

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

OPEN MEETING VIA WEBEX

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

Tuesday,
June 25, 2024
9:00 a.m.

COMMITTEE MEMBERS:

David Blassingame, Presiding Officer
Michael Bradburn, Sr., 1st Vice Chair
Trey Sralla, 2nd Vice Chair
Christopher Donnelly
Laird Doran
Thomas Durant
Paul Elam
Lloyd "Buddy" Ferguson
Julio Gonzalez (absent)
Tony Hall (absent)
Russell Hayter
Charles Hicks
William Murphy
Stephen Prather, Sr. (absent)
Michael Provost (absent)
Franklin Sims (absent)
Scott Stark
Mike Sullivan
Kalien Thomas (absent)
Jimmy Vitela (absent)

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. CALL TO ORDER	
A. Roll Call and Establishment of Quorum	3
2. DISCUSSION, BRIEFING, AND ACTION ITEMS	
A. Discuss Texas Automobile Dealers Association (TADA) Rulemaking Petition to Adopt New Rules to Define "Reasonable Quantity" and "Reasonable Time" in Occupations Code, §2301.452(a) (BRIEFING AND DISCUSSION ONLY)	8
B. Consider Rule Amendments to 43 TAC Chapter 215, Motor Vehicle Distribution; §215.245, Availability of Motor Vehicles (DISCUSSION AND ACTION ITEM)	93
C. Recommendations of Advisory Committee for Presentation to the Board on Texas Automobile Dealers Association (TADA) Rulemaking Petition; and Amendments to 43 TAC Chapter 215, Motor Vehicle Distribution; §215.245, Availability of Motor Vehicles (DISCUSSION AND ACTION ITEM)	109
3. PUBLIC COMMENT	(none)
4. ADJOURNMENT	127

P R O C E E D I N G

1
2 MR. BLASSINGAME: It is 9:06 a.m., and I am now
3 calling this MVIRAC meeting for June 25, 2024, to order.

4 I want to note for the record that the public notice of
5 this meeting containing all items on the agenda was filed
6 with the Office of Secretary of State on June 17, 2024.

7 This meeting is being held by telephone
8 conference call in accordance with the Texas Government
9 Code, Section 551.125. Members of the public may attend
10 this meeting in person at 4000 Jackson Avenue, Building 1,
11 Lone Star Conference Room, Austin, Texas, 78731.

12 Also, members of the public may attend this
13 meeting by clicking on the Webex link in the posted agenda
14 for this meeting and following the instructions to attend
15 the meeting via Webex. In addition, members of the public
16 may attend this meeting remotely by calling the toll-free
17 telephone number, which is listed on the posted agenda for
18 this meeting, along with the access code.

19 We have how many members?

20 MR. RICHARDS: Seven total.

21 MR. BLASSINGAME: We have seven members in
22 person, because a vast majority of Advisory Committee
23 participating remotely. At this time, I am asking all
24 attendants to please mute your phones for the entire
25 duration of this meeting unless I recognize you to speak.

1 I am asking our meeting host to make sure all
2 participants' phones are muted, except for Advisory
3 Committee members and those who are presenting. Callers
4 will be removed for any disruption, including background
5 noise.

6 I would like to remind all participants that
7 this is a conference call meeting. Because this meeting
8 is being held by conference call, there are a few things
9 that will assist in making the meeting run smoother and
10 assist the court reporter in getting an accurate record.

11 Please identify yourself before speaking.
12 Speak clearly and slowly. Remember that there may be a
13 slight delay due to the conference call format. So please
14 wait a little longer than usual before responding to
15 participants.

16 Do not speak over others. Please ask the
17 presiding officer to proceed to be sure to get recognized
18 before speaking. And for members participating in the
19 room, please remember to press the button on your
20 microphone to unmute it before speaking, then press the
21 same button again after speaking.

22 I would like to also thank our court reporter
23 who is transcribing this meeting.

24 If you are not a member of this Advisory
25 Committee but wish to address the Advisory Committee or

1 speak on an agenda item during today's meeting, please
2 complete the speaker sheet at the registration table prior
3 to the agenda item being taken up by the Advisory
4 Committee, or send an email to gco_general@txdmv.gov to
5 register by providing the required information prior to
6 the agenda item being taken up by the Advisory Committee.

7 Please advise if you are interested in
8 commenting on, your name and address, and whether you are
9 representing anyone or speaking for yourself. If your
10 comment does not pertain to a specific agenda item, we
11 will take your comment during the general public comment
12 portion of the meeting. When addressing the Advisory
13 Committee, please state your name and affiliation for the
14 record.

15 Before we begin today, I'd like to remind
16 presenters and those in attendance of the rules of conduct
17 at our Advisory Committee meetings.

18 I have the authority to supervise the conduct
19 of this Advisory Committee meeting. This includes the
20 authority to determine when a speaker is being disruptive.

21 Disruptive speakers will be muted, given a warning about
22 disruptive behavior, then removed from the meeting for any
23 continued disruption.

24 Advisory Committee members, if you become
25 disconnected from the call, please rejoin as soon as

1 possible. If you encounter technical difficulties, please
2 reach out to the Technical Support Team at
3 board.tech.help@txdmv.gov.

4 And now I'd like to have a roll call of the
5 Advisory Committee members. Please respond verbally when
6 I call your name. Please indicate if you are present.

7 Member Bradburn?

8 MR. BRADBURN: Member Bradburn present.

9 MR. BLASSINGAME: Member Donnelly?

10 MR. DONNELLY: Member Donnelly present.

11 MR. BLASSINGAME: Member Doran?

12 MR. DORAN: Member Doran present.

13 MR. BLASSINGAME: Member Durant?

14 MR. DURANT: Member Durant present.

15 MR. BLASSINGAME: Member Elam?

16 MR. ELAM: Member Elam present.

17 MR. BLASSINGAME: Member Ferguson?

18 MR. FERGUSON: Member Ferguson present.

19 MR. BLASSINGAME: Member Gonzalez?

20 (No response.)

21 MR. BLASSINGAME: Member Gonzalez? Member

22 Hall?

23 (No response.)

24 MR. BLASSINGAME: Member Hall?

25 (No response.)

1 MR. BLASSINGAME: Member Hayter?
2 MR. HAYTER: Member Hayter present.
3 MR. BLASSINGAME: Member Hicks?
4 (No response.)
5 MR. BLASSINGAME: Member Murphy?
6 MR. MURPHY: Member Murphy present.
7 MR. BLASSINGAME: Member Prather, Sr.?
8 (No response.)
9 MR. BLASSINGAME: Member Prather, Sr.? Member
10 Provost?
11 (No response.)
12 MR. BLASSINGAME: Member Provost? Member Sims?
13 (No response.)
14 MR. BLASSINGAME: Member Sims? Member Sralla?
15 (No audible response.)
16 MR. BLASSINGAME: Member Sralla? Member Stark?
17 (No audible response.)
18 MR. BLASSINGAME: Member Stark? Member
19 Sullivan?
20 MR. SULLIVAN: Member Sullivan present.
21 MR. BLASSINGAME: Member Thomas?
22 (No response.)
23 MR. BLASSINGAME: Member Thomas? Member
24 Vitela?
25 (No response.)

