presentation. If there are any  
11 questions, I'll be happy to entertain those.

12 MR. BACARISSE: Thank you.

13 Members, any questions of Mr. Richards on this  
14 item?

15 (No response.)

16 MR. BACARISSE: No. I think we're good with  
17 this.

18 Laura, any public comments on this item?

19 MS. MORIATY: No, sir, no public comments.

20 MR. BACARISSE: Okay. Thank you.

21 I will entertain a motion on agenda item number  
22 7.

23 MS. McRAE: Chairman, I would like to make a  
24 motion.

25 MR. BACARISSE: Vice Chair McRae.

1 MS. McRAE: I move that the Board approve the  
2 adoption of the proposed amendments, new rule section, and  
3 repeals to 43 Texas Administrative Code, Chapter 206,  
4 concerning cleanup as recommended by staff, for  
5 publication in the *Texas Register*.

6 I also move that the Board grant the department  
7 the authority to make changes to the adoption preamble and  
8 text of the Chapter 206 revisions that are approved by the  
9 department's general counsel as necessary for compliance  
10 with state or federal law or for acceptance by the Texas  
11 Secretary of State for filing and publication in the *Texas*  
12 *Register*.

13 In addition, I move that the Board grant the  
14 department the authority to make changes to the adoption  
15 preamble and text of the Chapter 206 revisions based on  
16 non-substantive corrections made by the *Texas Register*.

17 MR. BACARISSE: Thank you, Vice Chair McRae.  
18 Members, any second on that motion?

19 MS. OMUMU: I second.

20 MR. BACARISSE: Member Omumu seconds. Any  
21 discussion, members, on this motion?

22 (No response.)

23 MR. BACARISSE: Hearing none, I would now like  
24 to call for the vote.

25 Member Alvarado?

1 MR. ALVARADO: Aye.

2 MR. BACARISSE: Member Gillman?

3 MS. GILLMAN: Aye.

4 MR. BACARISSE: Member Graham?

5 MR. GRAHAM: Aye.

6 MR. BACARISSE: Vice Chair McRae?

7 MS. McRAE: Aye.

8 MR. BACARISSE: Member Omumu?

9 MS. OMUMU: Aye.

10 MR. BACARISSE: Member Prewitt?

11 MR. PREWITT: Aye.

12 MR. BACARISSE: Member Schlosser?

13 MR. SCHLOSSER: Aye.

14 MR. BACARISSE: And I, Member Bacarisse, vote  
15 aye as well. It's unanimous. Thank you.

16 Moving on to agenda item number 8, we've got  
17 Monique Johnston up to brief us on this Chapter 215.

18 Monique.

19 MS. JOHNSTON: Yes. Good morning, Chairman,  
20 members, Director Avitia. For the record, I'm Monique  
21 Johnston, director of the Motor Vehicle Division, or as we  
22 call it, MVD.

23 Today we are asking the Board's permission to  
24 adopt changes to Chapter 215, Motor Vehicle Distribution,  
25 in Title 43 of the Texas Administrative Code. This rule

1 is listed as agenda item number 8, and the details can be  
2 found beginning on page 218 of your board book.

3 The rule package adopts amendments and repeals  
4 to Chapter 215, and these changes would be adopted in  
5 conjunction with the rule review adoption under agenda  
6 item 6, which will be presented after the rule packages,  
7 as well as adoption of new Chapter 224, to be presented  
8 under agenda item number 14.

9 Chapter 215 has not been reviewed since 2017.  
10 By adopting Chapter 215 amendments and repeals, the  
11 department accomplishes the following goals: implementing  
12 statutory changes and adding language consistent with  
13 statutes and other chapters in Title 14 of the Texas  
14 Administrative Code; deleting language describing actions  
15 for which the department does not have rulemaking  
16 authority; deterring fraud or abuse by expanding  
17 fingerprinting requirements to drive-a-way operators who  
18 hold an in-transit license; modifying language to be  
19 consistent with current practice, including the use of  
20 records and electronic systems; amending certain  
21 application requirements consistent with regulatory best  
22 practices; clarifying existing requirements; increasing  
23 temporary tag allocations for new franchised dealers based  
24 on department experience; modernizing language and  
25 improving readability; clarifying and deleting unused

1 archaic or inaccurate definitions, terms and references to  
2 improve understanding and readability; and repealing of  
3 rules included in Chapter 224, Adjudicative Practice and  
4 Procedures.

5 I would like to briefly highlight four of the  
6 most significant Chapter 215 changes, the first being  
7 legislative implementation.

8 Amendments would implement Senate Bill 422 from  
9 the 2023 88th Legislature Regular Session, which amended  
10 Occupation Code 55.004, 55.0041, and 55.005 affecting  
11 licensing of military service members.

12 SB 422 requires state agencies to adopt rules  
13 to allow military service members who hold an out-of-state  
14 license to engage in a business or occupation in Texas for  
15 which a license is required.

16 Under these amended provisions, once a military  
17 service member, military veteran, or military spouse  
18 applies for a license and provides documentation, a Texas  
19 licensing agency must act within 30 days to determine if  
20 the applicant is currently licensed in good standing in  
21 another jurisdiction with substantially equivalent  
22 licensing requirements, and they just issue an  
23 authorization or a Texas license at that time.

24 The second is fingerprinting requirements.  
25 Fingerprint requirements have been determined to be a very



1 effective way to prevent application fraud and to protect  
2 in two important ways: verifying identity and by allowing  
3 the department to obtain a complete criminal history  
4 through the Texas Department of Public Safety and the  
5 Federal Bureau of Investigations criminal background check  
6 prior to issuing the license. Amendments would expand  
7 fingerprint requirements to drive-a-way operators who  
8 apply for or renew an in-transit license under  
9 Transportation Code 503.

10 The third are the new sections for  
11 manufacturers, distributors, converters, and franchised  
12 dealers. The new sections would document and clarify  
13 current licensing application requirements, procedures for  
14 obtaining and using industry license plates, and sanctions  
15 for violating department rules.

16 And for drive-a-way operators, the new section  
17 will document in-transit application requirements,  
18 procedures for obtaining and using industry license  
19 plates.

20 And finally, repeals. Adopted repeals would  
21 serve three purposes: to implement statutory changes in  
22 Senate Bill 604 from the 2019 86th Legislative Session,  
23 which eliminated department authority to approve shows and  
24 exhibitions; to move the existing rule to the subchapter  
25 designed for that license type; and to move the

1 adjudicative rules in Subchapters B, G, I and J to the new  
2 Chapter 224, Adjudicative Practice and Procedures.

3 Prior to rule proposal, the department  
4 incorporated input from two department advisory  
5 committees, the Motor Vehicle Industry Regulation Advisory  
6 Committee and the Customer Service and Protection Advisory  
7 Committee. The proposed rules were approved by the Board  
8 at the December 2023 Board meeting and were published for  
9 public comment in the December 29, 2023, *Texas Register*.

10 The department received nine written comments,  
11 which are included in your board book. The department  
12 received comments from six individuals and three industry  
13 associations: the Texas Independent Automobile Dealers  
14 Association, TIADA; the Texas Automobile Dealers  
15 Association, TADA; and the Texas Recreational Vehicle  
16 Dealers Association, TRVA.

17 The department considered all nine written  
18 comments and is recommending changes to the rule text at  
19 adoption in response to many of these comments. I would  
20 like to briefly discuss three rules in particular.

21 The first 215.102, the new application rule for  
22 manufacturers, distributors, converters and franchised  
23 dealers, this rule includes the requirement for a  
24 manufacturer or distributor to submit as part of their  
25 application a list of Texas franchised dealers who will be

1 facilitating the sale of their products, or a list of the  
2 out-of-state dealers authorized to sell a new motor  
3 vehicle online if the manufacturer or distributor is using  
4 an internet-sales-only model.

5 MVD has been requesting this information since  
6 October 2022 and has found this information to be  
7 important for the following reasons:

8 Number one, the request reinforces Texas  
9 requires a franchised dealer model, either in-state or  
10 out-of-state.

11 Number two, without this information, it would  
12 be difficult for the department to reject a manufacturer  
13 or distributor license application if an applicant does  
14 not have a franchised dealer in Texas.

15 Number three, by checking that each authorized  
16 out-of-state dealership is in good standing before  
17 approving the manufacturer or distributor license, TxDMV  
18 can protect consumers and Texas dealers from out-of-state  
19 bad actors by doing this.

20 And number four, the information also helps  
21 identify manufacturers who maintain ownership of their  
22 vehicles and provide a service to a company or a  
23 government entity.

24 This information has also been helpful in the  
25 department's efforts to be proactive and ensure compliance

1 with state registration and titling requirements and  
2 identifying the use of some autonomous vehicles that are  
3 on Texas roads.

4 Lastly, the requirement is consistent with the  
5 American Association of Motor Vehicle Administrators, or  
6 AAMVA, best practice recommendation regarding out-of-state  
7 internet sales.

8 The second rule, 215.121, is a new sanctions  
9 rule. The new sanction language authorizes the department  
10 to take disciplinary action against a manufacturer,  
11 distributor, converter or franchised dealer who omits or  
12 provides false information as part of a license  
13 application and has other similar provisions found in  
14 existing 215.141 which is the sanctions rules that applies  
15 to our independent or GDN dealers.

16 Lastly, I would like to discuss 215.112, Motor  
17 Home Shows Limitations and Restrictions. Government Code  
18 2001.039(e) and 2001.24(a)(3)(D) require that the agency  
19 repeal and not re-adopt any provisions that lack statutory  
20 authority, so the department is continuing with the repeal  
21 of 215.112 because the department does not have statutory  
22 authority for this rule.

23 However, the department has drafted a new rule  
24 which covers all shows and exhibitions that is consistent  
25 with our current statutory authority. We provided this

1 language to the stakeholders concerned about the repeal of  
2 215.112 and will continue our discussions with these  
3 stakeholders with the goal of bringing a new rule proposal  
4 to the Board at an upcoming meeting.

5 We are also recommending an effective date of  
6 June 1, 2024 to give license holders as much time as  
7 possible to implement any changes that may be required in  
8 regards to these rule changes. This is the latest date  
9 possible, as the Board will need to consider new proposals  
10 to amend Chapter 215 at the June Board meeting in order to  
11 implement HB 718, HB 3297, and SB 224.

12 MVD requests your approval to adopt these  
13 amendments and repeals, and this concludes my remarks, and  
14 I'm happy to answer any questions for you.

15 MR. BACARISSE: Thank you, Monique.

16 Members, any questions for Ms. Johnston on this  
17 particular item?

18 MR. GRAHAM: Sure.

19 MR. BACARISSE: Member Graham.

20 MR. GRAHAM: So 215.102, it looks like a  
21 recommended change from "dealer" to "person." Is that  
22 correct?

23 MS. JOHNSTON: Yes, to person, correct.

24 MR. GRAHAM: And so expand on the thought there  
25 a little more, if you would.

1 MS. JOHNSTON: The thought behind that was it  
2 depends on each state is different on how they're  
3 structured so it might not be potentially a dealer; some  
4 states allow manufacturers to sell directly to the public  
5 or allow direct sales to the public, so that was a  
6 suggested change and that was why, since it's not  
7 considered a dealer activity here in Texas for a  
8 manufacturer to sell; however, in other states they're  
9 utilizing that license to sell the product through the  
10 internet.

11 MR. GRAHAM: And so I heard two different  
12 things there. Are you saying that for a manufacturer to  
13 sell into Texas they need to be licensed or they don't  
14 need to be licensed?

15 MS. JOHNSTON: They need to be licensed. Yes,  
16 if they're in Texas they need to be licensed as a  
17 manufacturer, and of course, if they can't sell directly  
18 to the public. They would need a franchised dealer, so  
19 they have the option of either having a franchised dealer,  
20 such as, you know, Ford has franchised dealers here in  
21 Texas, or they would have to facilitate their sales  
22 strictly online through the licenses in the states that  
23 they do hold a license to sell those vehicles.

24 So such as the Teslas that are licensed in  
25 California, they would have to utilize their California

1 license to sell vehicles, and it would have to be strictly  
2 through the internet sales because they could not have a  
3 facility here in Texas to sell those vehicles.

4 MR. GRAHAM: Does the statute indicate that  
5 even if they do online sales through an out-of-state  
6 dealer, that seller out of state still needs to be a  
7 license holder?

8 MS. JOHNSTON: They need to be in compliance  
9 with the rules for that state, whatever the rules are in  
10 that state, so they would have to be in compliance with  
11 all of those rules and whatever those rules imply, so in  
12 some states, such as California, Tesla is the license  
13 holder to sell the vehicle in California.

14 MR. GRAHAM: So what kind of hits me there is  
15 it seems like just changing that to person makes it sound  
16 that there's no expectations of the agency -- if you sell  
17 from out-of-state, there is no expectation of how that is  
18 to be done, and you see what I'm saying?

19 MS. JOHNSTON: This is a clarification made as  
20 a recommendation from one of the comments. They said it  
21 was unclear what authorized dealer means, and so we added  
22 the other clarifies for that because it could vary from  
23 state to state what they consider who could utilize or  
24 facilitate that sale.

25 MR. GRAHAM: But in Texas --

1 MS. JOHNSTON: In Texas it would have to be a  
2 franchised dealer if you were to sell direct to Texas  
3 residents here without going through the internet in  
4 another state; you would have to have a franchised Texas  
5 dealer.

6 MR. GRAHAM: So if a manufacturer sells online  
7 to a Texas resident through some other person, dealer,  
8 whatever that is in another state, we have expectations as  
9 an agency that that's a licensed individual in a state in  
10 which they reside.

11 MS. JOHNSTON: Correct, and that's what we  
12 would check. By getting this list, we're able to collect  
13 that information and we're able to check with that state's  
14 licensing authority to ensure that those people are  
15 authorized to facilitate those sales and sell in that  
16 state.

17 MR. GRAHAM: And so I think that's particularly  
18 in this instance the word "person" really makes me  
19 uncomfortable that we're saying there's no expectation  
20 that it's just any person. And so I'm just going to say  
21 that's kind of where my indigestion here is on this one.

22 MS. GILLMAN: I have a question.

23 MR. BACARISSE: Member Gillman.

24 MS. GILLMAN: I, too, also have a problem with  
25 on our application having an either/or. Either you can do



1 it right according to the laws of Texas, or you can just  
2 be a person selling over the internet, and I think that  
3 that is -- by offering those two models, it seems to me a  
4 pathway to skirt Texas law, and I feel like the language  
5 that has been added here -- and it's on page 312 in your  
6 board book, and the board book is huge -- but it's page  
7 312 and it's line number 7, 8, 9 is what's causing the  
8 indigestion.

9 On line 7 where it starts: or if motor vehicle  
10 sales or offers to sell residents solely be over the  
11 internet, a list of each out-of-state person authorized by  
12 manufacturer or distributor to sell a new motor vehicle  
13 online.

14 Well, sales don't happen out of state -- I mean  
15 happen out of state not just over the internet also and  
16 not just online. You can go to Ohio and -- anyway, I have  
17 a problem with the focus on the sales model being a choice  
18 given on our application by an out-of-state person. I  
19 think that that would in fact be detrimental to citizens  
20 of Texas.

21 MS. JOHNSTON: These sales are already  
22 happening. Manufacturers are already utilizing this model  
23 and selling online through their facility, whichever state  
24 they have held a license or the authority to sell.  
25 There's nothing that the state could do to regulate the

1 online sales.

2           This is actually what we feel is protecting our  
3 dealer-manufacturer model so we can know who these  
4 manufacturers are when they do apply for a license,  
5 identify them, make sure that they are telling us that  
6 they do have the franchised dealer model, because it's not  
7 just your motor vehicle dealers; we have a lot of smaller  
8 manufacturers, such as these small EV neighborhood vehicle  
9 dealers, these off-road dealers that come in, these small  
10 distributors come in, these small manufacturers come in  
11 and apply for a license, and we ask them, okay, who are  
12 your franchised dealers going to be, and they're like, oh,  
13 we're not going to have any franchised dealers; we're just  
14 going to sell.

15           They're not even aware of the law in Texas, so  
16 this not only helps educate these smaller manufacturers,  
17 ensure that they're on the right side of the law when they  
18 do apply and if we do issue them a license.

19           And then if they do provide us with false  
20 information, as I discussed the sanctions law that we're  
21 adding, that we have the authority for enforcement to go  
22 after them if they're not complying with that, because not  
23 only are they not complying, they're violating Texas law  
24 in one way they falsified the information they provided to  
25 us on the application.

1           So we're able to check if they're not going to  
2 be utilizing Texas dealers and they're only going to be  
3 selling through the internet through, say, their Oklahoma  
4 license, we can check who those people are that they're  
5 selling through in Oklahoma and ensure they're in  
6 compliance with Oklahoma law, they're in good standing  
7 with Oklahoma law, and if we find out -- you know, if  
8 someone reports them that they've conducted sales here in  
9 Texas, we would be able to know who to go to to ensure  
10 that those sales were made through that dealer in another  
11 state.

12           MS. GILLMAN: I just feel like you can't  
13 control what licenses Oklahoma gives.

14           MS. JOHNSTON: No, we can't control that.

15           MS. GILLMAN: Oklahoma may not have good  
16 standards with respect to issuing licenses. All we can  
17 control is what Texas gives, and I just don't think that  
18 in our licensing application to do business in Texas we  
19 should offer this as a sales model, and so for those  
20 reasons, I disagree with the language on page 312, line 8.

21           MR. BACARISSE: Okay. Member Omumu.

22           MS. OMUMU: I have a question, Monique, in  
23 regards to 215.102, and this is for not just the  
24 distributorship that I represent but for all distributors.  
25 And just to clarify for the record, you are requesting

1 information between a distributor and the manufacturer,  
2 which a lot of that information, most of it is  
3 proprietary. How do we prevent that information from  
4 being requested through the Open Records Act?

5 MS. JOHNSTON: And are you referring to the  
6 distributor-manufacturer agreement, not the list of --

7 MS. OMUMU: The agreement, correct.

8 MS. JOHNSTON: Correct. Yes, we've made some  
9 changes to that. We've actually come up with a  
10 questionnaire. There's going to be excerpts from the  
11 agreement that they can provide that specifically are  
12 required by statute, or we've also come with the  
13 alternative of a questionnaire that answers the very  
14 specific questions we are required to have, so that  
15 information could be left out and would not be provided as  
16 part of the license application or license record.

17 MS. OMUMU: Okay. Thank you.

18 MR. BACARISSE: Member Schlosser.

19 MR. SCHLOSSER: When talking about applying for  
20 a manufacturer license that's out of state, what would be  
21 the repercussions for somebody that is violating the  
22 manufacturing side of it that is trying to register  
23 vehicles in the state through direct sales?