1 MR. BLASSINGAME: Member Vitela? And I, David
2 Blassingame, are present too. We have a quorum.

3 The purpose of this Committee is to assist the
4 Department in obtaining feedback regarding important
5 legislation, policymaking and rulemaking. The MVIRAC
6 provides valuable input for the Department by advising on
7 issues related to regulations of the motor vehicle
8 industry.

9 Members, I would like to move on to Agenda Item
10 2.A. and turn the meeting over to Monique Johnston,
11 Director of the Motor Vehicle Division, to discuss the
12 Texas Automobile Dealers Association's Rulemaking Petition
13 to adopt the new rules to define "reasonable quantity" and
14 "reasonable time" in Occupations Code, 2301.452.

15 MS. JOHNSTON: Thank you, Chair. Monique
16 Johnston, Director of the Motor Vehicle Division. Today,
17 the Texas Department of Motor Vehicles is presenting to
18 you a petition for rulemaking that was received from the
19 Texas Automobile Dealers Association, or TADA.

20 In the petition, they are requesting that the
21 Department further clarify and define in rule "reasonable
22 quantity" and "reasonable time," under Texas Occupations
23 Code 2301.452. To help facilitate this discussion, the
24 Department had put together specific questions that were
25 provided to the Committee in advance and have also been

1 included as part of the public meeting materials.

2 So I think we suggest that go through these
3 questions and get everyone's feedback for the questions,
4 and then we can open up the floor for other comments and
5 feedback on the specific rule petition. So is that format
6 okay with you?

7 MR. BLASSINGAME: Yes, ma'am.

8 MS. JOHNSTON: Okay. So we will get started on
9 the questions that were included as part of the public
10 materials. The first question for just further
11 clarification, in order to draft proposed rules, would be:
12 what inventory allocation methods or strategies do
13 manufacturers and distributors use in Texas?

14 So I will open up the floor to any comment or
15 feedback to that question.

16 MR. HICKS: This is Member Hicks. Look to be
17 recognized.

18 MR. BLASSINGAME: Member Hicks, you're
19 recognized.

20 MR. HICKS: Thank you, sir. The, you know,
21 primary allocation method is turn and earn in Texas, where
22 dealers are allocated models and then those models are
23 sold and they -- and by selling and retailing those
24 vehicles, they earn replacement vehicles with the
25 manufacturer.

1 Beyond that system, there's also a supplemental
2 allocation method which manufacturers use to allocate
3 vehicles to dealers for certain events like buy/sells. If
4 a dealership is sold to another entity or new buyer,
5 oftentimes, they're allocated additional or supplemental
6 allocations.

7 And then the third method would be regional
8 hold where some manufacturers hold a percentage of their
9 total availability back to be able to allocate that to
10 dealers at their discretion. So those are the three
11 primary allocation methodologies used in Texas.

12 MS. JOHNSTON: Any other comments or questions
13 on that -- on this first question?

14 MR. DORAN: This is Member Doran. May I be
15 recognized?

16 MR. BLASSINGAME: Member Doran, you're
17 recognized.

18 MR. DORAN: Thank you. So I agree with the
19 other member in terms of the allocation methods. Turn and
20 earn is kind of a bit of a broad term for how
21 manufacturers, you know -- the various allocation systems
22 that we're talking about.

23 One of the more popular ones is balanced day's
24 supply, which essentially looks at how many vehicles the
25 dealer has in inventory versus their rate of sales. And

1 so if you think about -- this is how I would describe it
2 to somebody who's not in the motor vehicle industry.

3 If you think about Mrs. Baird's bread, right,
4 and they have a truck and they're going around and they're
5 delivering bread to the different bakeries. They're going
6 to go by the first bakery, and that bakery only has one
7 loaf of bread left on the shelf, okay? They believe that
8 bread is going to get sold that day, so the Mrs. Baird's
9 bread truck gives them another loaf of bread so that they
10 can get through business the next day.

11 That Mrs. Baird's bread truck then goes to the
12 next bakery. That bakery has five loaves of bread on the
13 shelf. They don't need another loaf of bread for
14 tomorrow, until they start selling the loaves on the
15 shelf.

16 And that's essentially what balanced day's
17 supply as an allocation method does. It ensures that
18 there is alignment based on market forces between the
19 inventory that the manufacturer/distributor has, versus
20 the sales rate at those particular dealerships. And now,
21 in addition to balanced -- the one I just described,
22 balanced day's supply, there's usually a discretionary
23 component, and the other member was alluding to that
24 earlier. That is a small percentage of the overall
25 allocation that a manufacturer/distributor has to allocate

1 to the dealers.

2 It's a very important component because I
3 believe the prior member mentioned buy-sells. That is a
4 situation where the manufacturer/distributor would want to
5 make sure that at the time that that dealership changed
6 hands or if there was a new dealership opening up an open
7 point, that they have a sufficient level of inventory to
8 meet their initial needs, right, that's reflective of what
9 the demand is in the market.

10 So the manufacturer/distributor would take from
11 the bucket of discretionary allocation and would use that
12 to help that dealer launch, if you will, in the market.
13 That discretionary bucket would also be used in other
14 situations. For example, when there is a natural
15 disaster, a weather issue, a wildfire in west Texas, a
16 hurricane in the coast, a hailstorm in north Texas, where
17 a dealer's inventory is damaged or destroyed, this allows
18 the manufacturer/distributor to surge inventory to that
19 dealer that is in need.

20 Now, if that discretionary allocation is not
21 utilized, it goes back into the overall allocation system.

22 And it is not necessarily utilized in every allocation
23 cycle, but it's good to know that it's there, should you
24 need it.

25 In addition to those examples I just gave, I

1 think as we've seen in some of the cases that have come
2 before the Board, different manufacturers and distributors
3 will have different programs where a dealer can earn
4 additional inventory if they choose to participate in
5 those voluntary programs. That could be a loaner car
6 program where the dealer has decided that they want to
7 participate by utilizing the manufacturer/distributor's
8 vehicles as loaner vehicles at the dealership. It could
9 also be a couple of other examples I'm thinking about
10 here.

11 But if there's a facility upgrade where that
12 management -- where the dealer has decided to upgrade
13 their facility, maybe they've decided to remodel it,
14 expand it. There's usually a formula that the
15 manufacturer or distributor utilizes to ensure that that
16 dealer now has additional inventory for a reasonable
17 period of time to help cover the additional costs that
18 they've incurred by giving them more inventory to sell to
19 generate revenue to support that additional expense that
20 they're now carrying.

21 And those are very popular programs. Those are
22 very important programs. And I'll be very frank and
23 honest here. We are extremely worried that those programs
24 are at risk based on this rule.

25 We think that this rule would essentially

1 remove the free market principles and
2 substitute those with a system where underperforming
3 dealers are rewarded with additional inventory at the
4 expense of strong-performing dealers. And that is -- and
5 that's why all these people are in this room today,
6 actually, that I believe you'll hear from during the
7 public comment period -- is because we have the second-
8 largest new motor vehicle market in the country, and we
9 believe that is at risk with this rule.

10 Now, how is it at risk? Let me walk you
11 through a very -- I'm not a numbers guy. That's why I
12 went into law. So I'll use some easy numbers here,
13 because this is how I wrap my head around it.

14 You're going to hear the term "sales
15 efficiency" today. That's really looking at what
16 opportunity exists in the market, right? Average sales
17 performance against all other brands in your backyard.

18 That's what the manufacturer is looking at to
19 sort of evaluate, how is that dealer doing? Are they
20 advertising enough? Are they taking care of their
21 customers? Are they being aggressive enough?

22 Sales efficiency is not tied to vehicle
23 allocation. It's a little disingenuous to try and marry
24 those two things up. So the example I want to give is,
25 let's say, you -- the management wants the dealer to be

1 what we call sales-efficient -- usually that means 100
2 sales-efficient.

3 That is what we call a C grade. It means
4 you're passing. You're average dealer. And let's say, to
5 reach that sales efficiency standard, you need to sell 100
6 vehicles a month.

7 This particular dealer in this example -- let's
8 say they're in Odessa, Texas. They're only selling 50
9 vehicles a month currently. Now, that could be the result
10 of many things.

11 Maybe it's the management. Maybe they're
12 focusing on another brand. Maybe they don't have the
13 inventory, right? But nevertheless, they're only selling
14 50 and their sales efficiency standard is 100.

15 What this rule would essentially do is require
16 the management, irrespective of their sales performance,
17 to have to give them an additional 50 vehicles per month.

18 Now, where are those vehicles going to come from?
19 Because there's a finite number of vehicles.

20 Those vehicles are going to be taken out of the
21 allocation that otherwise would have gone to the strong-
22 performing dealers that are at 150 percent sales
23 efficiency, right? Sometimes -- I don't want to pick
24 names, but that could be a high-volume metro store or it
25 could be a very strong-performing rural store.

1 But in any event, you're talking about a scarce
2 commodity here. And in order to supply these dealers that
3 are performing at the low C average, you're going to have
4 to take inventory from the good-performing dealers and
5 redistribute it.

6 So this is, without a doubt, in my mind, the
7 most anti-competitive proposed rule that we've seen this
8 agency discuss. It's like you're injecting a little bit
9 of socialism right into the dealer franchise model. We
10 think that would place the consumer, the good-performing
11 dealers, and the State at a huge disadvantage.

12 Thank you.

13 MR. BLASSINGAME: [Inaudible], do you wish to
14 comment? Member Elam, do you wish to comment?

15 MR. ELAM: Yes. Member Elam.

16 MR. BLASSINGAME: You're recognized.

17 MR. ELAM: Very well. I just wanted to say
18 that the RV industry is not nearly as sophisticated as
19 those that have been outlined in those two commentaries,
20 but -- and we wish that in some way that we were.
21 Unfortunately for our dealers, the inventory levels are
22 pretty much controlled by the franchise agreements that
23 are negotiated at the manufacturer level.

24 Because our inventory's annual sales in a good
25 year 60,000 units, as compared to, say, 1.2 million in

1 automobile and light trucks -- just pales in comparison.
2 Therefore, our demands are less. However, we do see an
3 advantage to anything that might improve the situation for
4 the franchise dealer in allocations.

5 So I don't see the anti-competitive nature of
6 this, but at the same time, my industry is a little
7 different, obviously. So those are my comments at this
8 time. Thank you.

9 MR. BLASSINGAME: Thank you, Member Elam.

10 Member Durant, do you have a comment?

11 MR. DURANT: Yes. We're still discussing the
12 turn-and-earn system of allocation, and I'd like to make a
13 few comments on that. One of the things I've noticed in
14 the turn-and-earn allocation during the COVID pandemic,
15 while we had decreased supply, and during these recent
16 labor stoppages, is that there has been a death spiral
17 under the traditional turn-and-earn algorithm.

18 Now, I'll use Member Laird's very eloquent
19 explanation of how this works, and say we had that same
20 Odessa dealership that's set to sell -- or it's got a goal
21 of selling 100 vehicles. It currently has 50 in stock.
22 During the pandemic, what we saw happen is maybe it was
23 selling those 100 vehicles a month, but you know, it had
24 reduced supply.

25 And so in month 2, it only had 70 vehicles in

1 stock available to sell. So it sold half of those, and in
2 month 3, it only had about 37 in stock. And it could --
3 it got enough orders to top it up to 50 total. Well, it
4 sold half that, and in month 4 now, it's at 25 vehicles
5 left in stock.

6 And you know, it got another 15, so it had 40.

7 And then we keep going, and as you follow the math,
8 there's just a spiral because of its performance. Each
9 month not selling its entire inventory, it's not able to
10 replace.

11 And now here we are at the end of the pandemic,
12 and if you drive down the streets, what you see is this
13 death spiral has had a crippling effect on the auto
14 industry. There's some dealers, some in my group,
15 oversupplied to the point of turning inventory away,
16 whereas dealers down the street have almost nothing to
17 sell and can't compete.

18 I think establishing some sort of minimum level
19 would have very little impact on some of the very good
20 OEMs and distributors who address this in their algorithm
21 already, some of the ones that don't need some sort of
22 minimum guidance on how a dealership should be stocked.
23 Because once you're down to only stocking 10 vehicles in a
24 given month, getting back to where you can sell 100 in a
25 given month is a very difficult challenge.

1 And dealers in that position are having to buy,
2 borrow and steal just to get enough sales into the
3 algorithm to prove that they should be able to stock more
4 vehicles and get more orders in.

5 MR. BLASSINGAME: Thank you, Member Durant.
6 Member Stark, do you have a comment?

7 MR. STARK: I apologize for the lack of camera.
8 Technical issues this morning.

9 I'd like to refer to the opening statement. I
10 think that it had a lot of very good content in it,
11 although obviously there's some things that I disagree
12 with. In his opening statement, he said that there are
13 additional allocations for a reasonable period of time,
14 and I agree with that. Certainly, we have participated in
15 facility programs over the time, but they have a very
16 definitive beginning and a very definitive end.

17 Unfortunately, I think you have some
18 manufacturers that are now trying to make that permanent.

19 And to Member Durant's comment, when you make that
20 permanent, it's simply a function of math. If you give me
21 100 and I sell 50, and you determine on that 50 that I
22 need 75, and you determine on that 75, I need 35, you
23 really allow a manufacturer to remove the very lifeblood
24 of the dealership, which is the allocation.

25 There has to be some way to verify that that

1 dealership has the capacity to meet minimum requirements.

2 I think it's important to remember that these allocation
3 systems also do not operate in a vacuum. They are tied to
4 bonus programs.

5 They are tied to revenue programs. They are
6 tied to customer satisfaction programs. And as you start
7 to eliminate that allocation, you eliminate that dealer's
8 ability to acquire those certain goals, which limits your
9 ability to reinvest and try and grow your business.

10 I think it is -- very specifically would hurt
11 smaller market dealers. I think another thing that's not
12 mentioned, by oversimplification, is that model mix plays
13 a huge role in the rate of sale. I'll give you a really,
14 very reasonable example.