24 Is there going to be a prohibition of  
25 registering the vehicle in Texas, or what is the

1       repercussion for not signing up as a manufacturer for this  
2       situation?

3                   MS. JOHNSTON:  So are you talking about just  
4       having the list, you know, just providing us with the  
5       information?

6                   MR. SCHLOSSER:  Well, you're asking them to  
7       sign up as a manufacturer.  Correct?  So what if they  
8       don't, so if you find there's a manufacturer that's not  
9       registered with us?

10                   MS. JOHNSTON:  That's not licensed with us?

11                   MR. SCHLOSSER:  Right.

12                   MS. JOHNSTON:  Then they would be an unlicensed  
13       dealer, and we can refer them to Enforcement.  However, of  
14       course, they don't have a license that you can revoke;  
15       however, Enforcement will usually send cease and desist  
16       letters in those situations.

17                   MR. SCHLOSSER:  So in other words, if they're  
18       shipping vehicles in, let's say these import vehicles that  
19       are coming in, these small trucks that we are dealing  
20       with, if they don't have a manufacturer's license, then at  
21       that point they're not going to get any type of  
22       registration?

23                   MS. JOHNSTON:  They would have to have a first  
24       sale before they could get a registration, so they would  
25       have to sell it in another state and then register it in

1 that state, or they would have to get it titled and  
2 registered in another state and then transfer that title  
3 and registration to Texas in order to get it titled and  
4 registered in Texas.

5 MR. SCHLOSSER: Okay.

6 MR. BACARISSE: Any other questions, members,  
7 on this particular item?

8 Member Graham.

9 MR. GRAHAM: Are we tackling -- I'm sorry.  
10 Thank you.

11 MR. BACARISSE: That's all right. Go ahead.

12 MR. GRAHAM: Also, regarding the list of items  
13 that a manufacturer -- we're in the midst of that. I  
14 would say I also feel similarly regarding the section 7 on  
15 the list of items that the manufacturers would have to  
16 provide, party or person responsible for providing  
17 warranty services.

18 Well, on page 307, line 12 in this packet, it  
19 references the application requirement 215.102, no person  
20 may engage in business serving or acting in the capacity  
21 of or act as manufacturer, distributor, converter or  
22 franchised dealer in Texas unless that person holds a  
23 license.

24 And then similarly, on 233, lines 2 through 8  
25 state: this change conforms the rule text with statutory

1 language and provides franchised dealers with the  
2 flexibility allowed by the statute to perform warranty  
3 repairs using mobile services.

4 And so I don't think there's a question -- and  
5 if there is, somebody shine a light on it for me -- that  
6 when we're talking about warranty repairs that those  
7 warranty repairs are to be done by franchised dealers.  
8 Right?

9 And so on section 7 we've made a revision that  
10 says a person responsible for providing warranty services.

11 I feel like that is kind of undermining what we're doing  
12 First of all, let me ask the question. Am I incorrect in  
13 that conclusion?

14 MS. JOHNSTON: Are you referring specifically  
15 to the mobile warranty section, the change in the mobile  
16 warranty?

17 MR. GRAHAM: Yes. But in particular, I mean, I  
18 don't understand why we're asking for a manufacturer to  
19 list a person responsible for warranty services when I  
20 think we should define exactly in Texas who is supposed to  
21 be doing those warranty services.

22 MS. JOHNSTON: Franchised dealers can also  
23 contract with a third party in order to perform warranty  
24 services if they choose not to provide that. They can  
25 contract out with a third party, so it's not just

1 necessarily a dealer who's performing if that franchised  
2 dealer chooses to contract that out to a third party.

3 MR. GRAHAM: Right. But that would be through  
4 a franchised dealer, not a manufacturer?

5 MS. JOHNSTON: It would be a franchised dealer  
6 through -- but you're talking about the  
7 manufacturer/distributor agreement?

8 MR. GRAHAM: Yes. There's just so much.

9 MS. JOHNSTON: I know it's a lot.

10 MR. GRAHAM: But I've got it as Section 7,  
11 number 7, and the pages that refer to 215.110 but it was  
12 in your list of things that I believe a manufacturer would  
13 have to provide as part of the licensing requirement.

14 MS. JOHNSTON: Part of the licensing agreement.  
15 Correct. And what's required is what's dictated under  
16 statutory authority of what they needed to reveal and to  
17 know those agreements and make sure if there is a protest  
18 or a complaint filed under that protest section where if  
19 they have a complaint about the manufacturer violated an  
20 agreement, then that information we do have showing what  
21 those agreements are.

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

23 MR. BACARISSE: Yes, Ms. Moriaty.

24 MS. MORIATY: So I think, Member Graham, is  
25 actually in the statute -- Texas Occupations Code 2301.260



1 requires us to ask in an application for a manufacturer or  
2 distributor license the persons in this state who will be  
3 responsible for compliance with the warranty covering the  
4 motor vehicles to be sold, so we're using that same  
5 "persons" term.

6 It's also important to note that this is a  
7 request for information and this is a way for us to get  
8 the information that would allow us to deny a license and  
9 say gotcha, so if they were to tell us, well, I myself  
10 will be performing all warranty work, then we would say,  
11 Thank you for that information; we will now refer you to  
12 investigations. This is a totally different deal.

13 If we don't ask for that information -- and  
14 again, "persons" is the term used in the statute -- if we  
15 don't ask for that information, we're not going to get it,  
16 and we won't have grounds to deny that license or help  
17 inform the applicant that this is not something that's  
18 available to them under Texas law.

19 MR. GRAHAM: Okay. Thank you.

20 MR. BACARISSE: Thank you.

21 Member Gillman.

22 MS. GILLMAN: I just feel like, Laura, in that  
23 particular case when you ask on an application how are you  
24 going to perform warranty with a person, a person, when  
25 clearly Texas statute says it has to be a franchised

1 dealer, you're opening a path to saying yes, that's just  
2 fine. And how are you going to skirt Texas law? You can  
3 do it this way: designate a person.

4 MR. BACARISSE: If I may interrupt, I think Ms.  
5 Moriatty just read Texas law to us. Would you read it  
6 again, please.

7 MS. MORIATY: Sure. So this language is coming  
8 from the statute.

9 MR. BACARISSE: Just so we can get clarity on  
10 this.

11 MS. MORIATY: An application for a  
12 distributor's license must include -- this is part 3 of  
13 that -- the persons in this state who will be responsible  
14 for compliance with the warranty covering the motor  
15 vehicles to be sold. So again, "persons" is coming  
16 straight out of the statute.

17 MR. GRAHAM: That was 2301, what was that?

18 MS. MORIATY: 2301.260.

19 MR. BACARISSE: I think we're conflating the  
20 word "person/persons" here.

21 MS. MORIATY: If I may, Chairman? Right,  
22 "person" has a legal sense that's defined in both the  
23 statute and our rules to mean any business entity,  
24 individual, corporation, partnership, it's a catchall to  
25 catch all those different kinds of formations.

1           It's more of a legal construct than anything  
2 else, and again, we're literally just incorporating the  
3 statute here. And it's a request for information that  
4 allows us to do something with it, to go after these folks  
5 to find out what they're doing.

6           If we don't ask for it because we're  
7 uncomfortable with using the words, we won't have that  
8 information and won't be able to take action on it.

9           MR. BACARISSE: And are we currently not able  
10 to ask this question?

11          MS. MORIATY: So currently we have a very vague  
12 rule, sir, that we ask all sorts of things under, but I  
13 have concerns about whether it's enforceable. So that's  
14 why you see us during this rule review trying to enumerate  
15 the things that we are asking for, communicating clearly  
16 what it is you're going to have to show us when you want  
17 to apply for that license. So, yes, while we ask for  
18 these now, it's better that we shore it up with a rule.

19          MR. BACARISSE: Members, any other questions on  
20 this particular item number 8?

21          MS. GILLMAN: Does that --

22          MR. BACARISSE: Member Gillman.

23          MS. GILLMAN: Pardon me. Thank you, Mr.  
24 Chairman.

25                 Does that bleed into 215.103?

1 MS. JOHNSTON: I'm afraid I don't understand  
2 the question, Member Gillman.

3 MS. GILLMAN: Still under item number 8.

4 MS. JOHNSTON: Yes, those are all within 215.

5 MS. GILLMAN: May I make a few comments on  
6 215.103? And that is still under agenda item 8, and that  
7 is with respect to the -- and I'm on page 315 in the board  
8 book, and in this particular instance it is talking about  
9 that franchised dealers are where warranty work should be  
10 performed, but then it is recommended by staff to strike  
11 lines 5, 6 and 7 that it needs to be at a dealership or a  
12 licensed service facility.

13 And I feel that striking this, instead of  
14 having warranty repairs at a licensed facility, it opens  
15 it up for mobile warranty repair to be done at unknown  
16 locations.

17 And I worry about because dealers, by our laws,  
18 are supposed to be located so many miles apart -- I mean,  
19 there was a contested case today about location -- and if  
20 you allow dealers to set up shop and perform warranty  
21 repairs to Chevrolet, a dealer could have a mobile shop  
22 right next door to another Chevrolet dealer; that is  
23 eliminating the right of dealers to protest.

24 So today we had two dealers that got in a  
25 battle about location, but if you allow dealers to perform

1 warranty anywhere they want, I worry that dealers will set  
2 up shop right next door to another dealership and violate  
3 the distance rule.

4 And so for that reason, I am wanting to strike  
5 the proposed language and come up with something better in  
6 the future.

7 MS. JOHNSTON: So the mobile warranty has to be  
8 managed from a licensed location, so they would have to go  
9 through the protest process when they were initially  
10 licensed for service, for sales and service, and so that  
11 mobile warranty is a service provided from a licensed  
12 service location that has gone through the protest  
13 process, and so it's just another option that that dealer  
14 can choose to provide to their customers and come to their  
15 home.

16 And the comments we did get on this change were  
17 in support of the mobile warranty. This specifically  
18 benefits some of the dealers that are in smaller  
19 communities where their customers are a little more spread  
20 out and it might not be as easy for them to bring the car  
21 in to the service facility itself, or due to their job or  
22 something like that, so they can provide those services at  
23 their house or their place of business.

24 MR. BACARISSE: Thank you.

25 Member Omumu.

1 MS. OMUMU: Member Gillman, that's exactly what  
2 I wanted to say. We have dealers that have mobile  
3 service, and they do have to service customers within  
4 their PMAs, but it is a value to the customer.

5 But the dealer is responsible for servicing the  
6 customers within their marketing area and not go outside  
7 of that area, so it is a benefit to consumers for sure.

8 MS. GILLMAN: And if it's -- may I respond?

9 MR. BACARISSE: Member Gillman.

10 MS. GILLMAN: If it is within the PMA, that  
11 sounds very reasonable, and also, at someone's home, to me  
12 that also sounds reasonable, especially if it's a safety  
13 issue. I know in my own experience, when the Takata  
14 airbags were a huge potential harm, customers were afraid,  
15 and we wanted to help them.

16 But I feel like as it's written here, it's too  
17 broad to allow for concerns that I do have regarding  
18 setting up shop, and so for that reason, I want to strike  
19 what's being recommended but challenge staff and  
20 stakeholders to get together and work on improved language  
21 that would protect dealers' investments and not have  
22 mobile units that could be set up right next door to each  
23 other, you know, a Honda mobile unit next to a Honda  
24 dealer, but also provide for the safety of our citizens.

25 MR. BACARISSE: I'm sorry, Ms. Moriaty.

1 MS. MORIATY: Yes, thank you, sir.

2 So I just want to say that from staff's  
3 perspective, from a legal perspective, our goal is to get  
4 this rule out of the way of the statute. This rule is  
5 more narrow.

6 As Member Gillman I hope understands, this  
7 would preclude -- the current rule precludes all the  
8 things she described, fixing a car at somebody's place  
9 because they have a Takata airbag, you know, a whole barn  
10 of buses that all need the same repair. The dealer  
11 couldn't go to that barn and work on them; they would need  
12 to have them all come to his facility.

13 But that's not what the statute says. The  
14 statute says a franchised dealer has to be engaged in the  
15 business at their established and permanent place of  
16 business. Engaged in the business, it means that you are  
17 working, you are taking the reservations, you're taking  
18 the money, you are setting up the deals.

19 But you can deliver the product and get the  
20 paperwork signed at a person's residence; you can go buy a  
21 car at an auction which is not on your premises, and if we  
22 remove this part of the rule and get out of the way of the  
23 statute, you can go do your repair work and then come back  
24 to your dealership.

25 Now, Member Gillman has pointed out that this

1 will cause potential competition, and the Regulatory  
2 Compliance Division of the Governor's Office has looked at  
3 this, so I want to refer y'all to page 5 of that opinion  
4 because it makes me concerned that we have a statutory  
5 authority problem in keeping this provision because I'm  
6 concerned it goes outside of our ability to constrain the  
7 statute.

8           As you see on page 5 in the second paragraph,  
9 the last two sentences: "Ultimately, proposed amendment  
10 215.103 grants more flexibility to franchised dealers to  
11 perform warranty repair services as it opens up additional  
12 options for consumers seeking repair services. This is a  
13 valid exercise of the department's statutory authority and  
14 is consistent with state policy."

15           So again, this does not open the door to  
16 manufacturers, this is just franchised dealers competing  
17 with each other, one of them providing additional repair  
18 services in a remote not permanent way.

19           Once it becomes permanent and you have fully  
20 established, you are engaged in the business fully at that  
21 location, you need to apply for a license at that  
22 location. But if you are delivering your service of  
23 repair there, staff is recommending, and the Regulatory  
24 Compliance Division is frankly saying we need to cross out  
25 this thing to get out of the way of what the statute says



1 is allowable for competition between dealers.

2 MR. BACARISSE: Member Prewitt, do you have a  
3 question or a comment?

4 MR. PREWITT: Just towards the former point,  
5 there's nothing to prohibit a bad actor from circumventing  
6 the rules. If they're a valid dealership and still set up  
7 shop next to Stacey's Honda dealership, if they're a bad  
8 actor, they can still do that. Right?

9 MS. JOHNSTON: Sure. And there would be  
10 complaints filed, Stacey could file a complaint, but  
11 there's nothing to keep from bad actors to do those things  
12 until we discover that they do them and try to get them  
13 shut down.

14 MR. PREWITT: And so in terms of out-of-  
15 state -- that expands to another question which is on the  
16 out-of-state actors, you're oblivious to who they are,  
17 right, until they sell a car or sell a vehicle, and at  
18 which time the enforcement process would start.

19 So do we have the mechanisms in place to track  
20 all that information and to understand who those actors  
21 are that are coming in from out of state and selling  
22 vehicles? How quickly does that come back to us? Does  
23 that come back through the tax assessor's office, or how  
24 does that happen?

25 MS. JOHNSTON: Are you referring to the

1 manufacturer who is utilizing their out-of-state license  
2 to sell?

3 MR. PREWITT: An individual.

4 MS. JOHNSTON: An individual?

5 MR. PREWITT: Yes, that may be representing a  
6 manufacturer.

7 MS. JOHNSTON: So we don't track the sales;  
8 however, if there was a consumer complaint in regards to a  
9 sale that was conducted and then we could refer it to the  
10 Enforcement Division and they could collaborate with that  
11 out-of-state regulatory body in regards to the sale to  
12 determine, and then we have authority over the  
13 manufacturer itself because they are licensed in Texas and  
14 so hold a Texas license.

15 MR. PREWITT: It just appears that the  
16 enforcement is fairly porous in a lot of ways in terms of  
17 being able to really track things on a real-time basis of  
18 violations, and that makes me question whether we can --  
19 we're dependent on somebody else reacting and filing a  
20 complaint with us in order to track bad behaviors.

21 MS. JOHNSTON: Correct.

22 MR. BACARISSE: I think that's the situation in  
23 just about every case. It's all complaint-driven; it  
24 doesn't matter what the infraction is.

25 MS. JOHNSTON: Right.

1 MR. BACARISSE: So that's how this thing  
2 functions overall.

3 MR. PREWITT: Yeah.

4 MR. BACARISSE: Any other questions, members,  
5 on this particular agenda item?

6 Member Graham.

7 MR. GRAHAM: Thank you.

8 In that 215.103 section, what was the line of  
9 reasoning behind the strike of "only"?

10 MS. MORIATY: I'm sorry, Member Graham. Are we  
11 on line 6? Is it the "only" within the sentence on line 6  
12 on page 315?

13 MR. GRAHAM: So this came from a document that  
14 you provided the Board where it struck -- it says:  
15 "Changes will allow franchised dealers to offer mobile  
16 warranty repair and provide operational flexibility."  
17 Then it strikes "(a) except as allowed" "(d) warranty  
18 repair service can only be done at a licensed dealership."

19 Then it starts again and it says: "Upon the  
20 manufacturer or distributor's prior written approval,  
21 which cannot be unreasonably withheld, only a franchised  
22 dealer of the manufacturer or distributor may contract  
23 with another person." And it strikes "only."

24 MS. MORIATY: Can you tell me the title of that  
25 document? I'm sorry. Is it the feedback from the

1 advisory committees?

2 MR. GRAHAM: So on the -- yeah, there you go,  
3 14.

4 MR. BACARISSE: Member McRae has the particular  
5 cite.

6 MS. McRAE: I think it's line 14 on page 315.

7 MR. BACARISSE: Of the board book?

8 MS. McRAE: Yes.

9 MS. GILLMAN: Or is it line 4?

10 MS. MORIATY: So it was a cleanup of what we  
11 felt was unnecessary text. There's a lot of those within  
12 this. We didn't intend for it to have a -- we felt it was  
13 not going to change the meaning of the sentence. A  
14 franchised dealer or only a franchised dealer mean the  
15 same thing. We're not offering alternatives.

16 Sorry; it took me a moment to figure out where  
17 we were.

18 MR. GRAHAM: I guess it depends on how you look  
19 at it. I kind of read it differently. I mean, you can  
20 have a red apple or you can only have a red apple. You  
21 know, I mean, to me it just changes the context of the  
22 statement. So if it's in your opinion immaterial, right?

23 MS. MORIATY: If you would like to reinstate  
24 the "only" at adoption, I think we can do that.

25 MR. GRAHAM: Okay. Thank you.

1 MR. BACARISSE: The chair would entertain a  
2 motion on agenda item number 8.

3 MS. MORIATY: Sir, we have public comment.

4 MR. BACARISSE: Oh, I'm sorry. Great. I  
5 forgot to ask you. Is there public comment? Yes, there  
6 is.

7 MS. MORIATY: There is public comment.

8 MR. BACARISSE: All right, great. We would  
9 love to hear from that member of the public.

10 MS. MORIATY: First up is Earl Cooke from  
11 TIADA.

12 MR. BACARISSE: Sorry, Earl.

13 MR. COOKE: Thank you, Mr. Chairman and members  
14 of the Board. My name is Earl Cooke; I'm with the Texas  
15 Independent Auto Dealers Association.