15 If you say that, well, you need 250 loaves of
16 bread on the shelf -- well, 250 EVs, as opposed to 250
17 SUVs have a significantly different rate of return on a
18 car lot. So if you don't segment it by specifically model
19 mix, and every manufacturer keeps track of day supply and
20 faster moving inventory -- and then the question again
21 remains, if you have a dealer that, for whatever reason,
22 perhaps a natural disaster, perhaps a downturn in the
23 market, perhaps elevated interest rates -- not every
24 market has the same creditworthy consumer.

25 So some people are more impacted by the current

1 rates than others have been. It depends on median income
2 in that particular market. How does that dealer get back
3 into a competitive mindset if the inventory is continually
4 diminished?

5 So you know, I think -- again, I'll reiterate.
6 I think there has to be a floor. I think there has to be
7 a requirement that these dealers have the opportunity to
8 be competitive not only in the market, but in each
9 segment.

10 If you don't do that, I think you start to
11 eliminate the service provided, broadly. And then that's
12 all I have for now.

13 MR. BLASSINGAME: Thank you, Member Stark.

14 Member --

15 MR. FERGUSON: Mr. Chairman, Member Ferguson.

16 May I speak?

17 MR. BLASSINGAME: Mr. Ferguson, speak.

18 MR. FERGUSON: Thank you. I think we need to
19 be careful. I appreciate what has been said by everyone.

20 I think we have to be careful that we don't try
21 to set up a rule when we're just coming out of something
22 that we haven't seen in 100 years, a pandemic, supply
23 chain disruptions, and all that. And we could develop a
24 model to address those issues, but they may not come back
25 up for another 100 years, and now we're stuck with

1 something that we put in place for something that hadn't
2 occurred in our lifetimes before.

3 So I think we need to have a caution about
4 that. The thing that disturbs me about this rule -- and I
5 represent a lot of manufacturers for 30-something years.
6 Manufacturers aren't perfect.

7 Dealers aren't perfect, okay? Let me get that
8 out on the table. But allocation systems have a way of
9 rewarding dealers for retail sales. They don't reward you
10 for wholesale.

11 If I'm a dealer and I get 100 cars because some
12 minimum sales goal says I have to sell 100 that month, and
13 I'm only really ramped up to sell 25, I can take those 75
14 and go to Member Durant and say, hey, how would you like
15 to buy a car from me wholesale? And I'm going to make
16 money on that deal, and he's going to pay me more than the
17 wholesale price.

18 And then that wholesale price plus that he had
19 to pay is either going to come out of his pocket, the
20 consumer's pocket, or both, and it's going to create
21 inefficiencies in the system. Because I'm going sit there
22 and keep selling my 25, holding out for gross or above-
23 average gross, and the consumer is going to suffer for it.

24 Because the next month, when I have another
25 sales goal of 100, I'm going to get another 100, and I'm

1 going to wholesale those 75 again. Why? Because it's
2 economically beneficial to me to do that.

3 Under an allocation system, I don't get points
4 or rewarded for wholesaling vehicles. I can wholesale a
5 vehicle, say, to Mr. Sullivan here, one to one. Hey, I've
6 got this. I see you have that.

7 Would you trade? Sure, let's trade. And then
8 we both go sell, and we both have retailed vehicle to
9 other consumers.

10 But to set up a system where we have to keep
11 feeding a dealer who has no desire or does not have a
12 system that is designed to retail vehicles is simply
13 setting up a mini-distributor. And you will have a
14 dealer -- some dealers will do that. We've seen it in
15 cases that have settled.

16 You get X number of cars, okay. But the minute
17 you say that you can't wholesale these cars, suddenly
18 they're like, well, I don't know that I want those cars.
19 Because they never had the intention of trying to sell
20 them to the public.

21 Now, is that every dealer? No. But that's
22 what this rule will allow. It will create an inefficiency
23 in the distribution system, and it will hurt the consumer,
24 ultimately.

25 The manufacturers, honestly, if they could give

1 every dealer the same number of cars every month and those
2 cars get sold, they'd be happy. They don't make money on
3 the retail sale, per se. They make money on the wholesale
4 part, primarily. I'm excusing financing and other issues.

5 So the manufacturer, they want the most
6 efficient system, but if they have to allocate cars here,
7 and then that dealer goes, I don't want them this month,
8 then they've got to go find someone else to take them who
9 says, well, you know, what am I going to do? You told me
10 I was only getting this number, and I'm going to get
11 double that amount?

12 And what does this do to the salesperson who's
13 at a store that sells a lot of vehicles? Suddenly, they
14 can't get vehicles, and suddenly, they're without a job.
15 I didn't see anywhere in the materials where anybody
16 discussed the economic impact at the local level, the
17 statewide level, or anything else.

18 If I'm a dealer in Texarkana, Texas or
19 Arkansas, I'm loving this rule, because I'm going to sit
20 here and watch Texas hit a bump, and I'm going to be
21 sitting in Arkansas selling to Texas residents who come
22 across the state line to buy a vehicle, come back in.
23 Yeah, we'll get the motor vehicle use tax, but we will not
24 get the jobs and we won't get everything that flows from
25 that.

1 Anyway, that's my comment for the moment.

2 Thank you, Chair.

3 MR. BLASSINGAME: Thank you, Member Ferguson.

4 Do any other members have a comment?

5 Recognized.

6 MR. DORAN: Thank you, Officer Blassingame.

7 I'd just like to add to what Member Ferguson was saying,
8 give you kind of the -- one additional wrinkle to this for
9 us as a distributor.

10 So similar to dealers, as a distributor, we
11 have a territory, right? For us, that's five states:
12 Texas, Oklahoma, Louisiana, Arkansas and Mississippi. And
13 we are essentially competing and fighting for our fair
14 share of vehicles from Toyota. We're competing against 11
15 other regions in the country.

16 So if we see a system in Texas, which is our
17 biggest market, because we have -- we're the franchiser
18 for 87 or 88 Toyota stores here. Where we have even a
19 5 percent, 10 percent drop, that is actually going to hurt
20 every Toyota dealership in the state of Texas because our
21 slice of the pie that we were competing for from Toyota
22 just contracted and got smaller.

23 Where did those vehicles go? Well, they went
24 to the other regions, New York, California, the West. So
25 it's very concerning to us the impact this would have, not

1 only on our business, but it's going to impact all Toyota
2 dealers, good performers, poor performers, rural, metro,
3 because of these inefficiencies.

4 And I would argue it's also going to impact
5 motor vehicle sales tax revenue in the state, because you
6 will see lower motor vehicle sales across the board in
7 Texas because of these inefficiencies. Because we simply
8 will not be allocated the same number of vehicles that we
9 are allocated today from our manufacturer.

10 Thank you.

11 MR. BLASSINGAME: Thank you.

12 Any other members?

13 MR. SULLIVAN: Presiding Officer, may I be
14 recognized? Member Sullivan.

15 MR. BLASSINGAME: Yes, sir, Member Sullivan,
16 you're recognized.

17 MR. SULLIVAN: Thank you. My comment might be
18 a little broad and a little outside of the question that
19 Ms. Johnson posed to us, but we are -- just for
20 background, I'm an appointee to represent franchise
21 dealers. First and foremost, that's my role at this
22 table.