16 My understanding is these rules are back up in  
17 June, so I was going to ask that you guys have staff look  
18 at streamlining the licensing renewal process for dealers  
19 that have been in operation for at least ten years.

20 As we've combatted fraud in the system, we've  
21 really added a lot of layers. One dealer I talked to has  
22 been licensed 40 years, and it took him three days  
23 gathering documents. This would help the department too,  
24 because it would allow them to focus on those applicants  
25 that are the most serious to look at, that need the most

1 scrutiny.

2 Right now they're recommending six months, that  
3 you submit your renewal six months in advance, and it's  
4 not because they're not working as hard as they can; it's  
5 because we've asked a lot of them, and this would take  
6 some of that load off and would really help the dealers  
7 quite a bit to not have to gather these documents. If  
8 you've been licensed ten years, that should be long  
9 enough, is my thought, to weed them out through  
10 enforcement if there was a problem.

11 The other thing I wanted to point to was a  
12 comment by TADA about a change of the form. If we could  
13 remove that and include that in HB 718, that would be very  
14 helpful, because forms are printed multiple times, and you  
15 have to go through programming, legal.

16 There's a lot to do between now and when this  
17 would actually take effect, and we don't know that that's  
18 enough time to inform the community and to also get the  
19 forms out there.

20 Thank you, guys. I'll be happy to answer any  
21 questions.

22 MR. BACARISSE: Thank you.

23 Members, any questions on this comment?

24 (No response.)

25 MR. BACARISSE: Mr. Avitia.

1 MR. AVITIA: Earl, thank you for coming this  
2 morning and providing your thoughts on that. The  
3 department would be happy to work with you on any  
4 recommendations that may have to help streamline the  
5 application process.

6 The six-month provision is because we used to  
7 have it at three months, as you know, and now we said,  
8 okay, we're getting backed up here, let's let folks submit  
9 in six months, so that way they can submit early if they  
10 want to. That's just something to help the dealers. But  
11 always happy to work with you and listen to any thoughts  
12 that you have.

13 I appreciate you. Thank you.

14 MR. BACARISSE: Thank you, Mr. Avitia. Earl,  
15 thank you.

16 Any other commenters, Laura, on this agenda  
17 item?

18 MS. MORIATY: Yes, sir. Let me get my list  
19 back up.

20 Next up is Brian Case from TADA.

21 MR. BACARISSE: Great. Mr. Case.

22 MR. CASE: Good morning, Mr. Chairman, Board.  
23 Thank you for allowing me to speak to you this morning.  
24 My name is Brian Case, Sr. I am the chairperson for TADA  
25 for 2024. I'm also the owner of Classic Auto Group in

1 Beaumont, Texas, with Buick, Chevrolet, Cadillac, GMC, and  
2 then also Acura and Kia. In Port Arthur, Texas I've got  
3 the Nissan and Honda franchise, and then Toyota and  
4 Mercedes in Tyler, Texas. Over 40 years' experience in  
5 the automobile business.

6 Today I wanted to address the proposed rule  
7 regarding allowing mobile service for warranty work, which  
8 is 215.103 that everybody has been talking about.

9 The six form letters that the agency received  
10 from the five franchised dealers were in support of mobile  
11 warranty work, which was a direct response to a General  
12 Motors meeting and then also GM email requesting the  
13 dealers to send in a GM prepared form letter to this  
14 agency's general counsel.

15 And just to say this, GM has roughly 405 GM  
16 dealers in the state of Texas, so you do the math, you  
17 know, four dealers basically sent in. One percent signed  
18 their name to a form letter and sent it in to you. This  
19 form letter does not represent the over 1,200 franchised  
20 dealers in the state.

21 The statutory definition of dealership requires  
22 a physical premise, as we have heard, along with a  
23 business facility for that franchised dealer's business.  
24 This physical premise and facility includes a location in  
25 which only the repair of a motor vehicle is performed at



1 that location under warranty.

2 Although the agency may not have the authority  
3 over non-warranty repairs, it doesn't have the authority  
4 to allow warranty repairs to be performed via a mobile van  
5 either.

6 I'd like to just basically touch on just real  
7 briefly a couple of concerns that the franchised dealers  
8 have on this issue. Number one, relating to the customers  
9 is safety and comfort of the customer. Repairs being done  
10 offsite are not going to be conducted for being safe or  
11 comfortable. Technician safety, repairs on the side of  
12 the road or in a sloped driveway or in a garage bring  
13 added concerns and liability from a safety standpoint as  
14 well.

15 Technician shortages: no trained technician is  
16 going to want to go out and drive around in a van and  
17 perform warranty repairs, and I can speak on that from  
18 experience because early in my career I was a technician.

19 And I can tell you if you put me in a van with my tools,  
20 I would have not done that as a career. The likelihood of  
21 not having the correct part to repair the vehicle the  
22 first time, so that's going to necessitate follow-up  
23 trips.

24 So that being said, I just wanted to say that  
25 we would ask you to respectfully request the agency not to

1 go forward with the proposed change as published in the  
2 December 23, 2023 *Texas Register*.

3 MR. BACARISSE: Thank you, sir.

4 Any questions, members, on this item for Mr.  
5 Case?

6 (No response.)

7 MR. BACARISSE: Okay. Mr. Case, thank you for  
8 your time.

9 MR. CASE: Thank you.

10 MR. BACARISSE: Yes, sir.

11 Laura, any other commenters?

12 MS. MORIATY: Next up is Rob Mowrey from TADA.

13 MR. MOWREY: Good morning, Mr. Chairman, Board.

14 Appreciate very much the opportunity to speak here. I'm  
15 Rob Mowrey with the law firm of Locke Lord appearing here  
16 today on behalf of TADA. I'm also lead counsel for TADA  
17 in a lawsuit pending here in Austin, in which Lucid Group  
18 has sued the State of Texas challenging the  
19 constitutionality of the laws governing the sale of motor  
20 vehicles and related issues.

21 Lucid is bringing a broad-based attack on these  
22 laws. Make no mistake about it, if these rules, the ones  
23 dealing with internet, the ones dealing with warranty go  
24 into effect, they will be used in this litigation.

25 The whole thrust of Lucid's attack is that they

1 can do everything as a manufacturer except to have a  
2 physical location.

3 I'm going to hand you the complaint after my  
4 presentation so you can see yourself, and I direct your  
5 attention to page 9 and 10 of that complaint, but this is  
6 what they say, this is what Lucid says: Texas law allows  
7 vehicle manufacturers like Lucid to do everything that  
8 motor vehicles do, including selling motor vehicles to  
9 Texas consumers, with one single narrow exception:  
10 selling new motor vehicles from an established and  
11 permanent physical location in the state.

12 And they list all the things they can do,  
13 including providing repairs and service. This is what  
14 Lucid says it can do: provide repairs and service,  
15 including warranty service for the manufacturer's vehicles  
16 from an established physical location within Texas.

17 Now, earlier an opinion was written that says  
18 you must have a physical location. Now the Board wants to  
19 change that, says, well, our earlier opinion was not  
20 correct. Any inconsistencies, a change of view that these  
21 rules make will be used by Lucid.

22 It may be argued, well, these rules don't have  
23 anything to do with this lawsuit. That is a serious  
24 error. These lawyers are aggressive, and they are doing  
25 everything they can to thwart the statutes of Texas that

1 protect the relationship between dealers and manufacturers  
2 in this state, and I would urge you to not adopt these  
3 rules while there is pending litigation regarding the  
4 constitutionality of these statutes.

5 You might think one little statute or one rule  
6 is not going to affect this. It absolutely could, and  
7 then who knows what happens if a court were to side with  
8 Lucid in terms of the statutory scheme that we have. So I  
9 urge you not to adopt these rules.

10 Thank you.

11 MR. BACARISSE: Thank you.

12 Members, any questions of Mr. Mowrey?

13 MR. MOWREY: Yes, any questions? I'd be happy  
14 to ask.

15 MS. GILLMAN: I have a question.

16 MR. BACARISSE: Member Gillman.

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

18 I want to understand the implication of  
19 changing rules today while there's pending litigation.

20 MR. BACARISSE: I think that -- I'm sorry, go  
21 ahead.

22 MS. GILLMAN: Can you answer -- I mean, you  
23 have said that by changing that the rule changes will be  
24 discussed.

25 MR. MOWREY: Yes.

1 MS. GILLMAN: But why is that detrimental?

2 MR. MOWREY: Good question. If you look at the  
3 attorney general, if you look at other state agencies,  
4 they've had a longstanding rule not to comment on sections  
5 or rules or statutes that are involved in pending  
6 litigation, and the reason for that is because those  
7 changes could be used by the adverse party to attack the  
8 statutes that are in place, and that's exactly what we're  
9 talking about here.

10 There has already been briefing regarding these  
11 rules, and now if a new statute comes our or there's a  
12 rule change, then Lucid is going to use that to further  
13 their argument as to why ultimately these laws are  
14 unconstitutional.

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

16 MR. BACARISSE: Yes, Ms. Moriaty.

17 MS. MORIATY: First I need to note that you  
18 have counsel on the Lucid litigation and this gentleman is  
19 not it. He advises TADA, and TADA has throughout the  
20 litigation sought to bring in issues that are not part of  
21 the actual issue in the Lucid litigation, such as warranty  
22 work.

23 The court has ruled in Lucid that warranty work  
24 is not at issue in that case. The Lucid litigation is  
25 about the single question of whether it is constitutional

1 for a manufacturer to own or operate a dealership in  
2 Texas, whether a manufacturer can either sell directly or  
3 operate a dealership.

4 Lucid is saying it's unconstitutional, our  
5 current whole statutory scheme. TADA tried to bring in  
6 warranty work, tried to make it an issue in discovery, and  
7 the court shot it down and said warranty work is  
8 irrelevant. It has been in briefing only because it was  
9 part of a motion to compel that was denied.

10 I have spoken with our counsel from the AG on  
11 this issue, I have looked at it myself, and I do not see  
12 anything that overlaps between the balance of power  
13 between a dealer and a manufacturer and the ability of  
14 manufacturers to sell or not sell in Texas. Those are the  
15 issues in the Lucid litigation.

16 I see nothing in our rules that has any impact  
17 on that. The warranty work that we're talking about, this  
18 mobile warranty work, it's done exclusively by franchised  
19 dealers. This is not involving the manufacturer; that  
20 rule is only about franchised dealers.

21 I don't understand why we're getting this  
22 bluster on this issue, but it is not related to the Lucid  
23 litigation. So I urge you, on behalf of your counsel,  
24 that this is not related, is not a reason to not make  
25 these rules.

1           And if you wait for all litigation to stop for  
2 this agency, first of all, it's unlikely there will ever  
3 be a time where we have not been sued for something, we  
4 will be forever held hostage on getting these rule reviews  
5 done and getting our amendments complete. That's my  
6 concern.

7           MR. BACARISSE: If I may ask a question on this  
8 point. It is your opinion and you're stating that, but  
9 it's also the opinion of the attorney generals who are  
10 involved in this litigation that our promulgation of rules  
11 does in no way impact this case.

12           MS. MORIATY: I don't want to give away any  
13 attorney-client privileged conversation, but I can say  
14 that I consulted with them in advising you on this, and  
15 they are in support of our position.

16           MR. BACARISSE: Okay. Thank you.

17           MR. MOWREY: May I respond, Mr. Chairman?

18           MR. BACARISSE: Certainly.

19           MR. MOWREY: I'm reading from Lucid's  
20 complaint, not from TADA's papers. They list six or seven  
21 items, and one of those is provide repairs and service,  
22 including warranty service. They're the ones that bring  
23 warranty service to this case.

24           And, yes, there has been a motion to compel and  
25 just because there has been one ruling on it doesn't mean

1 that that issue is now decided. As we all know, there's  
2 the district court, there's the appellate courts and so  
3 forth.

4 This idea that this will just be continuing  
5 litigation, it's been over 20 years since the Ford case,  
6 and the Ford case, just for those that may not know, that  
7 was a situation where Ford wanted to sell used cars over  
8 the internet and the court said, No, that is prohibited.

9 So there will be a constant attack by the  
10 manufacturers, particularly in this EV space, of deluding  
11 with the idea of bringing the constitutionality of these  
12 statutes in place. Make no mistake about it; it will have  
13 an effect.

14 MR. BACARISSE: Thank you.

15 MS. GILLMAN: Can I have --

16 MR. BACARISSE: Member Gillman.

17 MS. MORIATY: Chairman, if I may, if we want to  
18 discuss more attorney-client privileged conversations, I  
19 recommend we go into closed session.

20 MR. BACARISSE: Understand. Thank you.

21 Member Gillman, do you have a question?

22 MS. GILLMAN: Is Subchapter E part of this item  
23 number 8 regarding lessor and lease facilitators?

24 MR. MOWREY: Are you talking about 215.102(e)?

25 MS. GILLMAN: It is 215.171 and .173, page 417



1 of the board book.

2 MR. MOWREY: I'm going to have to defer on  
3 that; I'm not able to address that just off the cuff.

4 MS. GILLMAN: I was really asking Monique.

5 MR. MOWREY: Oh, okay.

6 MS. MORIATY: Yes. There are amendments to  
7 Subchapter E in your proposed amendments for today.

8 MS. JOHNSTON: That's correct.

9 MS. GILLMAN: And hold on; wait one second.  
10 I'm finding my note. I think any -- I'm cautious as a  
11 Board member because Lucid is -- because manufacturers can  
12 get a lease license and also set up, so I worry any  
13 amendments in Subchapter E, because of pending litigation,  
14 should be stricken. And also, I believe I 215 is also the  
15 motor home show limitations. Is that right, Monique?

16 MS. JOHNSTON: Uh-huh.

17 MS. GILLMAN: And the Lucid, I think, similar  
18 to Tesla, would request a location under the motor home  
19 show provisions, so I would also -- and I think I'm asking  
20 because this attorney is up here that because of the  
21 pending Lucid litigation that any changes to motor homes  
22 and also the lease facilitators, which is part of 215,  
23 this chapter and rule changes, that it really should be  
24 stricken for now and wait until the outcome of -- I don't  
25 think that we should do anything to hurt the case at this

1 time.

2 MR. BACARISSE: If I may interject, Board  
3 members, if you have a question of one of our staff or of  
4 a speaker who is up on a public comment, ask the question.

5 Positing our own opinions on things is really  
6 slowing this process down, and it's not actually moving  
7 forward to getting an answer to other questions that other  
8 members may have.

9 So let's focus on if we have a question, ask  
10 it; if we want to make a statement, that's not germane to  
11 what we're trying to accomplish here.

12 I have a question of counsel, our own counsel.  
13 You have stated and the Attorney General's Office has  
14 assured us that we can move forward with our rulemaking  
15 authority while this litigation is ongoing.

16 My question is what happens to this agency if  
17 we refuse to or stymie the process of rulemaking after the  
18 legislature has passed law and it is the obligation and  
19 the responsibility of this agency to discharge rules  
20 connected to the law? How long do they give us on these  
21 types of things?

22 MS. MORIATY: Well, I mean --

23 MR. BACARISSE: And by the way, we've waited  
24 four years to do some of this -- seven years, pardon me.

25 MS. MORIATY: Obviously you are in violation of

1 the statute, but the question is a political one, I'm  
2 afraid. How long will they let you run before it becomes  
3 untenable for everyone: Certainly, to me, it's already, I  
4 would think, embarrassing to be unable to review our rules  
5 for almost a decade.

6 So it is an opportunity, as you point out, we  
7 haven't been in compliance with statute, these statutes  
8 are years old, and it's time to admit what the regulatory  
9 scheme is in Texas and make rules that match it.

10 MR. BACARISSE: Thank you.

11 With that being the case, the chair would call  
12 the question.

13 MS. MORIATY: We have more public comment, sir.

14 MR. BACARISSE: More public comments. Great.

15 All right, let's get to it.

16 MR. MOWREY: Thank you very much. I appreciate  
17 the time. Thank you.

18 MR. BACARISSE: Thank you, sir.

19 Who's next, Laura?

20 MS. MORIATY: Karen Phillips from TADA.

21 MR. BACARISSE: Great. Karen, welcome.

22 MS. PHILLIPS: Good morning, Chair, members,  
23 Director.

24 First of all, as Mr. Mowrey mentioned, the  
25 complaint with respect to issues that Lucid has brought

1 are ones not brought by TADA but by Lucid. They have  
2 suggested leasing, renting, selling, arranging financing,  
3 selling parts and accessories, and providing repairs and  
4 service. Those are at issue in the complaint.

5 With respect to the service-only facility  
6 issue, very briefly, you need to look at the definition of  
7 franchised dealer as well as the definition of dealership.  
8 Warranty work can only be performed by the franchised  
9 dealer, that's in your definitions.

10 A franchised dealer is one that services and  
11 repairs at a facility, established and permanent facility;  
12 i.e., a dealership. That is also in your definitions. A  
13 dealership is the physical presence and the physical  
14 premises and business facilities. That is also within  
15 your definitions. Therefore, warranty work has to be  
16 performed at a physical location. The definitions must  
17 control here.

18 With respect to a mobile service, that would be  
19 a change with respect to warranty work required to be  
20 performed at a physical facility. Only the legislature  
21 can make that change; you cannot make that change by rule.  
22 So if you want mobile services, you need to go to the  
23 legislature.

24 With respect to the listing of persons, that is  
25 a concern. We need to look at the Fifth Circuit opinion

1 in the Ford Motor Company case versus TxDOT in which the  
2 Fifth Circuit very succinctly said that a company may not  
3 circumvent otherwise constitutional state laws and  
4 regulations simply by connecting to the internet.

5 That particular case had to do with the fact  
6 that the statute says a manufacturer or distributor may  
7 not own, operate, control indirectly or directly, or act  
8 in the capacity of a dealer. That is what we are  
9 litigating today.

10 In addition, we need to look at the fact that  
11 Transportation Code 503 comes into play, something that  
12 hasn't been talked about. However, a person may not  
13 engage in business in the state of Texas as a dealer  
14 without a GDN.

15 The statute goes on to say that if you are an  
16 out-of-state dealer, you have to control the sales that  
17 you are doing in the state of Texas. You may sell to  
18 another GDN dealer, or if you're not selling to a GDN  
19 dealer, then you have to make certain -- this state has to  
20 make certain that that particular transaction is not  
21 intended to avoid the transaction of having a GDN. That's  
22 in 503.024.

23 Again, the Fifth Circuit makes very clear that  
24 Texas constitutional law cannot be bypassed simply through  
25 an internet sale, and finally, you cannot ignore the

1 statute that provides that a Texas licensed dealer may  
2 sell or offer to sell a motor vehicle online; it's the  
3 dealer by statute.

4 Happy to respond to any questions.

5 MR. BACARISSE: Thank you, Ms. Phillips.

6 Questions, members?

7 MS. GILLMAN: I have a question.

8 MR. BACARISSE: Sure, Member Gillman.

9 MS. GILLMAN: So what is the answer regarding  
10 the application requirements for Monique and her  
11 application process in trying to get information?

12 MS. PHILLIPS: Which information are you asking  
13 about?

14 MS. GILLMAN: Regarding a non-licensed  
15 manufacturer trying to sell cars in Texas. How should --  
16 her purpose was to gather information.

17 MS. PHILLIPS: I'm not seeing anything in the  
18 statute that prohibits the gathering of information.

19 MS. GILLMAN: Your suggestion is just ask.

20 MS. PHILLIPS: Ask.

21 MS. GILLMAN: Thank you.

22 MS. PHILLIPS: Thank you.

23 MR. BACARISSE: Thank you.

24 Someone else to speak publicly?

25 MS. MORIATY: Yes, sir. Robert Braziel from

1 TADA.

2 MR. BACARISSE: Great, thanks.

3 Robert, welcome.

4 MR. BRAZIEL: Good morning, Mr. Chairman,  
5 members of the committee. I'm Rob Braziel, the CEO of  
6 legislative affairs for TADA. I don't come to a lot of  
7 these meetings, and I rarely speak if I do, but I did want  
8 to raise something to your attention today that I think  
9 I'd like to see some further discussion on and hope you  
10 will give it some attention.

11 I would focus your attention on the amendments  
12 proposed in 215.160, which is pages 413 through 414 in  
13 your book, and this has to do when salvage vehicles are  
14 repaired, rebuilt or reconstructed and put back up for  
15 sale.

16 There are the disclosures of that history to  
17 the customer: There's a disclosure on the vehicle itself,  
18 and then there is a disclosure at the point of sale. At  
19 the point of sale there is a requirement that it be in  
20 11-point font and that it also provides that if it's part  
21 of a buyer's order or a purchase order. You do not need a  
22 signature with it because it has been disclosed twice  
23 already.

24 In the proposal the staff has before you today,  
25 that second disclosure would change. We would now need to

1 have 14-point type and also a signature as well with  
2 regard to that disclosure.

3 We could debate the merits of font sizes and  
4 signatures, but my point here is that we should look at  
5 the cost-benefit analysis of changes like this. I think  
6 it's something that Earl mentioned earlier, talking about  
7 the changes to forms. That involves time and expense,  
8 reprogramming costs, and the way that it is currently in  
9 here now is that it would be due on June 1.

10 You know, in the 30 years I've been doing  
11 legislative and regulatory work, I've noticed really two  
12 trends. Nobody is looking at the totality of what we're  
13 asking industry to do. It's not just disclosures; I'm  
14 talking about the whole gamut of what regulatory things  
15 fall on this industry and the fact that I believe we have  
16 over-disclosed the car buying process.

17 And so I would urge you to look at the cost-  
18 benefit of changing font sizes and signatures, and I would  
19 encourage you if you do that analysis that those  
20 provisions are not necessary, and I think that's there  
21 plenty of disclosure already, and I think you're about to  
22 put the industry through a lot with the hard plates, and  
23 this is just one more thing.

24 Thank you for your time.

25 MR. BACARISSE: Thank you. I appreciate it.



1 Don't leave yet, hold on. Rob, hold on just a second,  
2 there may be questions.

3 Members, any questions for Mr. Braziel?

4 Member Prewitt, did you have a question?

5 MR. PREWITT: I had really a question for you,  
6 Mr. Chairman, when it's appropriate.

7 MR. BACARISSE: Okay. Any other questions?

8 (No response.)

9 MR. BACARISSE: Thank you, Rob. Thank you for  
10 your time.

11 Any other speakers on this particular agenda  
12 item, Laura?

13 MS. MORIATY: Yes, sir, we have one more, Mark  
14 Borskey from TRVA.

15 MR. BACARISSE: Great.

16 MR. BORSKEY: Good morning, Mr. Chairman,  
17 members. My name is Mark Borskey, and I'm here today  
18 representing the Texas Recreational Vehicle Association.  
19 Thank you for allowing me to make a brief statement on  
20 behalf of the recreational vehicle franchised dealers with  
21 respect to the motor home show limitations and  
22 restrictions found in Texas Administrative Code 215.112.

23 Previously members of the Board and others have  
24 urged staff to work with the industry to find common  
25 ground from which we may be able to proceed to restore

1 some regulatory clarity for motor home shows. At the  
2 invitation of Executive Director Avitia, we have had an  
3 initial meeting with both he and other senior staff of the  
4 agency.

5 Subsequent to that meeting, the agency general  
6 counsel has recently provided us with draft rule language  
7 regarding shows and exhibitions. We are currently  
8 considering this proposal. We look forward to sitting  
9 down with the general counsel and the executive director  
10 in the coming weeks to discuss this language.

11 We would like to again express our appreciation  
12 to DMV leadership and the staff in continuing to work with  
13 our industry. Especially Mr. Avitia has always been very  
14 welcoming to all our comments, and all the staff, frankly.  
15 It's very much appreciated.

16 MR. BACARISSE: Thank you.

17 Members, any questions for Mr. Borskey?

18 (No response.)

19 MR. BACARISSE: Thank you for your time.

20 MR. BORSKEY: Thank you.

21 MR. BACARISSE: Yes, sir, absolutely.

22 Any other public comment?

23 MS. MORIATY: No, sir. That was the last one.

24 MR. BACARISSE: Okay, thank you.

25 Member Gillman, I see you.

1 MS. GILLMAN: Can I request a three-minute  
2 break to confer with counsel?

3 MR. BACARISSE: That would be wonderful. If we  
4 stretch it to five, that would be great. All in favor,  
5 aye.

6 (A chorus of ayes.)

7 MR. BACARISSE: Let's take a five-minute break.  
8 Thank you.

9 (Whereupon, at 11:03 a.m., a brief recess was  
10 taken.)

11 MR. BACARISSE: It is now 11:17, and I'm  
12 bringing the meeting back into order.

13 We are discussing item 8 on the agenda; that's  
14 where we left off, and so we've heard public comment.

15 Ms. Johnston, do you have further information  
16 you wanted to impart or are you just available for any  
17 questions that may come?

18 MS. JOHNSTON: No, no further information. I  
19 am just standing here because I also have the next agenda  
20 item, so you're not getting rid of me that quick.

21 (General laughter.)

22 MR. BACARISSE: Right, fantastic. Thank you.  
23 So at this point, the chair would entertain a  
24 motion.

25 MS. GILLMAN: I have a motion.

1 MR. BACARISSE: Member Gillman.

2 MS. GILLMAN: Regarding agenda item 8, I move  
3 that the Board reject the proposed amendments to new  
4 provisions in 43 Texas Administrative Code  
5 215.102(e)(2)(E)(I), 215.103, 215.171, 215.173 through  
6 215.180, and reject the proposed repeal of 215.112.

7 I also move that the Board approve the adoption  
8 of the remaining proposed amendments, new rule sections  
9 and repeals to 43 Texas Administrative Code, Chapter 215,  
10 as recommended by staff, for publication in the *Texas*  
11 *Register*.

12 In addition, I move that the Board grant the  
13 department the authority to make changes to the adoption  
14 preamble and text of Chapter 215 revisions that are  
15 approved by the department's general counsel as necessary  
16 for acceptance by the Secretary of State for filing and  
17 publication in the *Texas Register*.

18 Further, I move that the Board grant the  
19 department the authority to make changes to the adoption  
20 preamble and text of the Chapter 215 revisions based on  
21 non-substantive corrections made by the *Texas Register*.

22 That is the end of my motion, Mr. Chairman, but  
23 if you would like, because it was a lot, I can refer to  
24 any title or page numbers if anyone has any questions.

25 MR. BACARISSE: Okay. At this point, we're

1 going to get into discussion, certainly, on the motion, so  
2 at this point the chair is looking for a second to that  
3 motion, if there is one.

4 MR. GRAHAM: Second.

5 MR. BACARISSE: Member Graham seconds. Just  
6 making a note. Thank you.

7 Now, any questions on this motion that is  
8 before us on the table?

9 Member Prewitt.

10 MR. PREWITT: Just a question for general  
11 counsel. Is the passage of this motion -- how does that  
12 impact us in regards to our compliance with the state law?

13 MS. MORIATY: So passing this motion will  
14 severely debilitate our ability to get this rule review  
15 done today.

16 There are three provisions in here that we will  
17 have to pull out of the rule review because we lack  
18 statutory authority to have them continue to be in our  
19 rules, so I can't certify them as part of the rule review.

20 So if this passes, we will pull those out, and  
21 we will remain out of compliance with statute until we can  
22 someday come into compliance.

23 I'm open to any further questions about the  
24 specific authority for these various things, but it will  
25 be a real problem for us because we will lack statutory

1 authority for our rules continuing.

2 MR. PREWITT: Will it inhibit us from  
3 implementing other state regulations?

4 MS. MORIATY: Oh, yes, absolutely. Thank you  
5 for the softball, sir.

6 The next thing that's coming up on your radar  
7 is House Bill 718 implementation, and the main goal,  
8 really of running this massive rule review process was to  
9 clean up our rules ahead of trying to implement that new  
10 massive process.

11 If we don't have our rules cleaned up -- and  
12 rejecting these provisions will again leave provisions  
13 unclean and unamended -- we will be trying to work the  
14 House Bill 718 amendments on top of rules that are not  
15 enforceable and have a bunch of garbage in them.

16 So from a legal perspective, it's going to make  
17 the House Bill 718 implementation very difficult.

18 MR. PREWITT: And if I may, Mr. Chairman, a  
19 final question of general counsel?

20 MR. BACARISSE: Yes, sir.

21 MR. PREWITT: If we found a middle ground on  
22 these specific rules that Member Gillman wants to reject,  
23 if we were able to find a middle ground in the course of  
24 today's meeting, would that be possible as well, or is the  
25 way it's written it's sort of that way or the highway?

1 MS. MORIATY: So we are at adoption right now,  
2 which means we can make very limited changes. Basically  
3 you could reinstate text that we have proposed to strike,  
4 you can make other changes that don't have any new --  
5 folks wouldn't have notice of them already, right, that  
6 folks would have already thought that this was a  
7 possibility and would have responded to it.

8 But we can't put in new text that someone  
9 wouldn't have thought was possible or wouldn't have  
10 imagined when they were responding to it the first time.  
11 That's going to limit us a lot in what we can do.

12 The other thing that's going to limit us a lot  
13 is time because we have got to get this done, again, so  
14 that we can open the House Bill 718 implementation  
15 proposal in June.

16 There are not choices about that June date,  
17 we've got to hit the statutory deadline of adopting in  
18 December, and the only way that that happens is if we  
19 propose in June. So we are out of time and out of a lot  
20 of ways to maneuver with regard to these rules.

21 Now, we are capable of adopting these changes  
22 and then making more changes in June, so if we repeal the  
23 provisions that we believe no longer have statutory  
24 authority, we could address clarifying issues that members  
25 may want in June at our next meeting.

1           But unless we have this cleaned up, we won't  
2 have closed the rule review; that will still be sitting  
3 out there, and we won't be ready to implement the new  
4 changes.

5           MR. BACARISSE: And if I may, a question for  
6 Ms. Moriaty. Any sort of new language that we wanted to  
7 propose at the table today would need to go back through  
8 the Governor's Regulatory Compliance Division. Right?

9           MS. MORIATY: Yes, precisely. It would need to  
10 go back. If it's going to be a real substantive change  
11 from what we already proposed, it would have to go back  
12 through proposal, back through public comment, back  
13 through the Regulatory Compliance Division.

14           Even if we change what we're doing in rule  
15 review, we leave provisions in that staff believes we  
16 don't have -- or Regulatory Compliance has put questions  
17 on whether we have legal authority for them, we're going  
18 to have to send those back through Regulatory Compliance  
19 before we can even do our rule review.

20           So things will become very complex if we are  
21 unable to repeal these provisions.

22           MR. PREWITT: I thought they already were.

23           MS. MORIATY: Indeed, sir, yes.

24           MR. BACARISSE: Thank you.

25           Member Omumu.



1 MS. GILLMAN: Go right ahead, Sharla.

2 MS. OMUMU: So if we were to repeal, will we  
3 have time before the June Board meeting to meet in the  
4 middle at all with the various stakeholders?

5 MS. MORIATY: Yes. There's absolutely time to  
6 add. For example, on the shows and exhibitions rule, we  
7 have been in consultation with those stakeholders, TADA  
8 and TRVA, we have floated draft rule text. We are in  
9 process, and our plan, hopefully, if we can come to a  
10 consensus, is to propose that text in June.

11 So if there are other areas that we could  
12 address and find consensus, we could propose those things  
13 in June, but again, the first step is to get the old out  
14 of date, out of compliance language repealed so that we  
15 can look at other avenues and close our rule review.

16 MS. OMUMU: And by doing that, we would need to  
17 approve all of the proposed amendments. That would be the  
18 first step?

19 MS. MORIATY: Right. I mean, we have some  
20 areas, for example, the "only" that Member Graham  
21 discussed earlier, we could remove the "only" from our  
22 amendments and not impact the process as a whole, but when  
23 we're reinstating the shows and exhibitions rule,  
24 reinstating the warranty repair service limitation that  
25 Regulatory Compliance has given a thumbs-up to, when we're

1 striking all changes from Subchapter E, all amendments  
2 altogether -- which is what this motion does -- we're  
3 going to have a lot of trouble coming back from that by  
4 June.

5 MS. GILLMAN: Mr. Chairman?

6 MR. BACARISSE: Yes, Member Gillman.

7 MS. GILLMAN: When two committees and several  
8 stakeholders recommend to delete, I would think that there  
9 must be a path to delete and come back, and I don't know  
10 if it has to be done by June.

11 Why does it have -- like if we delete this 215,  
12 as in my motion, and accept the rest, tell me why does it  
13 have to be done by June.

14 MS. MORIATY: Member Gillman, you're proposing  
15 changes to about ten provisions of 215 -- I don't know  
16 exactly which one you were talking about -- but we have  
17 got to propose new amendments starting in June.

18 And in order to propose amendments, we have to  
19 have closed these amendments, have the rule text be  
20 settled, and then be able to propose text on top of it.  
21 If we fail to make amendments, the rule text will not be  
22 in the place where we thought it was when we drafted our  
23 amendments.

24 And again, this train is pretty far out of the  
25 station because it's coming for you in June, and we will

1 not have the same provisions and the same degree of  
2 statutory consistency that we hoped we would be having  
3 going into June.

4 It would complicate that issue significantly,  
5 and to the extent we have provisions that are lacking  
6 statutory authority, like 215.112, they will be clogging  
7 up our rule where we could put in new provisions for 718,  
8 and we will not be able to close our rule review again.  
9 We'll still be out of compliance with that.

10 MS. GILLMAN: Some portions of rule review,  
11 those that were rejected would remain open.

12 MS. MORIATY: From a compliance with a rule  
13 review perspective, it doesn't matter if you're out of  
14 compliance with one section or the whole thing.

15 MS. GILLMAN: If you reject one it is --

16 MS. MORIATY: Right. We have to get the whole  
17 chapter across the finish line within four years or we're  
18 out of compliance with the statute.

19 There's legislative rumblings every year that  
20 one day they're going to say if you're out of compliance  
21 with the four-year rule review, your rule is invalid, and  
22 you know, that could happen to us someday.

23 MR. BACARISSE: Member Prewitt.

24 MR. PREWITT: Would it be possible, say, if we  
25 do adopt these rules in whole and put us in compliance, is

1 it possible for the Board -- and this is a question -- to  
2 pass a resolution resolving to address those issues that  
3 Member Gillman has brought up between now and the next  
4 Board meeting to where there might be something pursued to  
5 give satisfaction to our constituencies?

6 MS. MORIATY: Certainly. You can absolutely  
7 direct staff to work with stakeholders to find language to  
8 address an issue and direct us to bring back text at the  
9 June Board meeting, if at all possible. That's certainly  
10 something that you could include in a motion.

11 MR. PREWITT: Okay.

12 MR. BACARISSE: Member Graham.

13 MR. GRAHAM: So let me tell you what I don't  
14 like about where we are right now. I've just for the last  
15 week busted my rear to go through these pages; I've tried  
16 really hard to get my head around it. I have issues with  
17 it.

18 I've just heard major people, representatives  
19 from our industry step up and say, look, there is a reason  
20 for pause here, there's concerns. And I'm now listening  
21 to general counsel say you have no choice, it has to be  
22 done right now.

23 I mean, I'm going to tell you, my blood  
24 pressure is pretty high, because I feel like I'm cornered  
25 and the decisions that we're going to make are potentially

1 very problematic, and we shouldn't be here, we shouldn't  
2 be in this position, we shouldn't have been caught here  
3 with no choice.

4 I'm not sure exactly how that happened, but you  
5 know, these rules have not been in compliance since  
6 apparently the dawn of time, and I'm not sure why we've  
7 got to jam them through today to all of a sudden make sure  
8 that we're in compliance.

9 So I'm looking for an option here, and I don't  
10 think we're far off but there's concerns, so I can't  
11 support it -- I mean, I can support the motion; I can't  
12 support it in its entirety. And those are my comments.  
13 Thank you.

14 MS. MORIATY: Member Graham is absolutely  
15 right. We could remain out of compliance, we could unable  
16 to fix rules that have been unenforced and unenforceable  
17 for five years.

18 At some point the Board has to act, though, we  
19 have to admit what the state of regulation is in Texas.  
20 We've got things that can't get through the Regulatory  
21 Compliance Division. That's a fact; that's going to  
22 happen every time we take it up. Right? So we should  
23 have had Regulatory Compliance Division review of all  
24 these rules, frankly, but because we managed not to review  
25 them, we haven't had to have that.

1           So in June, when we do these House Bill 718  
2 required revisions, Regulatory Compliance is going to have  
3 to take a look at those rules as well, so we won't be able  
4 to get past them that time either, and if they reject our  
5 rules in June, we really have a problem because we're,  
6 again, out of time.

7           So Member Graham is right, we can be in  
8 violation of this statute, we could end up in violation of  
9 statutes we need to implement for House Bill 718, but it's  
10 going to keep compounding the number of statutes we're in  
11 violation of, and I don't think that's a healthy place for  
12 the agency to be.

13           MR. BACARISSE: Member Gillman.

14           MS. GILLMAN: For discussion, I feel like the  
15 current pending litigation may provide clarity; we just  
16 need to let it go. And I think that it's truly wrong to  
17 make changes right now when you've got a lot -- our own AG  
18 trying to defend our statutes, and I agree with the  
19 attorney that said any changes that we have will be used  
20 in that litigation.

21           And for me, as a dealer, the decisions made  
22 today in this motion affect the dealer's everyday life,  
23 and it is not insignificant; it's major changes to sales  
24 model.