23 Second, I happen to be employed by Group 1
24 Automotive. Group 1 Automotive is the largest franchise
25 dealer in the state of Texas. I did my finger count last

1 night.

2 We own 58 franchises in Texas, representing 23
3 brands and OEMs. In addition to that, we own 12 collision
4 centers. So I was surprised to read in the rule petition
5 from TADA, which we're members of, that TADA is bringing
6 this on behalf of the -- I'm quoting -- "on behalf of the
7 franchise dealers, manufacturers, distributors, and
8 representatives, TADA requests the following rule
9 adoption" -- and finish the sentence.

10 I was not aware of this rule petition until an
11 industry colleague brought it to my attention. TADA did
12 not reach out to us to gauge our opinion or what our
13 thoughts were on this issue. So I want to be sure to put
14 on the table that, as a member of TADA who represents the
15 entire franchise industry in Texas for automotive dealers,
16 I wasn't contacted.

17 No one received a call in my business. I
18 started from the top down. This was all new to us. So
19 thank goodness for a colleague that mentioned it to me so
20 I could dive into this, and then of course, we received
21 the information from the agency.

22 So with that said, I would just like to lay on
23 the table once again that I'm not certain that TADA's rule
24 petition represents the will of franchise dealers in the
25 state of Texas. That's a fact. It certainly doesn't

1 necessarily represent ours.

2 We as a company, Group 1 Automotive, enjoy very
3 good relationships with our OEMs and our manufacturers and
4 our distributors. It is a partnership. In these 58
5 franchises that we own, we employed thousands of people in
6 Texas, thousands, from Lubbock to El Paso to San Antonio
7 to DFW to Houston.

8 We then of course have parts people. We have
9 collision employees. And we're servicing a market. And
10 we rise and fall based on our ability to perform well in
11 the market.

12 And we perform well because we comply with the
13 allocation methods and models that have been outlined and
14 discussed this morning and that benefits us. We don't
15 look at it that it benefits us to the detriment of another
16 dealer. We just have a good relationship with our OEMs
17 and our partners, and we meet the criteria for allocation.

18 The market should drive this and not necessarily an
19 agency rule.

20 And with that, I'll save my other comments for
21 later today. Thank you very much. Thank you, Presiding
22 Officer.

23 MR. BLASSINGAME: Thank you, Member Sullivan.
24 Member Stark, you have your hand up?

25 MR. STARK: I do. Thanks.

1 First off, I'd like to full-heartedly agree
2 with the fact that you can never predict what dealers or
3 manufacturers will do. I think 2008 certainly
4 demonstrated that. To think that the manufacturer has a
5 corner on handling their business correctly, I think
6 multiple franchises went bankrupt in 2008 due in some
7 cases to situations beyond their control, which I think is
8 probably what we're talking about here.

9 And while I appreciate the gentlemen from Group
10 1, I think that it would probably do this group well to
11 remember that there are tens of thousands of dealers in
12 the United States, and as I have often said, a lot of them
13 are making a paycheck. They're not making a fortune.
14 They don't have the economies of scale, the size of the
15 funds available to them, a company like Group 1 or
16 AutoNation or some of these other -- Penske or some of
17 these other public companies do.

18 And then the last thing I would like to address
19 is that I believe the gentlemen referred to the fact that
20 some of these dealers would take these cars and then
21 become a de facto wholesaler. I've only been in this
22 40 years, and certainly, you can't account for how
23 everyone will behave. There's no question about that.

24 But in this current market and this
25 environment, because we're talking about not making rules

1 for something that we just came through that's a 100-year
2 event, it is much more likely -- in most cases, you have
3 companies that provide this service that will buy your
4 inventory and move it off of a dealer's lot because of
5 their lack of ability to pay the expense. And certainly,
6 when that floor plan rate is 7 or 8 percent, that is
7 probably more prevalent than being able to wholesale cars
8 at a profit to another dealer.

9 I just don't think that's -- I don't think
10 some -- that's something that takes place. And if it
11 does, I think it's such a minuscule amount, I don't know
12 that I'd make rules based off of that.

13 And then my final comment would be that I
14 believe TADA has brought this forward not based on some
15 irrational fear. I think it was a groundswell of the
16 smaller dealers that said, hey, we need some kind of
17 minimum protection. I don't see anything in this ruling
18 that says we want an unfair share of this inventory.

19 It seems more to create a basement or a floor
20 that cannot allow a manufacturer to deny them inventory
21 that would allow them to get to a minimum, as the
22 gentleman referred to, 100 percent sales efficiency as a
23 C. And that's correct in the manufacturers' eyes. It's
24 not an over-performance.

25 The idea of giving a floor so that dealer

1 cannot be denied the very vehicles he needs to meet those
2 minimum requirements, I'm not sure how that becomes a
3 controversial suggestion.

4 MR. BLASSINGAME: Thank you, Member Stark.
5 Any other member comment?

6 MR. SRALLA: Member Sralla needs to be
7 recognized.

8 MR. BLASSINGAME: Member Sralla, go ahead.

9 MR. SRALLA: Yeah. I agree with some of the
10 comments that have been made here. And the power supports
11 industry is a little different than obviously the
12 automotive, but we have seen an increase of manufacturers
13 that have pulled allocations away and still demanded
14 certain sales goals. And there's absolutely zero way to
15 obtain those sales goals, and yet the dealers are
16 penalized for not attaining those sales goals.

17 So I can see where the TADA is coming from with
18 its rule. And I do think that like any rule, there's
19 going to be some things that are probably going to affect
20 some of the larger dealers and help some of the smaller
21 dealers maintain competitiveness. And whether that's a --
22 whether you consider that a fair market system or not,
23 when you have manufacturers that have control over
24 basically whether your business lives or not and the
25 profitability of your business based on sales goals or

1 allocations, and then based on sales goals, it can be
2 problematic.

3 So I can understand where they're coming from
4 with this rule request.

5 MR. BLASSINGAME: Thank you, Member Sralla.

6 Mr. Stark, Member Stark, do you have another
7 comment?

8 MR. STARK: I do not. I'm sorry. Need to
9 remove that.

10 MR. BLASSINGAME: Thank you, sir.

11 MALE VOICE: We have one other question, sir.

12 MR. BLASSINGAME: Okay. Okay.

13 MS. JOHNSTON: Okay. If there's no other
14 comment right now on the first question, the second
15 question is: is there a benefit to further defining
16 reasonable quantity and reasonable time in Texas
17 Occupational Codes 2301.452?

18 Does anyone have a comment on that question?

19 MR. BLASSINGAME: Any member have a comment?

20 MR. DURANT: Member Durant has --

21 MR. BLASSINGAME: Member Durant? He's muted.

22 MR. DURANT: Thank you very much. My mistake.

23 As the other member mentioned, there's
24 certainly concern with this regulation that it could force
25 OEMs to do things they wouldn't want to do and force OEMs

1 to put inventory to dealers that were wholesaling
2 vehicles. I think it's excellent feedback that we could
3 define a reasonable quantity to exclude or penalize
4 dealers for wholesaling vehicles and doing other things
5 like that. And I'd invite those members to, you know,
6 list out the things they might want to exclude, and as far
7 as what's reasonable and what's not reasonable.