25           And I have never seen the amount of testimony

1 and both committees, in certain sections that I have  
2 recommended, recommending also, I'm concurring with the  
3 committees. Ignoring all of that in order to push through  
4 cleanup would be a mistake, I think.

5 MS. MORIATY: If I may, Chairman?

6 MR. BACARISSE: Please, Ms. Moriaty.

7 MS. MORIATY: I would like to go through the  
8 provisions that Member Gillman has identified as being  
9 related to the litigation and talk about what they do and  
10 what the litigation is doing.

11 MR. BACARISSE: Please.

12 MS. MORIATY: So 215.102(e)(w)(E)(I) is about  
13 the information that we are going to ask manufacturers to  
14 give us on their applications for licensure. There is  
15 nothing about the information we ask for that is in  
16 question in the Lucid litigation. That will not change  
17 whichever way the Lucid litigation goes.

18 MS. GILLMAN: I disagree.

19 MS. MORIATY: With 215.103 the question is  
20 whether the current statute allows leeway for a franchised  
21 dealer, who is engaging in the business at their licensed  
22 location, to send out mobile repair vehicles.

23 We are removing a rule that says it doesn't and  
24 believing that the statute is enforceable the other way.  
25 The Lucid litigation will not change what that statute

1 says. It may completely remove franchised dealers as an  
2 exclusive means of sales in Texas, but it's not going to  
3 change that statute's allowance of mobile repair or not.

4 The ones that I find the least related -- they  
5 can't even be called tangentially really related to the  
6 Lucid litigation -- are the leasing and lessor or lease  
7 facilitator rules, which are 215.171, 215.173 through  
8 215.180.

9 The statute does not put any limitation on a  
10 manufacturer serving as a lessor or a lease facilitator.  
11 There is not carved out of any of the provisions the way  
12 that dealers and manufacturers can overlap. A  
13 manufacturer, under our statutes, can be a lessor or a  
14 lease facilitator. That's settled, that's not at issue in  
15 the Lucid litigation, that's what our statute says. So  
16 while we can not like what our statute says, it's not  
17 going to change the fact that it is.

18 And these amendments that are really just  
19 cleanup amendments to get these rules legible, consistent,  
20 you know, functional, we will lose all of that due to a  
21 suspicion that there might have been some kind of conflict  
22 with a statute that already says a manufacturer can lease.

23 So those are my concerns about trying to find  
24 relatedness, trying to blame this on the Lucid litigation.

25 MR. BACARISSE: Any other questions?



1 MS. GILLMAN: Well, the last one that Laura  
2 didn't mention is the motor home show and limitations,  
3 215.112.

4 MS. MORIATY: Member Gillman, you don't argue  
5 that that's related to the Lucid litigation, though.  
6 Right?

7 MS. GILLMAN: Well, yes, I do.

8 MS. MORIATY: Okay. So I don't see any way  
9 that the limitations on a show or exhibit by a motor home  
10 dealer are related to the Lucid litigation because, again,  
11 that is about what manufacturers can sell.

12 Well, RV folks can sell at a show. No one else  
13 can, so that's not relevant here either; these aren't  
14 related to the Lucid litigation.

15 MS. GILLMAN: Can I respond to that?

16 MR. BACARISSE: No, because we'd be here all  
17 day. We need to either ask a question or I'm going to  
18 call the question and we're going to have a vote.

19 So does any member have another question?

20 MS. GILLMAN: I'll ask Laura the question.

21 MR. BACARISSE: Sure.

22 MS. GILLMAN: The reason why I think that the  
23 motor home is part of pending litigation is because that's  
24 how manufacturers have these massive showrooms -- I'm in  
25 Houston and they have four or five -- because they get a

1 license to have an exhibit for years and years and years,  
2 and that's how they skirt around being a franchised dealer  
3 with an authorized approved location is they are  
4 disguising their manufacturer showroom as a show or an  
5 exhibit, and they're allowed to just be a permanent  
6 exhibit instead of being a franchised dealer at a  
7 location. And so because shows and exhibits is a very  
8 significant part of how a manufacturer sets up shop in  
9 Texas, that is part of --

10 MR. BACARISSE: Okay. Is there a question?

11 MS. GILLMAN: That is why I think it's relevant  
12 and super important in the Lucid litigation.

13 MR. BACARISSE: What is the question?

14 MS. MORIATY: So I'll help with talking about  
15 the statutory authority for shows and exhibitions because  
16 that might be the question. So the statutory authority  
17 for shows and exhibitions is broad, it is actually in the  
18 back page of y'all's handout on the Regulatory Compliance  
19 Division.

20 We gave you the bill that shows how our  
21 authority to permit shows and exhibitions, to approve them  
22 has been lost, but instead we have only the authority to  
23 get notice. Now, the electric vehicle manufacturers, they  
24 are using the pure statute. They're not going through  
25 this rule; this rule only applies to recreational vehicle

1 manufacturers, and it's limited by its own wording to our  
2 permits for those events, so it has no impact on what  
3 manufacturers can do.

4 Now, TADA and TRVA had hoped that we would put  
5 in a new rule that might do something different and  
6 analyzed what the statute does and given definitions. We  
7 have offered proposed text for that, we still hope to get  
8 there, but the fact is that it's the statute, not this  
9 rule that is causing the concerns that Member Gillman has.

10 It will continue to be the statute and not this rule that  
11 allows Tesla and the others to function in that way.

12 This rule is, again, unenforced and  
13 unenforceable since 2019 and is only about RV shows. It's  
14 a limited thing, it's about our authority to permit those  
15 RV shows, which is completely gone. So this rule doesn't  
16 impact Tesla, and it isn't functioning for anyone right  
17 now. It's not a thing, it needs to go, it will not change  
18 the status quo when we repeal this thing.

19 MR. BACARISSE: Thank you.

20 Members, are there any more questions of either  
21 Ms. Johnston or our general counsel?

22 (No response.)

23 MR. BACARISSE: Okay. We have a motion and a  
24 second, and at this point I would like to call the  
25 question if I see no other members with a question.

1           So we are voting on the motion that Member  
2 Gillman made, and it's been seconded by Member Graham.

3           Member Alvarado?

4           MR. ALVARADO:   Nay.

5           MR. BACARISSE:   Member Gillman?

6           MS. GILLMAN:    Aye.

7           MR. BACARISSE:    Member Graham?

8           MR. GRAHAM:     Aye.

9           MR. BACARISSE:    Member McRae?

10          MS. McRAE:    Nay.

11          MR. BACARISSE:   Member Omumu?

12          MS. OMUMU:    Aye.

13          MR. BACARISSE:   Member Prewitt?

14          MR. PREWITT:   Nay.

15          MR. BACARISSE:   Member Schlosser?

16          MR. SCHLOSSER:   Aye.

17          MR. BACARISSE:   And I vote nay.   That's four  
18 nays and four.   We are tied.   That's exciting.

19          MS. MORIATY:    So it seems like we need a motion  
20 that will actually pass.   Is that accurate, Aline?

21          MS. AUCOIN:    It has to pass.

22          MS. MORIATY:    Right.   So it's not passed, so  
23 we're going to have to somehow tweak this motion to become  
24 something that a majority can support.

25          MR. BACARISSE:   Should the chair recommend a

1 little executive session time now?

2 MS. MORIATY: Sure, we can try to go into  
3 executive session, if that will help.

4 MR. BACARISSE: I think that might be the only  
5 way that we can get this done, perhaps, if members agree.

6 MS. GILLMAN: Did you say go into executive  
7 session?

8 MR. BACARISSE: Yeah, to have a conversation.

9 So it's 11:43 in the morning. The Board is  
10 going into executive session; we're recessing this open  
11 meeting. We will not vote or make any decisions in  
12 executive session. We will come back out from executive  
13 session, and any and all decisions will be made back in  
14 the open meeting.

15 Is that a fair assessment?

16 MS. MORIATY: Can you use the specific language  
17 that's in your folder just so we get the right consult  
18 with counsel provision cited.

19 MR. BACARISSE: Oh, sure. Sorry. I tried to  
20 do it and it just didn't quite get there, did it? Sorry.  
21 The purpose of us going into executive session is what you  
22 need me to say. Right? Yes, thank you. Get this  
23 correct.

24 It is now 11:44 in the morning on April 11,  
25 2024. We're going to go into closed session under Texas

1 Government Code Sections 551.071, 551.074, 551.076 and  
2 551.089.

3 For those of you in the audience, I anticipate  
4 being in closed session for who knows how long. We'll  
5 reconvene in open session after that.

6 With that, we are now recessed from this public  
7 meeting, and we are going into closed session.

8 (Whereupon, at 11:44 a.m., the meeting was  
9 recessed, to reconvene this same day, Thursday, April 11,  
10 2024, following conclusion of the closed session.)

11 MR. BACARISSE: It is now 1:22 in the  
12 afternoon, and the Board of the Texas DMV is now back in  
13 open session.

14 The Board will now take up agenda item 8, and  
15 we are now back in session. Thank you.

16 So we are considering agenda item 8, and we had  
17 a motion that was tied four-four and essentially that  
18 motion failed, so the chair would ask if there is another  
19 motion.

20 MS. McRAE: Mr. Chairman, I have a motion.

21 MR. BACARISSE: Vice Chair McRae.

22 MS. McRAE: I move that the Board approve the  
23 adoption of the proposed amendments, new rule sections,  
24 and repeals to 43 Texas Administrative Code, Chapter 215,  
25 as recommended by staff, for publication in the *Texas*

1     *Register* with the addition of a non-substantive clarifying  
2     amendment at adoption to the second clause of  
3     215.102(e) (2(E) (I) to add the term "dealer" so that it  
4     reads: "A list of each out-of-state dealer or person  
5     authorized by the manufacturer or distributor to sell a  
6     new motor vehicle online to a Texas resident, including  
7     the dealer's or person's name, physical address, and  
8     license number issued by the state in which the dealer or  
9     person is located."

10             I also move that the Board grant the department  
11     the authority to make changes to the adoption preamble and  
12     text of the Chapter 215 revisions that are approved by the  
13     department's general counsel as necessary for compliance  
14     with state or federal law for acceptance by the Secretary  
15     of State for filing and publication in the *Texas Register*,  
16     or based on non-substantive corrections made by the *Texas*  
17     *Register*.

18             I further move that the Board direct staff to  
19     engage with stakeholders and to bring more specific draft  
20     language for proposal at the next Board meeting in June  
21     that would fully describe how a franchised dealer can  
22     perform mobile warranty work within the limitations of  
23     Texas Occupations Code 2301.002, and would provide  
24     definitions for vehicle show and exhibition under Texas  
25     Occupations Code 2301.358.

1 MR. BACARISSE: Thank you.

2 Is there a second to that motion?

3 MR. PREWITT: Second.

4 MR. BACARISSE: That was Member Prewitt. Thank  
5 you.

6 Any discussion on this motion?

7 MS. GILLMAN: Yes.

8 MR. BACARISSE: Member Gillman.

9 MS. GILLMAN: For clarification, is the  
10 directed to staff to engage with stakeholders with Texas  
11 Occupations Code 2301.002 -- does that specifically speak  
12 to also the rule 215.103, and does the request to draft  
13 language for vehicle show and exhibit under Texas  
14 Occupations Code 2301.358 specifically relate to the rule  
15 adoption of 215.112?

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

17 MR. BACARISSE: Yes. Laura Moriaty.

18 MS. MORIATY: I'm not exactly sure what you  
19 mean by relate to, but those provisions are the statutory  
20 provisions that are involved -- I'm sorry, 215.103  
21 involves Texas Occupations Code 2301.002, and Texas  
22 Occupations Code 2301.358 is the statute on shows and  
23 exhibitions.

24 MS. GILLMAN: Thank you for the clarification.

25 MR. BACARISSE: Any other questions, members?



1 (No response.)

2 MR. BACARISSE: Seeing no questions, the chair  
3 would call the vote, please for this new motion on agenda  
4 item 8.

5 Member Alvarado?

6 MR. ALVARADO: Aye.

7 MR. BACARISSE: Member Gillman?

8 MS. GILLMAN: Nay.

9 MR. BACARISSE: Member Graham?

10 MR. GRAHAM: Aye.

11 MR. BACARISSE: Member McRae?

12 MS. McRAE: 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: And Bacarisse is aye as well.

20 Okay. Thank you. This agenda item number 8 amended  
21 motion passes. Thank you.

22 Now we move to agenda item number 9. I think  
23 Monique has been standing up here for all this time.

24 (General laughter.)

25 MS. JOHNSTON: Should have worn better shoes.

1 MR. BACARISSE: Yeah, there you go. Please  
2 carry forward.

3 MS. JOHNSTON: Hello again. Again for the  
4 record, I'm Monique Johnston, director of the Motor  
5 Vehicle Division or MVD.

6 Today we are asking for the Board's permission  
7 to adopt changes to Chapter 221, Salvage Vehicle Dealers  
8 in Title 43 of the Texas Administrative Code. This rule  
9 is listed on your agenda as item 11 [sic] and the details  
10 may be found beginning on page 537 of your board books.

11 This rule package adopts amendments and repeals  
12 to Chapter 221. And these changes would also be adopted  
13 in conjunction with the rule review under agenda item 6,  
14 which will be now presented to the Board after the rule  
15 packages, and also the adoption of new Chapter 224 to be  
16 presented as agenda item number 14.

17 The chapter has not undergone rule review since  
18 2015. By adopting the Chapter 221 amendments and repeals,  
19 the department accomplishes the following goals:  
20 implementing statutory changes and adding conforming  
21 language; deterring fraud and abuse by expanding  
22 fingerprint requirements to salvage dealers and setting  
23 minimum standards for business operations; modifying  
24 language to be consistent with statutes and other chapters  
25 in Title 43 of the Administrative Code; modifying language

1 to be consistent with current practice, including the use  
2 of records and electronic systems; clarifying existing  
3 requirements; improving readability by use of consistent  
4 terminology; clarifying or deleting unused archaic or  
5 inaccurate definitions, terms and references to improve  
6 understanding and readability; and repealing of rules  
7 included in new Chapter 224, Adjudicative Practice and  
8 Procedure.

9 I would like to highlight the four most  
10 significant Chapter 221 changes. The first is legislative  
11 implementation. Proposed amendments would implement  
12 Senate Bill 422 from the 2023 88th Legislature Regular  
13 Session, which amended Occupations Code 55.004, 55.0041,  
14 and 55.005, affecting licensing of military service  
15 members, as I described in the prior agenda item.

16 Proposed amendments would also conform language  
17 with Senate Bill 604 from the 86th Legislature Regular  
18 Session in 2019, which eliminated salvage dealer license  
19 endorsements, and House Bill 1667, also from the 2019  
20 Legislative Session, which allowed holders of an  
21 independent motor vehicle dealer general distinguishing  
22 number issued under Transportation Code 503 to act as a  
23 salvage vehicle dealer. HB 1667 added Occupations Code  
24 2302.009 and amended 2302.101, granting dealers the  
25 ability to perform salvage activities without obtaining a

1 salvage vehicle dealer license, but at the same time  
2 requires these dealers to comply with Occupations Code  
3 Chapter 2302 requirements.

4 The next one is proposed fingerprint  
5 requirements. As previously mentioned, fingerprint  
6 requirements have been proven to be a very effective way  
7 to prevent fraud, application fraud. These amendments  
8 would expand fingerprint requirements to new and renewal  
9 license applicants for salvage vehicle dealer licenses.

10 Fee consistency. The department compared GDN  
11 and salvage dealer application requirements and fees.  
12 These amendments make salvage dealer license amendment  
13 fees and refund opportunities consistent with our GDN  
14 license holders, and include an amendment to 221.13,  
15 License Terms and Fees.

16 This allows the department to charge a salvage  
17 vehicle dealer a \$25 license amendment fee for certain  
18 types of license amendments that require department  
19 processing time and expense. And also, the amendment to  
20 221.115 would allow flexibility for the director to  
21 approve an application refund in certain circumstances,  
22 which is not possible under the current rule.

23 The proposed repeals. Adopted repeals would  
24 delete 221.48, Scrapped or Destroyed Motor Vehicles, which  
25 duplicates 217.86, Dismantling, Scrapping or Destruction

1 of Motor Vehicles. And we would also move the  
2 adjudicative rules in Subchapter E to the proposed new  
3 Chapter 224, Adjudicative Practice and Procedure.

4 In September 2023, the department provided an  
5 early draft of these rules to the two department advisory  
6 committees, the Motor Vehicle Industry Regulation Advisory  
7 Committee and the Customer Service and Protection Advisory  
8 Committee. The members of these two committees did not  
9 have any comments on Chapter 221 on the proposed  
10 amendments.

11 The proposed rules were approved by the Board  
12 at the December 2023 Board meeting and were published for  
13 public comment in the December 29, 2023, *Texas Register*.  
14 The department received one written comment from the Texas  
15 Independent Automobile Dealers Association, TIADA, which  
16 was included in your board book. The department  
17 considered this written comment and is recommending  
18 changes to the rule text at adoption to one of the two  
19 suggestions from that comment. We are also recommending  
20 for this rule to have an effective date of June 1, 2024,  
21 to give license holders as much time as possible to  
22 implement any change that might be required.

23 As I mentioned previously, this is the latest  
24 possible date as the Board will need to consider new  
25 proposals to amend Chapter 221 at the June Board meeting

1 to implement HB 718 and Senate Bill 224.

2 This concludes my remarks and I am here to  
3 answer any questions for you.

4 MR. BACARISSE: Thank you, Monique.

5 Members, any questions for Ms. Johnston on this  
6 item?

7 (No response.)

8 MR. BACARISSE: Laura, any public commenters on  
9 this item?

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

11 MR. BACARISSE: Okay. Thank you.

12 The chair would entertain a motion on this  
13 item, number 9. Member Schlosser.

14 MR. SCHLOSSER: I move that the Board approve  
15 the adoption of the proposed amendments and repeals to 43  
16 Texas Administrative Code, Chapter 221, concerning SB 422,  
17 fingerprinting and cleanup as recommended by staff for  
18 publication in the *Texas Register*. I also move that the  
19 Board grant the department the authority to make changes  
20 to the adoption preamble and the text of the Chapter 221  
21 revisions that are approved by department's general  
22 counsel as necessary for compliance with state or federal  
23 law or for acceptance by the Secretary of State for filing  
24 and the publication in the *Texas Register*. In addition, I  
25 move that the Board grant the department authority to make

1 changes to the adoption preamble and text of the Chapter  
2 221 revisions based on non-substantive corrections made by  
3 the *Texas Register*.

4 MR. BACARISSE: Is there a second for that  
5 motion?

6 MS. OMUMU: I second.

7 MR. BACARISSE: Member Omumu seconds. Thank  
8 you.

9 Any further discussion, members? We have a  
10 motion and a second on the floor.

11 (No response.)