8 MR. BLASSINGAME: Thank you, Member Durant.

9 Any other comment? Member Ferguson?

10 MR. FERGUSON: Thank you, Officer Blassingame.

11 The question is, do we need more definition for
12 reasonable -- reasonable quantity, reasonable time? I'm
13 going to give you a scenario. I run out a building door
14 and I run over Mr. Sullivan.

15 Is that reasonable? No, it doesn't sound
16 reasonable. What if I tell you someone was chasing me
17 with a gun?

18 Well, it starts to sound a little reasonable,
19 Mr. Ferguson. Maybe you're okay. What if I tell you the
20 guy with the gun is chasing me because I just broke into
21 his apartment and threatened people in there? Well, now,
22 it doesn't sound like a reasonable guy, does it?

23 So what's reasonable? Tell me the fact
24 scenario and I'll tell you, get all your evidence in as to
25 why you think you're reasonable. Bring me all the

1 evidence why you think you're reasonable, and then a judge
2 can decide.

3 That's the system we have right now. What the
4 rule is trying to do is define reasonable further and cut
5 it down and limit it based on certain factors, but not all
6 factors. That's my problem with it.

7 It is trying to do the impossible. If we are
8 going to -- and I respect Member Durant. In fact, I even
9 bought a car from his dealership one time.

10 If we're going to sit here and define all the
11 characteristics that go into reasonable, I hope you
12 brought your lunch and I hope you brought your bedroll,
13 because we're not going home. We're going to be here for
14 months writing all the possibilities.

15 Right now, the statute provides that a
16 manufacturer cannot require adherence to unreasonable
17 sales or service standards. If you think you are
18 suffering from unreasonable sales or service standards,
19 you have a solution. You bring a complaint and go through
20 the process and present why you think it's unreasonable.
21 There is another -- that's 2301.467(1).

22 There's another rule, 2301.468, that talks
23 about if franchise dealers are treated unfairly or
24 inequitably in the sale of a motor vehicle. There's
25 grounds there. This is not new ground we're trying to

1 plow here. This is ground that's already been plowed.

2 When I started doing this kind of work in the
3 late '80s -- I hate to admit that, but in the late '80s, I
4 thought these rules were horrible or the statute was
5 horrible because there was no definition. They would just
6 talk about, well, be reasonable. Now, as I look at it
7 today in 2024, I'm kind of like, well, I kind of get why
8 they didn't get real specific.

9 They wanted to leave it open so parties could
10 come in and say this is why I was running out of the
11 building. I had a good reason. Somebody was chasing me.

12
13 Or here's why this is an unreasonable sales
14 requirement or standard that's there. It's more than it's
15 not fair. It's unreasonable, and here's why.

16 This rule tries to tilt that even more and say,
17 well, we're only going to look at this. If I tell you
18 that a dealer to be sales efficient needed to sell 100
19 vehicles a month and they only sold 50, you might say,
20 well, did you give them enough cars? Well, what if I tell
21 you they had the same 50 cars sitting on their lot all
22 year and they never sold one?

23 They didn't need any more cars. They needed
24 someone to sell the cars they had. And I have been
25 involved in cases where dealers have challenged the

1 allocation system, among other things, and said it's not
2 fair.

3 I couldn't get the new, let's say, 2024 hot
4 model that I wanted. But yet when you're at the
5 dealership trying to negotiate a settlement and you walk
6 around the corner and there's four or five 2023's or
7 2022's of that model, and you say, you know that's hurting
8 you in allocation because they're counting that as being
9 in your inventory.

10 And the dealer is like, oh, I didn't know they
11 counted it. You know, that's not every dealer, but that
12 is systematic of what can happen in a situation like this.

13 I think we have enough regulation that's there.

14 We just need people to step up if they have
15 been harmed and say, hey, this is not reasonable. Talk
16 with each other. Try to work it out.

17 If you can't work it out, you file a complaint
18 and you go through the system. That's what we have set
19 up. I know it's not pleasant, but neither is suddenly
20 you've built a big facility because you have a lot of
21 inventory, and suddenly you lose your inventory, and now
22 you've got this big facility sitting here that you built.
23 That's not fair to that dealer either.

24 Thank you.

25 MR. BLASSINGAME: Thank you, Member Ferguson.

1 Go ahead.

2 MR. DORAN: Member Doran again. Just to build
3 on what Member Ferguson was saying. It was the
4 Legislature's intent to use the word "reasonable" in the
5 statute. They believed that this was the best way to
6 guide the industry to handling all of the different and
7 ever-changing factual scenarios that could come along.

8 And they did build in a mechanism for a dealer
9 to seek redress under the statutory provisions that Mr.
10 Ferguson just referenced. And so what this rule does -- I
11 know we keep using the word reasonable, reasonable. Well,
12 it actually reduces the reasonableness and the way it was
13 intended in the statute because what it does is it inserts
14 a mandatory floor under which no manufacturer can go with
15 respect to how many vehicles they're going to supply the
16 dealer.

17 That is not the definition of reasonable. That
18 is a mandatory requirement. So I think the Legislature
19 got it right.

20 I believe that this agency does a good job at
21 taking up the complaints that brought to them, if a dealer
22 has one as it relates to the reasonableness of the
23 allocation. And if the complaint has merit, it precedes
24 and the dealer has recourse. This is trying to -- this
25 will have negative consequences that go far beyond just

1 dealing with one specific dealer's complaint about their
2 allocation for a period of time with their manufacturer/
3 distributor.

4 Thank you.

5 MR. BLASSINGAME: Thank you, Member Doran.

6 Member comment?

7 MR. SULLIVAN: Yes, sir. Presiding Officer
8 Blassingame, Member Sullivan. May I be recognized?

9 MR. BLASSINGAME: Mr. Sullivan, you are
10 recognized.

11 MR. SULLIVAN: Thank you.

12 The comments by both Member Ferguson and Member
13 Doran take me to a question that I thought about last
14 night. I wrote it down so I wouldn't forget it. And that
15 makes me wonder how many complaints the agency has
16 actually received from franchise dealers regarding
17 allocation issues and over what period of time.

18 It also -- of those complaints that may or may
19 not have been received by the agency, which were referred
20 to SOAH and what was the outcome? Let's look at the data.

21 Let's see if we really have a problem that needs a
22 solution.

23 Thank you.

24 MR. BLASSINGAME: Thank you, Member Sullivan.

25 Member Stark, do you have your hand up? Member

1 Stark, you may be muted.

2 MR. STARK: Yes, sir. Thank you.

3 I would like to, I guess, pose a question
4 myself or address two things that have been mentioned.
5 Reasonable time, we're talking about reasonable time. So
6 the question there would be -- and issues that have been
7 brought up to me, and I don't have any data on how many
8 complaints have been brought forward.

9 I say, I'm just a poor old car dealer. But as
10 far as reasonable time, if you have an allocation or if
11 you have a sales goal -- and I'll just use an arbitrary
12 number of 100 units. And 75 of those units are delivered
13 to the dealership in the last 10 days of the month; is
14 that a reasonable goal?