12 MR. BACARISSE: Seeing none, I'll call the roll  
13 for a 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 McRae?

21 MS. McRAE: Aye.

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: And I, Member Bacarisse, vote  
4 aye as well. It's unanimous. Thank you.

5 So now we move to agenda item number 10, and we  
6 will hear from Annette Quintero.

7 Good morning.

8 MR. AVITIA: Afternoon.

9 MR. BACARISSE: I'm just kidding.

10 (General laughter.)

11 MS. QUINTERO: I just looked at my notes and  
12 made sure I acknowledged that it is now afternoon.

13 Good afternoon, Chairman and members, Executive  
14 Director Daniel Avitia. I'm Annette Quintero, director of  
15 the Vehicle Titles and Registration Division, for the  
16 record, and I am covering agenda item number 10, which is  
17 on page 613 of your board book.

18 This is an action item for the Board to approve  
19 the adoption of amendments to Rule 217.63, related to the  
20 digital license plate fees and payment.

21 A digital license plate is an optional  
22 electronic display device that replaces the metal rear  
23 license plate and displays the corresponding plate number  
24 issued by the department. Digital license plates were  
25 enacted in 2019 as part of the department's Sunset Bill,



1 and the digital license plate program was implemented in  
2 June 2022. There are a total of eight digital license  
3 plates currently issued to vehicles.

4 The statute authorizes the department to  
5 establish a fee to cover administrative costs related to  
6 the issuance of a digital license plate. Currently the  
7 fee is set at \$95 for issuance and renewal. The amendment  
8 reduces the fee to \$45 with the goal of increasing digital  
9 license plate sales. The remainder of the amendment  
10 merely provides clarity.

11 The proposed amendments were published in the  
12 *Texas Register* for public comment on December 29, 2023,  
13 and no public comments were received.

14 I request adoption of these amendments. If  
15 approved, we anticipate publication in the April 26 issue  
16 of the *Texas Register*, with an effective date of May 12.  
17 I am glad to answer any questions.

18 MR. BACARISSE: Thank you, Ms. Quintero.

19 Members, any questions on this item?

20 (No response.)

21 MR. BACARISSE: Seeing none, I would entertain  
22 a motion on this item. Member Graham?

23 MR. GRAHAM: No.

24 MR. BACARISSE: Oh, you're just moving paper  
25 around.

1           Is there a motion to approve this item,  
2 members?

3           MS. GILLMAN: Yes, I have a motion.

4           MR. BACARISSE: Member Gillman, sorry.

5           MS. GILLMAN: I move that the Board approve the  
6 adoption of proposed amendments to 43 Texas Administrative  
7 Code, Chapter 217, Section 217.63 concerning digital  
8 license plates, as recommended by staff, for publication  
9 in the *Texas Register*. I also move that the Board grant  
10 the department the authority to make changes to the  
11 adoption preamble and text of Section 217.63 provisions  
12 that are approved by the department's general counsel as  
13 necessary for compliance with state or federal law or for  
14 acceptance by the Secretary of State for filing and  
15 publication in the *Texas Register*. In addition, I move  
16 that the Board grant the department the authority to make  
17 changes to the adoption preamble and text of Section  
18 217.63 revisions based on non-substantive corrections made  
19 by the *Texas Register*.

20           MR. BACARISSE: Thank you, Member Gillman.

21           Is there a second to this motion?

22           MS. McRAE: I'll second, Chairman.

23           MR. BACARISSE: Vice Chair McRae, thank you.

24           All right, members, any further discussion on  
25 this item?

1 (No response.)

2 MR. BACARISSE: Seeing none, I'll call the vote  
3 now.

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 McRae?

11 MS. McRAE: Aye.

12 MR. BACARISSE: Member Omumu?

13 MS. OMUMU: Aye.

14 MR. BACARISSE: Member Prewitt?

15 MR. PREWITT: Aye.

16 MR. BACARISSE: Member Schlosser?

17 MR. SCHLOSSER: Aye.

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

20 Thank you very much, Ms. Quintero.

21 Mr. Archer. We will now hear from Mr. Archer  
22 on agenda item 11, and I'll turn it over to him.

23 MR. ARCHER: Good afternoon, Chair Bacarisse,  
24 Executive Director Avitia, members of the Board. For the  
25 record, my name is Jimmy Archer and I'm the director of

1 the Motor Carrier Division.

2 This action item is number 11 on today's agenda  
3 and the materials are found beginning on page 617 of your  
4 board books. For the Board's consideration, I'm  
5 presenting these rule amendments to 43 Texas  
6 Administrative Code, Chapter 217, concerning registration  
7 reciprocity agreements for adoption and approval for  
8 publication in the *Texas Register*.

9 The rules were proposed at the December 14,  
10 2023, Board meeting and were published for comment in the  
11 *Texas Register* on December 29, 2023. The department  
12 received no comments on the proposed amendments.

13 These amendments are necessary to do the  
14 following: incorporate by reference the January 1, 2022,  
15 version of the International Registration Plan, or IRP;  
16 clarify language; make the terminology consistent with  
17 other department rules; delete certain language regarding  
18 the process for an appeal under Section 217.56; and to  
19 refer proposed new Chapter 224 of this title relating to  
20 adjudicative practice and procedure for an appeal of the  
21 department's decision against a vehicle registrant  
22 regarding an assessment, cancellation or revocation under  
23 217.56.

24 Enforcement Director Corrie Thompson will  
25 present the proposed amendments to the new Chapter 224

1 under item 14 on today's agenda.

2 If the Board adopts the amendments today, staff  
3 anticipates publication in the April 26 issue of the *Texas*  
4 *Register* and an effective date of June 1, 2024.

5 I ask that the Board adopt these rule  
6 amendments, and happy to answer any questions you may  
7 have.

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

9 Any questions for Mr. Archer, members,  
10 anything?

11 (No response.)

12 MR. BACARISSE: Okay. Laura, any public  
13 comment on this agenda item?

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

15 MR. BACARISSE: Okay. Thank you.

16 I would now entertain a motion on agenda item  
17 number 11. Member Alvarado.

18 MR. ALVARADO: I'll make a motion, Mr.  
19 Chairman.

20 MR. BACARISSE: Please.

21 MR. ALVARADO: I move that the Board approve  
22 the adoption of the proposed amendments to 43 Texas  
23 Administrative Code, Chapter 217, Section 217.56  
24 concerning cleanup, as recommended by staff, for  
25 publication in the *Texas Register*. I also move that the

1 Board grant the department the authority to make changes  
2 to the adoption preamble and text of Section 217.56  
3 amendments that are approved by the department's general  
4 counsel as necessary for compliance with a state or  
5 federal law or for acceptance by the Secretary of State  
6 for filing and publication in the *Texas Register*. In  
7 addition, I move that the Board grant the department the  
8 authority to make changes to the adoption preamble and to  
9 the text of 217.56 amendments based on non-substantive  
10 corrections made by the *Texas Register*.

11 MR. BACARISSE: Very good. Is there a second  
12 on this motion?

13 MR. PREWITT: Second.

14 MR. BACARISSE: Is that Member Prewitt?

15 MR. PREWITT: It is.

16 MR. BACARISSE: You're so fast, John, I didn't  
17 see you.

18 Okay. There is a motion and a second. Any  
19 further discussion on this item, members?

20 (No response.)

21 MR. BACARISSE: Seeing none, I'll now call the  
22 vote.

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 McRae?

5 MS. McRAE: Aye.

6 MR. BACARISSE: Member Omumu?

7 MS. OMUMU: Aye.

8 MR. BACARISSE: Member Prewitt?

9 MR. PREWITT: Aye.

10 MR. BACARISSE: Member Schlosser?

11 MR. SCHLOSSER: Aye.

12 MR. BACARISSE: And I, Member Bacarisse, vote  
13 aye as well. It's unanimous.

14 Thank you, Mr. Archer, appreciate that. You  
15 have a second one now, agenda item number 12, Chapter 218.  
16 Please continue.

17 MR. ARCHER: Yes, sir. Again, Jimmy Archer,  
18 for the record, with the Motor Carrier Division.

19 This action item is number 12 on today's agenda  
20 and the materials are found beginning on page 630 of your  
21 board books. For your consideration, I'm presenting these  
22 rule amendments to 43 Texas Administrative Code, Chapter  
23 218 for adoption and approval for publication in the *Texas*  
24 *Register*.

25 The rules were proposed at the December 14,

1 2023, Board meeting and were published for comment in the  
2 *Texas Register* on December 29, 2023. The department  
3 received no comments on the proposed amendments.

4 The amendments and repeals are necessary to do  
5 the following: cleanup language; delete certain language  
6 regarding adjudicative practice and procedure; refer to  
7 new Chapter 224 of this title; make the rule consistent  
8 with statute, current practice and the department rules;  
9 otherwise clean up the language and clarify language.

10 If the Board adopts the amendments today, staff  
11 anticipates publication in the April 26, 2024, issue of  
12 the *Texas Register* and an effective date of June 1, 2024.

13 I ask the Board to adopt these rule amendments,  
14 and I'm happy to answer any questions you may have.

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

16 Members, any questions on this item?

17 (No response.)

18 MR. BACARISSE: Seeing none, the chair would  
19 entertain a motion, please.

20 MR. GRAHAM: I'll make a motion.

21 MR. BACARISSE: Oh, I'm sorry. Are there any  
22 public comments?

23 MS. MORIATY: No, sir, there sure aren't.

24 MR. BACARISSE: I keep forgetting.

25 Yes, Member Graham.



1 MR. GRAHAM: Mr. Chairman, I would not have  
2 made my motion if I thought there was public comment, so  
3 just so you know, I had you covered.

4 MR. BACARISSE: Of course not. Thank you.  
5 (General laughter.)

6 MR. GRAHAM: I move the Board approve the  
7 adoption of the proposed amendments and repeals to 43  
8 Texas Administrative Code, Chapter 218 concerning cleanup,  
9 as recommended by staff, for publication in the *Texas*  
10 *Register*. I also move that the Board grant the department  
11 the authority to make changes to the adoption preamble and  
12 text of 218 revisions that are approved by the  
13 department's general counsel as necessary for compliance  
14 with state or federal law or for acceptance by the  
15 Secretary of State for filing and publication in the *Texas*  
16 *Register*.

17 In addition, I move that the Board grant the  
18 department the authority to make the changes in the  
19 adoption preamble and text of the Chapter 218 revisions  
20 based on non-substantive corrections made by the *Texas*  
21 *Register*.

22 MR. BACARISSE: Thank you.

23 Is there a second on this agenda item?

24 MR. PREWITT: Second.

25 MR. BACARISSE: Member Prewitt, thank you.

1 Members, any further discussion on this item?

2 (No response.)

3 MR. BACARISSE: Hearing none, seeing none, I'll  
4 call the vote, 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 McRae?

12 MS. McRAE: 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: And Member Bacarisse votes aye  
20 as well. It's unanimous.

21 Thank you, Mr. Archer, appreciate that.

22 Keep moving on to number 13 on the agenda, it's  
23 you, go for it.

24 MR. ARCHER: Thank you, Chairman. Again, my  
25 name is Jimmy Archer, director of the Motor Carrier

1 Division.

2 This action item is number 13 on today's agenda  
3 and the materials are found beginning on page 658 of your  
4 board books. For the Board's consideration, I'm  
5 presenting these rule amendments to 43 Texas  
6 Administrative Code, Chapter 219, relating to oversize and  
7 overweight vehicles and loads for adoption and approval  
8 for publication in the *Texas Register*.

9 The rules were proposed at the December 14,  
10 2023, Board meeting and were published for comment in the  
11 *Texas Register* on December 29, 2023. The department  
12 received no comments on the proposed amendments.

13 The amendments and repeals are necessary to do  
14 the following: clean up the language; delete certain  
15 language regarding to adjudicative practice and procedure;  
16 refer to new Chapter 224 of this title relating to  
17 adjudicative practice and procedure; and to make rule text  
18 consistent with statute and current practice.

19 If the Board adopts the amendments and repeals  
20 today, staff anticipates publication in the April 26,  
21 2024, issue of the *Texas Register* and an effective date of  
22 June 1, 2024.

23 I ask the Board to adopt these rule amendments,  
24 and I'm happy to answer any questions you may have.

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

1 Members, any questions on this agenda item 13?

2 (No response.)

3 MR. BACARISSE: Seeing none, the chair would  
4 ask if there is a motion on agenda item 13.

5 Is there public comment? Sorry.

6 MS. MORIATY: There is no public comment, sir.

7 MR. BACARISSE: Okay. Thank you.

8 I'm sorry, Mr. Prewitt. Go ahead.

9 MR. PREWITT: Thank you, sir.

10 Mr. Chairman, I move the Board approve the  
11 adoption of the proposed amendments and repeals to 43  
12 Texas Administrative Code, Chapter 219 concerning cleanup,  
13 as recommended by staff, for publication in the *Texas*  
14 *Register*.

15 I also move that the Board grant the department  
16 the authority to make changes to the adoption preamble and  
17 text of the Chapter 219 revisions that are approved by the  
18 department's general counsel as necessary for compliance  
19 with state or federal law or for acceptance by the  
20 Secretary of State for filing and publication in the *Texas*  
21 *Register*.

22 In addition, I move that the Board grant the  
23 department the authority to make changes in the adoption  
24 preamble and text of the Chapter 219 revisions based upon  
25 non-substantive corrections made by the *Texas Register*.

1 MR. BACARISSE: Thank you, Member Prewitt.

2 Is there a second to this motion?

3 MR. SCHLOSSER: Aye.

4 MR. BACARISSE: Member Schlosser, thank you.

5 Any further discussion?

6 (No response.)

7 MR. BACARISSE: In that case, the chair will  
8 call for the vote, please.

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 McRae?

16 MS. McRAE: Aye.

17 MR. BACARISSE: Member Omumu?

18 MS. OMUMU: Aye.

19 MR. BACARISSE: Member Prewitt?

20 MR. PREWITT: Aye.

21 MR. BACARISSE: Member Schlosser?

22 MR. SCHLOSSER: Aye.

23 MR. BACARISSE: And I, Member Bacarisse, vote  
24 aye. It's unanimous.

25 Thank you very much, Mr. Archer, appreciate it.

1                   We'll now hear from Corrie Thompson on agenda  
2 item number 14.

3                   Good afternoon.

4                   MS. THOMPSON: Good afternoon, Chairman,  
5 members of the Board, Director Avitia. I'm Corrie  
6 Thompson, director of the Enforcement Division, and I am  
7 happily presenting the last rule up for adoption on  
8 today's agenda.

9                   MR. BACARISSE: Not quite, but you're close.  
10 We still have to go back to agenda item 6.

11                   MS. THOMPSON: Oh, that's right. Sorry, Laura.

12                   MR. BACARISSE: We can see the end.

13                   (General talking and laughter.)

14                   MS. THOMPSON: Well, then I'm presenting agenda  
15 item 14 that begins on page 671 in your board book, and  
16 before you now is a recommendation to approve the adoption  
17 of new Chapter 224 in Texas Administrative Code 43.

18                   This relates to adjudicative practice and  
19 procedure and contested cases. And so this item is going  
20 to propose new sections that are going to consolidate into  
21 one chapter all of the department's contested case rules.

22                   This item also is proposed concurrently with the proposal  
23 you heard earlier today regarding amendments of and  
24 repeals of related sections in Chapters 206, 218 -- 215,  
25 218 and 221. I got my numbers out of order but I think

1 you get the point.

2 This change is being proposed to organize all  
3 of our procedures that are related to contested cases into  
4 one chapter for easier readability and processing. This  
5 is also going to make us consistent with SOAH rules and  
6 current department practices, and it's going to add new  
7 rules that are needed to address statutory requirements as  
8 well as our department procedures, and again, improve  
9 overall consistency and department readability.

10 It's going to be organized into a couple of  
11 different subchapters. That language is going to start on  
12 page 703 in your board book.

13 Subchapter A is going to cover our definitions  
14 in all of our rules that apply generally to all contested  
15 case matters, unless expressly excluded. Then Subchapter  
16 B is going to all Enforcement actions that involve motor  
17 vehicle dealers, salvage dealers and trailer license  
18 holders, as well as applicants. Subchapter C is going to  
19 cover contested cases between motor vehicle industry  
20 license holders or applicants, which we frequently refer  
21 to as protest cases at the department.

22 Subchapter D applies to all motor carrier and  
23 oversize/overweight load enforcement. Subchapter E is  
24 going to describe the types of contested cases that are  
25 referred to SOAH and the rules related to transfer of

1 jurisdiction to and from SOAH, so when things come back  
2 before the Board, as you hear on agenda items as cases.  
3 And then finally, Subchapter G is going to cover rules  
4 that apply to all Lemon Law and warranty performance  
5 matters on claims that are brought by consumers for the  
6 department to hear.

7           Regarding advisory committee input, the  
8 advisory committees for the Motor Vehicle Industry  
9 Regulation Advisory Committee, or MVIRAC, as well as the  
10 Customer Service and Protection Advisory Committee got  
11 early previews of these rules back in September of 2023.  
12 And then input from those committees was considered in a  
13 number of the rules that we brought to you for proposal  
14 back at the December Board meeting.

15           Then those proposed new rules in the new  
16 Chapter 224 were published for comment in the December 29,  
17 2023, version of the *Texas Register* for public comment.  
18 The department did receive four comments in response to  
19 the proposal from two different commenters, Mr. Bruce  
20 Bennett and then the Texas Independent Automobile Dealers  
21 Association. The department did consider those comments  
22 and recommended changes to certain rule text in response  
23 to those comments.

24           If the Board adopts the new sections in this  
25 chapter during the meeting today, staff anticipates



1 publication in the April 26, 2024, version of the *Texas*  
2 *Register*, and then a June 1, 2024, effective date.

3 There is no financial impact associated with  
4 this proposal. And if there are no questions, I would ask  
5 that the Board approve the proposal for adoption of this  
6 in the *Texas Register*.

7 MR. BACARISSE: Thank you, Ms. Thompson.

8 Members, any questions on this item for Ms.  
9 Thompson?

10 (No response.)

11 MR. BACARISSE: Hearing none, Laura, any public  
12 comments on this item?

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

14 MR. BACARISSE: Thank you.

15 The chair would now entertain a motion on  
16 agenda item 14.

17 MS. OMUMU: I'd like to make a motion, Mr.  
18 Chairman.

19 MR. BACARISSE: Member Omumu.

20 MS. OMUMU: I move that the Board approve the  
21 adoption of the proposed 43 Texas Administrative Code,  
22 Chapter 224 concerning adjudicative practice and  
23 procedure, as recommended by staff, for publication in the  
24 *Texas Register*. I also move that the Board grant the  
25 department the authority to make changes to the adoption

1 preamble and text of Chapter 224 that are approved by the  
2 department's general counsel as necessary for compliance  
3 with state or federal law or for acceptance by the  
4 Secretary of State for filing and publication in the *Texas*  
5 *Register*. In addition, I move that the Board grant the  
6 department the authority to make changes to the adoption  
7 preamble and text of Chapter 244 based on the non-  
8 substantive corrections made by the *Texas Register*.

9 Thank you.

10 MR. BACARISSE: Thank you.

11 Is there a second for this motion?

12 MS. McRAE: I'll second, Chairman.

13 MR. BACARISSE: Vice Chair McRae, thank you.

14 Members, any other questions? We have a motion  
15 and a second. Any further questions or discussion on this  
16 item?

17 (No response.)

18 MR. BACARISSE: Hearing none, I'll call the  
19 roll, please.

20 Member Alvarado?

21 MR. ALVARADO: Aye.

22 MR. BACARISSE: Member Gillman?

23 MS. GILLMAN: Aye.

24 MR. BACARISSE: Member Graham?

25 MR. GRAHAM: Aye.

1 MR. BACARISSE: Member McRae?

2 MS. McRAE: Aye.

3 MR. BACARISSE: Member Omumu?

4 MS. OMUMU: Aye.

5 MR. BACARISSE: Member Prewitt?

6 MR. PREWITT: Aye.

7 MR. BACARISSE: Member Schlosser?

8 MR. SCHLOSSER: Aye.

9 MR. BACARISSE: And I, Member Bacarisse, vote  
10 aye as well. It's unanimous.

11 Thank you, Ms. Thompson.

12 We now want to move back to agenda item 6, so  
13 flip back in your agenda, if you could, please, under the  
14 heading of Rule Review. This is the cleanup action and  
15 Ms. Moriaty is going to walk us through agenda item 6.

16 MS. MORIATY: Good afternoon, Board. Laura  
17 Moriaty, general counsel of the DMV.

18 I bring you great news. You have the  
19 opportunity to adopt all three chapters of this rule  
20 review, Chapter 206, Chapter 215, and Chapter 221, and we  
21 don't have to leave any provisions behind. We can get  
22 them all done.

23 Every state agency that adopts rules is  
24 required by the Texas Government Code to review their  
25 rules every four years and figure out if the reason for

1 initially adopting them continues to exist.

2 We went through the rule review process. It  
3 was painful, but we identified the provisions that no  
4 longer match current practice, no longer match current  
5 statutory authority. We have adopted amendments and  
6 repeals to deal with those issues and now we are ready to  
7 re-adopt the remaining provisions. So this motion will  
8 re-adopt those provisions subject to those repeals and  
9 amendments that you already did.

10 Chapter 206 and Chapter 221 were last adopted  
11 in 2015 and Chapter 215 was last reviewed in 2017. So if  
12 you vote to adopt, we will finally be back in compliance  
13 with the Government Code for three of our chapters, and it  
14 will be wonderful.

15 I want to acknowledge that this was a huge lift  
16 for everybody. It was a huge lift for staff, it was a  
17 huge lift for y'all reviewing it. This has been a huge  
18 binder, but this work is now complete.

19 We have cleaned this up, and we can move  
20 forward into the next huge lift which will be the House  
21 Bill 718 implementation at the next Board meeting. But  
22 thank you to everybody involved for getting this across  
23 the finish line. And it's wonderful to be coming back  
24 into compliance.

25 Over the next two years we are going to

1 continue on our path of reviewing rules, but after that we  
2 will be able to space them out so that we are reviewing  
3 them one at a time and we won't have this sort of  
4 onslaught that you're experiencing right now. We'll be  
5 able to do them gradually over four years and it shouldn't  
6 ever be this painful again. So thank you all for enduring  
7 this with us.

8 Today you get an opportunity to adopt these  
9 rules and to come into compliance with statute, and I  
10 appreciate it so much. So with that, I am open to  
11 questions.

12 MR. BACARISSE: Members, any questions on  
13 agenda item 6, Rule Review?

14 (No response.)

15 MR. BACARISSE: Hearing none, I would entertain  
16 a motion.

17 Oh, public comment. Laura, do we have any  
18 public comment?

19 MS. MORIATY: No. There's no public comment,  
20 sir.

21 MR. BACARISSE: Okay, great.

22 MR. PREWITT: I just have a motion.

23 MR. BACARISSE: Okay. I was going to ask if  
24 you had a motion. Great.

25 MR. PREWITT: I do. Mr. Chairman, I move the

1 Board approve the notice of adoption to 43 Texas  
2 Administrative Code, Chapters 206, 215 and 221, as  
3 recommended by staff. I also move that the Board grant  
4 the department the ability to make changes to the notice  
5 of adoption of Chapters 206, 215 and 221 that are approved  
6 by the department's general counsel as necessary for  
7 compliance with state or federal law or for acceptance by  
8 the Secretary of State for filing and publication in the  
9 *Texas Register*. In addition, I move the Board grant the  
10 department the authority to make changes to the notice of  
11 adoption of Chapters 206, 215 and 221 based on non-  
12 substantive corrections made by the *Texas Register*.

13 MR. BACARISSE: Is there a second to that  
14 motion?

15 MR. ALVARADO: Second.

16 MR. BACARISSE: Member Alvarado seconds. Thank  
17 you.

18 Now we have a motion and a second. Any  
19 discussion, members?

20 (No response.)

21 MR. BACARISSE: Hearing none, I will call for  
22 the vote.

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 McRae?

5 MS. McRAE: Aye.

6 MR. BACARISSE: Member Omumu?

7 MS. OMUMU: Aye.

8 MR. BACARISSE: Member Prewitt?

9 MR. PREWITT: Aye.

10 MR. BACARISSE: Member Schlosser?

11 MR. SCHLOSSER: Aye.

12 MR. BACARISSE: And I, Member Bacarisse, vote  
13 aye as well. It's unanimous.

14 Thank you very much.

15 MS. MORIATY: Thank you, sir.

16 MR. BACARISSE: And we now move to number 15 on  
17 our hit parade. Let me see here, I've got to get on the  
18 right page.

19 Go ahead, Ms. Moriaty.

20 MS. MORIATY: Thank you, sir.

21 So agenda item 15 is the new rule reviews that  
22 we will be proposing. We've moved out of adoption and  
23 into proposal, so next on our list are Chapters 208 and  
24 223 of the Board's rules.

25 208 is the Board's internal rules for its

1 employment practices and Chapter 223 governs compliance  
2 and investigations. Again, this is the every four-year  
3 rule review process where we look to see whether the  
4 reasons for initially adopting continue to exist.

5 With regard to Chapter 208, staff has looked at  
6 it and determined that the reasons for initially adopting  
7 those rules do still continue to exist. So our  
8 recommendation is that we don't need any amendments or  
9 repeals, we can just propose that for rule review, ask for  
10 public comment, and then adopt it without further ado.  
11 But on Chapter 223 we do have some streamlining and some  
12 updating that needs to happen, so that will be our next  
13 agenda item.

14 This vote is just to open the rule review, to  
15 send it for publication in the *Texas Register* to get  
16 public comments on rule reviews for Chapter 208 and  
17 Chapter 223. We will bring you back public comment or any  
18 further amendments that become necessary in August, and  
19 that's also when we would adopt these rule reviews and  
20 have two more in compliance with statute.

21 MR. BACARISSE: Thank you.

22 Members, any questions here? Any public  
23 comment that you're aware of?

24 MS. MORIATY: No public comment, sir.

25 MR. BACARISSE: Okay. I would entertain a



1 motion on this agenda item, please.

2 MS. McRAE: Chairman, I'd like to make a  
3 motion.

4 MR. BACARISSE: Member McRae.

5 MS. McRAE: I move that the Board approve the  
6 proposed notice of intention to review 43 Texas  
7 Administrative Code, Chapters 208 and 223, as recommended  
8 by staff, for publication in the *Texas Register*.

9 I also move that the Board grant the department  
10 the authority to make changes to the proposed notice of  
11 intention to review Chapters 208 and 223 that are approved  
12 by the department's general counsel as necessary for  
13 compliance with state or federal law or for acceptance by  
14 the Secretary of State for filing and publication in the  
15 *Texas Register*.

16 In addition, I move that the Board grant the  
17 department the authority to make changes to the proposed  
18 notice of intention to review Chapters 208 and 223 based  
19 on non-substantive corrections made by the *Texas Register*.

20 MR. BACARISSE: Thank you.

21 Is there a second for this motion?

22 MR. GRAHAM: Second.

23 MS. OMUMU: I second.

24 MR. BACARISSE: Member Graham, throw him in  
25 there. Thank you.

1 Thank you, Member Omumu.

2 Any further discussion on this motion and  
3 second that's on the table?

4 (No response.)

5 MR. BACARISSE: Seeing none, I will call for  
6 the 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 McRae?

14 MS. McRAE: 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: And Member Bacarisse votes aye  
22 as well. It's unanimous. Thank you very much.

23 MS. MORIATY: Thank you.

24 MR. BACARISSE: All right. We are now moving  
25 to agenda item number 16. This is Chapter 223, Compliance

1 and Investigations, and Corrie Thompson will brief us on  
2 this.

3 So the floor is yours.

4 MS. THOMPSON: Now I get to say it.

5 MR. BACARISSE: Now you do.

6 MS. THOMPSON: Again, Chairman, members of the  
7 Board, Director Avitia, Corrie Thompson, director of the  
8 Enforcement Division with the last rule-related agenda  
9 item today.

10 I am presenting agenda item number 16, which  
11 can be found starting on page 804 in your board books.  
12 Before you is a recommendation to approve the publishing  
13 of amendments to a new section and repeal in Texas  
14 Administrative Code, Chapter 223, related to compliance  
15 and investigations in the *Texas Register* for public  
16 comment.

17 These recommendations serve as a general  
18 cleanup in connection with the rule review that Ms.  
19 Moriarty just mentioned that's being conducted by the  
20 department. We're going to be revising the title of the  
21 chapter by removing the word "Division." This is because  
22 the Compliance and Investigations Division was disbanded  
23 several years ago, and then those employees were wrapped  
24 within the Enforcement Division.

25 We're also going to bring the rules into

1 compliance with statute, clarify existing requirements,  
2 improve readability and consistency. We're going to  
3 describe the department's methods and procedures for  
4 county tax assessors to report fraud, waste and abuse to  
5 the department. And then we're updating the department's  
6 process for external risk-based monitoring regarding  
7 external users of the department's registration and  
8 titling system.

9 Proposed new 223.5 would replace Subchapter B,  
10 which is being proposed for repeal. And we are wrapping  
11 those provisions from existing Subchapter B into new  
12 223.5.

13 There's no significant fiscal impact associated  
14 with this proposal, the new section or the repeal. And if  
15 there are any questions, I'm happy to take those;  
16 otherwise, I'd ask the Board to approve the proposal for  
17 publication in the *Texas Register* so that we can receive  
18 public comment.

19 MR. BACARISSE: Great. Thank you.

20 Members, any questions for Ms. Thompson?

21 (No response.)

22 MR. BACARISSE: Seeing none, any public  
23 comments, Laura?

24 MS. MORIATY: No, sir. No public comments.

25 MR. BACARISSE: Okay. Thank you.

1 I would entertain a motion on agenda item 16,  
2 if there is one. Member Schlosser.

3 MR. SCHLOSSER: I move that the Board approve  
4 the proposed amendments to 43 Texas Administrative Code,  
5 Chapter 223, concerning cleanup, as recommended by staff  
6 for publication in the *Texas Register*. I also move that  
7 the Board grant the department the authority to make  
8 changes to the preamble and text of the proposed Chapter  
9 223 revisions that are approved by the department's  
10 general counsel as necessary for compliance with state or  
11 federal law or for acceptance by the Secretary of State  
12 for filing and publication in the *Texas Register*. In  
13 addition, I move that the Board grant the department the  
14 authority to make the changes to the preamble and text of  
15 the proposed 223 revisions based on non-substantive  
16 corrections made by the *Texas Register*.

17 MR. BACARISSE: Thank you, Member Schlosser.

18 Is there a second to this motion?

19 MR. PREWITT: Second.

20 MR. BACARISSE: Member Prewitt, thank you.

21 Is there any further discussion, members, on  
22 this motion?

23 (No response.)

24 MR. BACARISSE: Seeing none, hearing none, I'll  
25 call for the vote, please.

1 Member Alvarado?

2 MR. ALVARADO: Aye.

3 MR. BACARISSE: Member Gillman?

4 MS. GILLMAN: Aye.

5 MR. BACARISSE: Member Graham?

6 MR. GRAHAM: Aye.

7 MR. BACARISSE: Member McRae?

8 MS. McRAE: 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: And I, Chairman Bacarisse, vote  
16 aye as well. It's unanimous.

17 Thank you, Corrie, appreciate it. Thank you,  
18 Ms. Thompson.

19 Okay. We are now moving to the briefing and  
20 action items section. Number 17 we have a specialty plate  
21 design, and Annette Quintero is going to walk us through  
22 that. So here comes that beautiful specialty plate.

23 Carrie, you're like Vanna White. Great job.

24 MS. QUINTERO: Thank you, Carrie.

25 Good afternoon, Chairman, members, Executive

1 Director Daniel Avitia. My name is Annette Quintero,  
2 director of Vehicle Titles and Registration Division.

3 This is agenda item number 17. It can be found  
4 on page 819 of your board book. The action item before  
5 you is a request for Board approval or denial of one  
6 specialty plate design in accordance with the Board's  
7 statutory authority .

8 The following proposed plate is from My Plates,  
9 the state's specialty license plate marketing vendor, and  
10 was posted for public comment in March 2024. Phi Beta  
11 Sigma, a new plate design, is proposed under  
12 Transportation Code 504.851. 1,694 people liked this  
13 design and 366 did not.

14 This concludes my presentation on this action  
15 item. I am available to take any questions you may have.

16 MR. BACARISSE: Thank you, Ms. Quintero.

17 Any questions, members, for Ms. Quintero on  
18 this item?

19 (No response.)

20 MR. BACARISSE: Are there any public comments,  
21 Laura, on this item?

22 MS. MORIATY: No, sir, no public comments.

23 MR. BACARISSE: Thank you.

24 What sort of society or group is this  
25 necessarily, do we know?

1 MS. QUINTERO: I don't know. I can find out  
2 for you. It's a fraternity.

3 MR. BACARISSE: Is it a social fraternity or is  
4 it like --

5 MS. QUINTERO: A social fraternity, I'm being  
6 told.

7 MR. BACARISSE: Great, okay, fantastic. Thank  
8 you. Just curious.

9 Any other questions, members?

10 (No response.)

11 MR. BACARISSE: Okay. And no public comment,  
12 so I would entertain a motion on agenda item 17, please.

13 MR. ALVARADO: I can make a motion.

14 MR. BACARISSE: Member Alvarado.

15 MR. ALVARADO: I move that the Board approve  
16 the specialty plate as presented by staff.

17 MR. BACARISSE: And is there a second?

18 MS. GILLMAN: I'll second.

19 MR. BACARISSE: Member Gillman, thank you.  
20 Any further discussion?

21 (No response.)

22 MR. BACARISSE: Hearing none, I'll call for the  
23 vote, please.

24 Member Alvarado?

25 MR. ALVARADO: Aye.



1 MR. BACARISSE: Member Gillman?

2 MS. GILLMAN: Aye.

3 MR. BACARISSE: Member Graham?

4 MR. GRAHAM: Aye.

5 MR. BACARISSE: Member McRae?

6 MS. McRAE: Aye.

7 MR. BACARISSE: Member Omumu?

8 MS. OMUMU: Aye.

9 MR. BACARISSE: Member Prewitt?

10 MR. PREWITT: Aye.

11 MR. BACARISSE: Member Schlosser?

12 MR. SCHLOSSER: Aye.

13 MR. BACARISSE: And member Bacarisse votes aye  
14 as well. It's unanimous.

15 Thank you, Ms. Quintero.

16 MS. QUINTERO: Thank you.

17 MR. BACARISSE: Agenda item 18 is Projects and  
18 Operations Committee. I know they're busy.

19 Chairman Prewitt, fill us in.

20 MR. PREWITT: Yes, sir.

21 All right. Thank you, Chairman Bacarisse,  
22 Executive Director Avitia, and members.

23 Yesterday, Vice Chair McRae, Members Alvarado,  
24 Gillman, Schlosser and I participated in the Projects and  
25 Operations Committee meeting and received wonderful

1 briefings from the department staff. There were no action  
2 items on the agenda.

3 Agenda item 18.A., Enterprise Projects,  
4 18.A.i., Camp Hubbard Renewal Project, which is a briefing  
5 only.

6 Dorothy Spearman, the department's facilities  
7 project manager, and Chief Financial Officer Glenna Bowman  
8 briefed the committee on the most recent activities  
9 related to the Camp Hubbard project. The financing  
10 agreements with the Texas Public Finance Agency are  
11 finalized and pending Office of the Attorney General  
12 approval. Marmon Mok Architects have completed the design  
13 and construction documents. The interior design and  
14 furniture selection will commence in late spring.

15 Constructing the new data center in CH-6 is a  
16 critical milestone in preparation for the new building.  
17 In reference to that, the Texas Facilities Commission has  
18 procured a contractor for the data center who will start  
19 build-out work in April.

20 Secondly, the Information Technology Services  
21 Division, ITSD, and Department of Information Resources,  
22 DIR, are on track with the underground fiber cable  
23 relocation planning. ITSD is in the contracting phase of  
24 moving the call center to the cloud before the data center  
25 move.

1           And finally, once construction of the new data  
2 center is complete, ITSD will require one month to set up  
3 the new equipment, test, then commission the new data  
4 center. Decommissioning is underway in Building CH-2,  
5 CH-3 and CH-5 and preparation for demolition immediately  
6 following the data center move from CH-5.

7           The Texas Facilities Commission is soliciting a  
8 construction manager at risk for the construction delivery  
9 method. Evaluation, negotiation and contracting should be  
10 complete in June. Pre-construction activities, including  
11 purchasing long lead-time equipment and work sequence  
12 scheduling will take less than a month.

13           The new building construction is expected to be  
14 completed in mid 2026, with demolition of CH-1 and final  
15 site work wrapping up in late 2026.

16           Ms. Spearman and Ms. Bowman are here to answer  
17 any questions on this item. Are there any questions?

18           MR. BACARISSE: Members, any questions on this  
19 briefing?

20           (No response.)

21           MR. BACARISSE: Thank you.

22           MR. PREWITT: Moving on, agenda item 18.A.ii.,  
23 HB 718 implementation.

24           Roland Luna, Sr., the department's deputy  
25 executive director, provided an update on House Bill 718

1 implementation. HB 718 will eliminate various paper tags  
2 and replace them with the metal license plates that will  
3 remain with the vehicle when sold or transferred. HB 718  
4 requires the department to adopt rules by December 1,  
5 2025, and requires dealers to use the department's  
6 webDEALER application to submit transactions starting July  
7 1, 2025.