15 I would challenge you that it probably is not.

16 I will also agree that there is a mechanism for redress
17 on this. But the question has to be asked.

18 You can file a complaint. It can go through
19 the system. Generally speaking, you'll probably end up
20 facing some of the gentlemen in that very room.

21 And the question is, does a dealer in a small,
22 rural market have the resources to wait for a year, a year
23 and a half, or two years for that resolution while being
24 denied the very inventory that generates the revenue with
25 which he's fighting that complaint? And the answer again

1 is no. So I just -- unless I'm just misreading the rule,
2 I feel like the rule is asking for a floor, not a ceiling.
3 And the idea of denying someone the very basic lifeblood
4 of their business while they try to work through a process
5 that is onerous and expensive against a multinational
6 company doesn't define reasonable to me.

7 Thanks.

8 MR. BLASSINGAME: Thank you, Member Stark.

9 Any other comment from members?

10 MR. HICKS: May I?

11 MR. BLASSINGAME: Member Hicks, please.

12 MR. HICKS: Yeah. And following up, I mean,
13 there's obviously two unique perspectives here, that of
14 the manufacturers and distributors, and that of the
15 individual dealer. I'm part of a second-generation, 52-
16 year family business in Corpus Christi. We have five
17 dealerships or franchises.

18 One of those we're fortunate to have is Subaru.

19 And owning the Subaru franchise -- when we acquired that
20 in 2018, they provided us a planning volume to make a
21 decision to make the investment, and it was 600 new
22 Subarus a year. To date, I've yet to ever see 600 new
23 Subarus in a year. The highest we've ever done is 432,
24 and that was not only the allocation system, but us
25 acquiring Subarus from other dealers.

1 The reason I bring that up is that, you know,
2 we're still doing what we can. Some of the members have
3 mentioned, you know, dealers holding on and not selling
4 vehicles. We sell every Subaru we can get.

5 And what happens to the consumer, who -- I
6 think we have to keep focus on the consumer here. As soon
7 as I do not have a Subaru inventory, an Outback, Forester
8 or whatever model because I just haven't been provided
9 that Subaru, that consumer has to go 140 miles minimum to
10 acquire the vehicle that they want. So I would certainly
11 have sold them the vehicle if I had it, but not having
12 access to or the availability of that model puts a
13 consumer at risk and they have to go to another market to
14 make it happen.

15 Inconvenience for them. Certainly price is an
16 issue. But it's not me holding for a higher price versus
17 another dealer.

18 And the only other comment I'd make would be
19 regarding the allocation system. You know, when
20 manufacturers see dealers turn vehicles down or this
21 allocation system puts vehicles in the wrong dealers'
22 hands, they respond to that, by the virtue of -- that they
23 overproduced certain models, which we're in a market now
24 where there seems to be more product than there is demand.
25 They respond by increasing incentives, and those

1 incentives can oftentimes be tied to sales objectives.

2 So I'm provided the sales objective to sell 15
3 or 20 of a particular model to achieve that next level of
4 incentive support, which I would pass through to the
5 consumer. If I don't have the inventory to get to that
6 sales goal, I don't have the ability to offer that lower
7 price to the consumer.

8 So it does create, in some ways, a tiered
9 pricing model that the consumer is unfortunately not the
10 benefactor of, but they oftentimes have to pay that price.

11 So I think a consumer is the one we have to stay focused
12 on here. I would support reasonable quantity because as
13 long as you have product provided to dealers at the local
14 level, especially in the smaller markets, you have the
15 opportunity for that consumer to be provided the best
16 selection and best pricing to acquire the vehicle in their
17 local market where they want to spend their money anyway.

18 So I appreciate your time. Thank you.

19 MR. BLASSINGAME: Thank you, Member Hicks.

20 Any other comment from the Committee?

21 MR. DORAN: Member Doran again. I would just
22 add to that last commenters, the Code already provides
23 that all existing circumstances are supposed to be taken
24 into consideration. So every one of the arguments that he
25 just made, he would be free to make if he brought a

1 complaint.

2 That exists today. So statutorily, it's
3 required that all existing circumstances be considered.
4 And based on that, you determine whether or not the
5 allocation is reasonable.

6 Thank you.

7 MR. BLASSINGAME: Thank you, Member Doran.

8 Any other comment from the Committee?

9 (No response.)

10 MS. JOHNSTON: Okay. Monique Johnston again,
11 for the record. Going on to Question No. 3.

12 Is the draft language too vague for a
13 manufacturer, distributor or dealer to determine exactly
14 how many vehicles and exactly when a
15 manufacturer/distributor is required to deliver to a
16 dealer? How would you make the definitions more specific
17 if you feel they're too vague?

18 MR. BLASSINGAME: Any comment from Committee
19 members?

20 (No response.)

21 MS. JOHNSTON: All right. Keep moving.

22 MR. BLASSINGAME: No comment.

23 MS. JOHNSTON: If -- okay. Going on. If a
24 definition is based on a dealer's sales goals, which sales
25 goals should be considered to determine reasonable

1 quantity and reasonable time? Weekly, monthly, quarterly,
2 yearly goals? Goals based on sales incentives?

3 Any comment on that question?

4 MR. BLASSINGAME: Member Doran?

5 MR. DORAN: Member Doran here. I would just
6 say that the setting of sales goals and the methodologies
7 used is going to vary among all manufacturers and
8 distributors. So you really can't thread this needle in a
9 way that's going to prescribe a method that would apply in
10 a fair way to every OEM.

11 You saw in the Bert Ogden Subaru case that
12 Subaru based part of its allocation on the dealer's 30-day
13 supply in a separate part of the dealer's 90-day supply.
14 That may not be the way that General Motors does theirs,
15 or Toyota. So I just don't think it's realistic to try
16 and attack this by rule when the way that those goals and
17 incentives are set is going to vary among the different
18 brands.

19 And honestly, it's going to vary over time
20 depending on the manufacturing schedules, the amount of
21 inventory they have available, you know, a permutation of
22 variables over time that will come into play. So I just
23 don't believe that it's realistic to try and assign that
24 by rule.

25 Thank you.

1 MR. BLASSINGAME: Thank you, Member Doran.
2 Member Stark?

3 MR. STARK: Yeah. I was actually going to --
4 may be shocking. I was going to say what Member Doran
5 said, and that is that all of these manufacturers have
6 different targets and they have different timelines for
7 those targets.

8 Some of them will give you a monthly sales
9 goal. Some of them will give you a monthly sales goal
10 with a quarterly catch-up. Some of them will give you
11 annual targets.

12 So I completely agree with that. But I do
13 think it's probably more simple to define, which is quite
14 simply, if they're going to hold you to a minimum level of
15 performance, they should provide a minimum level of
16 inventory to attain that. And now, if that manufacturer
17 does that monthly, so be it. If they do it quarterly, so
18 be it.