8 Mr. Luna discussed how the agency created  
9 cross-divisional internal committees to identify, develop,  
10 and complete activities associated with the implementation  
11 of the metal plate.

12 Mr. Luna provided an update on the agency's  
13 activities related to the research and analysis of  
14 inventory management systems. He also updated the  
15 committee on the status of the three new plate designs:  
16 the dealer demo plate, the out-of-state buyer plate, and  
17 the temporary registration plate. He also gave a  
18 preliminary risk assessment that identified risks  
19 associated with current policies and procedures and  
20 recommended to eliminate and mitigate those risks.

21 Mr. Luna provided an update on the development  
22 of draft rules and described how the advisory committees  
23 have reviewed and provided feedback on draft rules. Mr.  
24 Luna explained the metal plate distribution models under  
25 evaluation by the department and the webDEALER training

1 efforts underway.

2 WebDEALER will be required on July 1, 2025, and  
3 the department has developed a robust training schedule to  
4 teach dealers how to sign up for webDEALER and how to use  
5 the application. Some of the training sessions have  
6 included joint training sessions in conjunction with tax  
7 assessor-collectors. The webDEALER training is provided  
8 in person and virtually, and staff have provided training  
9 to more than 400 dealers.

10 Lastly, the department has closely partnered  
11 with tax assessor-collectors, dealer associations and  
12 public safety officials to discuss, develop and execute  
13 various activities associated with the implementation of  
14 HB 718.

15 Mr. Luna is here to answer any questions on  
16 this item.

17 MR. BACARISSE: Great. Any questions, members,  
18 for Mr. Luna?

19 (No response.)

20 MR. BACARISSE: Okay. Thank you. Continue,  
21 please.

22 MR. PREWITT: Tremendous amount of work going  
23 on. Thank you, Roland.

24 Agenda item 18.A.iii., RSC expansions, moves  
25 and renovations.

1           Annette Quintero, the department's Vehicle  
2 Titles and Registration Division director, provided an  
3 update on RSC expansions, moves and renovations. The  
4 initial request for proposal for potential new locations  
5 in Dallas and Houston have been submitted to the Texas  
6 Facilities Commission and is undergoing the review process  
7 for posting by TFC.

8           The move being conducted in San Antonio is  
9 underway. Interior design specifications and furniture  
10 have been selected and order. Department staff have  
11 walked the location and met with TFC to discuss security  
12 needs at the new location, to include secured parking for  
13 staff and fleet vehicles. The contract was awarded on  
14 March 4, 2024, to Drash Contracting for the build-out of  
15 the new site.

16           The renovation project in Odessa is making  
17 significant progress. The interagency cooperation  
18 contract with the Texas Department of Transportation was  
19 finalized on March 19, 2024. A rebid for a renovation  
20 contractor was posted due to a shortage of bids received  
21 at initial posting.

22           Since then, new bids have been submitted and  
23 are currently being reviewed by TxDOT. The portable  
24 building the Odessa staff will move into while the brick-  
25 and-mortar building is being remodeled is currently being

1 cabled for installation of security devices. Planning and  
2 coordination for the move into the portable building are  
3 currently being developed.

4 Ms. Quintero is here to answer any questions on  
5 this item. Are there any questions?

6 (No response.)

7 MR. BACARISSE: Seeing none, continue, please.

8 MR. PREWITT: Agenda item 18.B.i, and ii.,  
9 Technology Projects. This is a briefing only.

10 Wendy Barron, the department's chief  
11 information officer, provided an update on the status of  
12 current active department technology projects. The update  
13 included a description and status update on the four high  
14 priority projects and initiatives overseen by the  
15 Information Technology Services Division, including the  
16 Tax Assessor-Collector T1 upgrade project.

17 Phases 1 and 2 are 93 percent complete with 222  
18 locations completed as of March 13. The team is working  
19 through various blockers for site requirements on the  
20 remaining 7 percent of the locations.

21 Phases 3 and 4 are underway. 39 of 98 orders  
22 are progressing. Some have been canceled due to special  
23 construction needs and 14 are completed.

24 The subsequent phases require alternative  
25 solutions and new quotes have been requested from vendors.

1 211 locations are being evaluated due to site  
2 requirements the counties are unable to meet, special  
3 construction costs or a monthly recurring cost that is too  
4 high.

5 Next, Motor Carrier Credentialing System  
6 rewrite. The project is currently in the procurement  
7 phase with the state of work was completed and distributed  
8 to potential respondents. Responses did not meet  
9 expectations, and an open market exemptions request was  
10 requested from the Department of Information Resources and  
11 granted. The final solicitation on this is being reviewed  
12 internally.

13 Next, the Texas International Registration  
14 Program upgrade. The project is in the execution phase  
15 and the application is 85 percent complete.  
16 Congratulations.

17 The Okta enterprise-wide integration, this is  
18 on access to our systems. The vendor has been selected  
19 and the kickoff meeting is complete. The architecture  
20 workshops are complete for end-scope applications,  
21 requirement gathering sessions are complete, and the  
22 project overall health is green, which is good. The  
23 project is on time, within scope, schedule and budget.

24 Ms. Barron is here to answer any questions on  
25 this item. Are there any questions?



1 MR. BACARISSE: Members, are there any  
2 questions for Ms. Barron?

3 (No response.)

4 MR. BACARISSE: No? Okay. Thank you. Please  
5 continue.

6 MR. PREWITT: Good work.

7 Next 18.B.iii., Credit Cards in the regional  
8 service centers.

9 Chris Hayden, the department's deputy chief  
10 financial officer, briefed the committee on the process of  
11 implementing an over-the-counter credit card payment  
12 process in each of the 16 regional service centers. Prior  
13 to this project, RSC locations only accepted cash, checks,  
14 and money orders for services provided to the public.

15 Texas DMV staff finalized programming and  
16 testing efforts in both the Registration and Titling  
17 System, RTS, and the Texas International Registration Plan  
18 System. Deploying the new applications was successful and  
19 the Austin RSC began offering a credit card payment option  
20 to customers in October. Six RSCs have gone live to date.

21 They are: Austin, Houston, Dallas, Fort Worth, Corpus  
22 Christi, and Pharr.

23 TxDMV staff plan to deploy credit card  
24 capabilities to the remaining RSC locations through fiscal  
25 year 2024 at the rate of two per month, except for San

1 Antonio, Midland-Odessa. Those two RSCs are being  
2 renovated and implementation will be dependent on the  
3 construction schedules. The additional RSCs in Dallas and  
4 Houston will be completed when the new offices are opened.

5 Mr. Hayden is here to answer any questions on  
6 this item.

7 MR. BACARISSE: Members, any questions?

8 (No response.)

9 MR. BACARISSE: No. Please continue.

10 MR. PREWITT: Thank you, sir.

11 13.B.iv., Accounts Receivables project.

12 Eric Horn, the department's director of  
13 accounting, briefed the committee on the progress of the  
14 accounts receivable, AR system. Following the selection  
15 of Microsoft Dynamics 365 Business Central as the platform  
16 for the system, staff of the Finance and Operations  
17 Division and Information Technology Services Division  
18 collaborated with the Department of Information Resources  
19 to initiate the procurement process.

20 The procurement process was divided into two  
21 steps: software licenses and a contract for development  
22 and implementation. TxDMV staff procured the software and  
23 then drafted a statement of work for the implementation of  
24 the AR system in accordance with the DIR's process. After  
25 negotiations with the selected vendor, DIR provided final

1 approval for the project to begin in March 2024.

2 A project kickoff meeting commenced on March 18  
3 and TxDMV staff are currently engaged in the define and  
4 design phase of the project. This phase is expected to be  
5 completed in May of 2024 and will result in a business  
6 requirements document, along with a detailed project plan  
7 that includes both functional and technical designs.

8 Upon agreement and acceptance of these  
9 deliverables, the vendor will begin developing the system  
10 over the remainder of the calendar year. A production  
11 deployment of the new AR system is expected in January  
12 2025, with transition and project closing activities  
13 occurring through April 2025.

14 Mr. Horn is here to answer any questions on  
15 this item.

16 MR. BACARISSE: Members, any questions?

17 (No response.)

18 MR. BACARISSE: Everybody is getting off, John.

19 MR. PREWITT: I tell ya. Well, just in a  
20 closing note, Mr. Chairman, the work that's going on, both  
21 in scope and depth, is amazing. And we're fortunate to  
22 have the team that's up to the challenge and doing the  
23 great work.

24 So thank you to all the Texas DMV employees who  
25 are doing that. Thank you.

1 MR. BACARISSE: Indeed. Thank you, Mr.  
2 Chairman of Projects and Operations. Lots happening.

3 I will now turn to agenda item 19, Finance and  
4 Audit. And I think we'll hear from John Ralston first on  
5 the semi-annual financial audit report.

6 John, good afternoon.

7 MR. RALSTON: Good afternoon, Chairman  
8 Bacarisse, Board members, and Executive Director Avitia.  
9 For the record, my name is John Ralston, and I'm the  
10 Budget and Forecasting director for the Finance and  
11 Operations Division.

12 In your Board materials, starting on page 843,  
13 is item 19.A and this is our semi-annual financial report.

14 This report provides financial information for the period  
15 from September 1, 2023, through February 29, 2024, or the  
16 first six months of our fiscal year 2024. The report  
17 contains information on projected and actual revenues, as  
18 well as budgeted and actual expenditures for the fiscal  
19 year. It also includes a standalone report for TxDMV Fund  
20 10 and information on selected statistics that may have an  
21 impact on revenues.

22 The key highlights from the report that I bring  
23 to your attention -- I'll start with revenues. TxDMV  
24 collected \$986.9 million in revenue in all funds through  
25 February 29, 2024, and that is a 3.4 percent increase over

1 collections for the same time period in February of 2023.

2 The increase is attributable to growth in most  
3 categories, with only motor carrier credentialing and  
4 motor vehicle business licenses showing slight decreases  
5 year over year. The 3.4 percent increase in all fund  
6 collections matches what we had projected at the beginning  
7 of the fiscal year, so we are right where we expected to  
8 be in terms of revenues for all funds.

9 If I narrow my focus to Fund 10, TxDMV Fund 10  
10 revenue collections total \$90.4 million through February.

11 That's a 2.0 percent increase compared to the same time  
12 period of February 2023, and this too matches our  
13 projections from where we thought we'd be at the end of  
14 February. The TxDMV Fund 10 is the fund that covers all  
15 TxDMV operations with the exception of the Motor Vehicle  
16 Crime Prevention Authority.

17 The TxDMV Fund 10 revenue growth reflects  
18 slight growth in registration revenue, a growth in  
19 interest earnings due to higher interest rates on the fund  
20 balance, and a decrease in motor vehicle business license  
21 revenue due the implementation of enhanced pre-licensing  
22 checks conducted by TxDMV.

23 On the expenditure side, total expenditures as  
24 of February 29 were \$78.4 million for all funds. Of that  
25 total, \$78.0 million is within the TxDMV Fund 10, and the

1 remaining expenditures are funded by the General Revenue  
2 fund for the Motor Vehicle Crime Prevention Authority.

3 Our major cost drivers for the first six  
4 months, which are standard for most years, is payroll,  
5 postage, license plate production, and charges for data  
6 center services.

7 Overall during the first six months of FY24,  
8 the department collected sufficient revenue to support its  
9 operations and year-to-date actual expenditures. There  
10 were no surprises from a financial standpoint through the  
11 first six months, and we anticipate that the growth in  
12 revenues will continue through the second six months of  
13 FY24 and cover anticipated expenditures.

14 The last item to bring to your attention is  
15 just My Plates information. The current specialty plates  
16 marketing contract began on November 19, 2019, and runs  
17 through December 31, 2025. As of February 29, 2024, the  
18 deposits to the General Revenue fund related to the  
19 current My Plates contract totaled \$94.8 million. Of that  
20 amount, \$42.3 million counts toward the \$25 million  
21 contract guarantee which has now been met.

22 Overall, the department continues to maintain  
23 its strong financial position.

24 This concludes my formal remarks, and I'm  
25 available to answer any questions that you may have.

1 MR. BACARISSE: Thank you, Mr. Ralston.

2 Members, any questions on this item?

3 (No response.)

4 MR. BACARISSE: That's great. I'm glad you all  
5 were good forecasters. Thank you, John. Good job.

6 Now we'll move to the Internal Audit Division  
7 status update, and we have Mr. Chuah. Salem is with us.

8 Good afternoon.

9 MR. CHUAH: Good afternoon, Chairman Bacarisse,  
10 Board members, Executive Director Avitia. For the record,  
11 I'm Salem Chuah, the director of the Internal Audit  
12 Division for the department.

13 Item 19.B is a briefing item to provide you  
14 with information on the Internal Audit Division's current  
15 activities.

16 We continue to work on two audits. The first  
17 is the investigation processes audit, which is now in the  
18 field work phase. We've reviewed standard operating  
19 procedures, interviewed investigators and attorneys, and  
20 developed flow charts to understand the complaint intake  
21 and review process.

22 Some of the questions we want to answer in this  
23 audit include: were complaints assigned the appropriate  
24 priority levels; how timely are the investigations  
25 conducted; do case notes include all required information;

1 and do team members with access to eLICENSING, which is  
2 the case management system, have the appropriate access  
3 assigned.

4 The second audit is the inventory management  
5 audit, which is nearing the end of planning and should  
6 move into field work next week. We have interviewed team  
7 members from various divisions, attended a walk-through of  
8 inventory counts by compliance specialists, and analyzed  
9 equipment by location. We will be reviewing the  
10 receiving, monitoring and reporting areas for equipment on  
11 this audit.

12 We anticipate completing both of these audits  
13 by the end of summer.

14 On administrative items, we awarded a contract  
15 to Weaver & Tidwell for performance and information  
16 technology audit and advisory services. We evaluated a  
17 total of seven firms who responded to the department's  
18 request for qualifications. The contract allows for a  
19 potential contract term of five years and was needed  
20 because our previous contract for these services expired  
21 in August of last year.

22 I want to thank the evaluators and team members  
23 from the purchasing unit and the Office of General Counsel  
24 for assisting us with this contracting process.

25 This concludes my updates. I'm happy to answer



1 any questions

2 MR. BACARISSE: Thank you, Mr. Chuah.

3 Members, any questions on these Internal Audit  
4 activities?

5 (No response.)

6 MR. BACARISSE: Good. Thank you very much for  
7 your report.

8 Before we go into agenda item 20, which is a  
9 closed session, I wanted to mention that agenda item 22 is  
10 public comment, and I just want to see if anyone has  
11 signed up under that agenda item.

12 MS. MORIATY: No, sir. There is no public  
13 comment.

14 MR. BACARISSE: Okay, very good.

15 So at this point we will go back to agenda item  
16 number 20, Closed Session. We are now taking that up.

17 We're going to go into closed session. It is  
18 now 2:22 in the afternoon on April 11, 2024, and we'll go  
19 into closed session under Texas Government Code Sections  
20 551.071, 551.074, 551.076 and 551.089.

21 For those of you in the audience, I anticipate  
22 being in closed session for approximately an hour. We'll  
23 reconvene in open session after that if anyone is left.

24 With that, we are now recessed from the public  
25 meeting and we're going into closed session.

1 (Whereupon, at 2:22 p.m., the meeting was  
2 recessed, to reconvene this same day, Thursday, April 11,  
3 2024, following conclusion of the closed session.)

4 MR. BACARISSE: It is now 3:14 p.m., and the  
5 Board of the Texas DMV is now back in open session.

6 The Board will now take up agenda item number  
7 21, Action Items from Closed Session.

8 There are no public comments on this, I'm  
9 certain. Right? I don't think so.

10 MS. MORIATY: No, sir, there are no public  
11 comments.

12 MR. BACARISSE: Okay. And we took no action in  
13 closed session, did we?

14 MS. MORIATY: You best not have.

15 MR. BACARISSE: Yeah, I don't think so. You  
16 were there.

17 MS. MORIATY: I didn't see any.

18 MR. BACARISSE: Okay, good, good.

19 At this point then, I would entertain a motion  
20 regarding item 21 which is -- is that adjournment? No,  
21 sorry.

22 Agenda item 23 is adjournment, so I think we  
23 can move to agenda item 23 which is adjournment.

24 MS. MORIATY: Sorry, Chairman. You have to  
25 vote because you took no action.

1 MR. GRAHAM: Mr. Chairman, I have a motion on  
2 agenda item 21 --

3 MR. BACARISSE: I've got to get to it. Sorry.

4 MR. GRAHAM: That's okay.

5 MR. BACARISSE: So item 21, do you have a  
6 motion, Member Graham?

7 MR. GRAHAM: Yes, sir, yes, sir. Mr. Chairman,  
8 I move the Board approve the combined evaluation for the  
9 Internal Auditor from our executive session. I also move  
10 that the Board authorize department staff to take the  
11 steps necessary to implement and record the evaluation.

12 MR. BACARISSE: All right. That is a motion  
13 from Member Graham. Is there a second?

14 MR. PREWITT: Second.

15 MR. BACARISSE: And that's Member Prewitt. Is  
16 there any discussion?

17 (No response.)

18 MR. BACARISSE: So I'll call for the vote on  
19 that item.

20 Member Alvarado is absent.

21 MR. BACARISSE: Member Gillman?

22 MS. GILLMAN: Aye.

23 MR. BACARISSE: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. BACARISSE: Member McRae?

1 MS. McRAE: Aye.

2 MR. BACARISSE: Member Omumu?

3 MS. OMUMU: Aye.

4 MR. BACARISSE: Member Prewitt?

5 MR. PREWITT: Aye.

6 MR. BACARISSE: Member Schlosser?

7 MR. SCHLOSSER: Aye.

8 MR. BACARISSE: And I, Chair Bacarisse, vote  
9 aye as well. It's unanimous.

10 Now we can move to agenda item number 22, which  
11 is public comment. There is none.

12 Agenda item number 23 is adjournment. Is there  
13 a motion to adjourn?

14 MS. McRAE: I move.

15 MS. GILLMAN: Second.

16 MR. BACARISSE: Motion by Member McRae, second  
17 by Gillman. We are adjourned and it is 3:17.

18 Thank y'all.

19 (Whereupon, at 3:17 p.m., the meeting was  
20 adjourned.)

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MEETING OF: TxDMV Board  
LOCATION: Austin, Texas  
DATE: April 11, 2024

I do hereby certify that the foregoing pages,  
numbers 1 through 165, inclusive, are the true, accurate,  
and complete transcript prepared from the verbal recording  
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Texas Department of Motor Vehicles.

DATE: April 24, 2024

/s/ Nancy H. King  
(Transcriber)

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