19 But again, if a manufacturer is going to go to
20 an independent franchise dealer and say, I expect you to
21 sell this amount of inventory, and then now provide that
22 product, that's a guaranteed failure. So I don't -- I
23 agree. There are multiple ways. There are multiple
24 incentives. Manufacturers all have their own way of doing
25 business, but seems, at the very core of it, if you're

1 going to expect the dealer to sell 100 cars, you should
2 provide them 100 cars.

3 Thanks.

4 MR. BLASSINGAME: Thank you, Member Stark.

5 Member comment? Member Ferguson, you're
6 recognized.

7 MR. FERGUSON: Thank you, Officer Blassingame.
8 I would just say this. I need to -- we need to remember
9 something that, in the termination provisions of the
10 statute, you have to -- the manufacturer has the burden to
11 establish good cause. And they're to take into account
12 all existing circumstances including -- and there's a list
13 of seven factors.

14 After those factors, there's the following
15 language. "The desire of a manufacturer, distributor or
16 representative for market penetration does not by itself
17 constitute good cause." Think about that. I've signed a
18 contract with you to sell my product, and you don't sell
19 my product, and I can't terminate you on that issue alone.

20 I would suggest that if we're going to define
21 reasonable quantity and reasonable time like has been
22 proposed by TADA, then we also ask the Legislature to take
23 that out. Because if you're going to get all the goodies
24 that you can get, then you have all the responsibility.

25 But I will bet you my bottom dollar TADA would

1 never agree to that. They would never agree to that. So
2 you now position the manufacturer where they can't even
3 get the cars to people who are earning them in the
4 traditional sense, and they can't do anything about it.

5 Thank you.

6 MR. BLASSINGAME: Thank you, Member Ferguson.

7 Member comment?

8 MR. DURANT: This is Member Durant. May I be
9 recognized?

10 MR. BLASSINGAME: Member Durant, you're
11 recognized.

12 MR. DURANT: Thank you. I'll put my hand down.

13 I think -- yeah. I agree with some of the
14 other statements here. This figuring out the right goal
15 is a very difficult thing.

16 And I think, on behalf of the manufacturers and
17 distributors, they need to be ones to set the goal in
18 their algorithm to prevent these death spirals from taking
19 otherwise good dealers down in these pandemic events or
20 union strikes or -- I know there's been talk that this is
21 a once-in-100-years event, but we seem to be having once-
22 in-100-years events pretty frequently with all the union
23 strikes we've had and other things. And it seems like
24 being prepared for the future is merited here.

25 But they certainly have wonderful algorithms

1 for determining dealer inventory, and they've put a lot of
2 thought into it. But it doesn't appear that these
3 allocations have any minimum floor or anything like that,
4 that can use -- to prevent this death spiral when it does
5 happen.

6 MR. BLASSINGAME: Thank you, Member Durant.

7 Any other member comment?

8 MR. DONNELLY: Member Donnelly. May I be
9 recognized?

10 MR. BLASSINGAME: Member Donnelly, you're
11 recognized.

12 MR. DONNELLY: I am probably -- I pretty much
13 do not have [inaudible] to vote probably on something
14 towards the end of this. So I'd like to ask a question,
15 if you don't mind. I don't have any experience with
16 franchise dealerships, other than acquiring cars.

17 Can a franchise dealership sell cars on an
18 order they're not allocated? Can they sell past -- can
19 they -- if a customer comes in and orders a car, is there
20 a limit to the number of orders a franchise dealer can do
21 in a month? And is it appropriate for me to ask that?

22 Thank you.

23 MR. BLASSINGAME: Thank you.

24 Member Doran?

25 MR. DORAN: This is Member Doran. I'll take a

1 shot. In simple terms, no.

2 You could come in and order a vehicle, and it's
3 not going to count against the dealer's metrics or
4 allocation. If anything, it would help them. I think it
5 would depend on how many vehicles they're ordering.

6 I think most manufacturers believe that a
7 retail customer is probably not going to come in and
8 order, you know, 100 Corvettes, right? That may cause
9 some red flags and additional, you know, scrutiny.
10 Because as the Code says, the allocation needs to be fair
11 and equitable and reasonable.

12 So I think it would depend upon the size of the
13 order, the production schedules, right -- things like
14 that. But if you were just coming in to order a vehicle,
15 yes, the dealer should be able to take that order, satisfy
16 that order, and provide you with that vehicle.

17 MR. DONNELLY: So I appreciate that. What --

18 MR. BLASSINGAME: Go ahead.

19 MR. DONNELLY: -- I'm kind of getting at is, if
20 you have a sales goal of 100 cars a month and you're
21 allocated 50 and you sell those 50, are you able to sell
22 on orders and force the manufacturer to provide those
23 additional 50 cars because you have people coming in
24 ordering, is what I was asking.

25 MR. BLASSINGAME: Member Doran?

1 MR. DORAN: Yeah. I think the answer to that
2 question is, it depends. It depends on the status of the
3 inventory. It depends on what's going on at that period
4 of time. It depends on what the manufacturer's policy is
5 on selling orders.

6 So it truly can depend. It could go both ways.
7 Sorry. That's not a very definitive answer, but that's
8 the reality.

9 MR. DONNELLY: It's an answer.

10 MR. DORAN: Yeah.

11 MR. BLASSINGAME: Member Elam, comment?

12 (No response.)

13 MR. BLASSINGAME: Member Stark, comment?

14 MR. STARK: I was just going to say, and this
15 is experience over 14 franchises over four decades. The
16 manufacturer is not under any obligation to fill a sold
17 order. Member Doran is correct in his statement that it
18 depends.

19 It depends on their inventory availability.
20 But they are not -- a sold order does not guarantee that
21 that vehicle be delivered to that dealer and ultimately to
22 that consumer.

23 MR. BLASSINGAME: Thank you, Member Stark.

24 Any other comment by members?

25 MR. SULLIVAN: Presiding Officer, Member

1 Sullivan. May I be recognized?

2 MR. BLASSINGAME: Member Sullivan, you're
3 recognized.

4 MR. SULLIVAN: Thank you. My comment actually
5 refers to this question and maybe filters over into what I
6 see the next question may be from DMV. And that's that
7 there are many factors that play into whether or not a
8 dealer makes a sale to a customer.

9 It's not all about allocation. Some of the
10 factors are the number of vehicles we might have, the
11 reputation of our dealership, our reputation in the
12 community, the location of our dealership, the service
13 that we provide to our customers, the competitiveness that
14 we have in the market, the history of prior businesses.

15 Mr. Ferguson said he bought a vehicle from
16 someone else. He mentioned -- I forgot who it was. Was
17 it Durant? Yeah -- mentioned from Durant.

18 I know when I first grew up, I was buying
19 vehicles from wherever my family did business. So history
20 plays into it. And then assistance with financing. And
21 of course, our facilities.

22 So there are a lot of factors that play into
23 this. It's not a matter of simply having the iron on the
24 floor, so to speak.

25 Thank you.

1 MR. BLASSINGAME: Thank you. Any other comment
2 from members?

3 MR. DONNELLY: Member Donnelly. Can I be
4 recognized?

5 MR. BLASSINGAME: Member Donnelly, you're
6 recognized.

7 MR. DONNELLY: So again, I know there will be a
8 vote towards this, and I feel like I've got to ask
9 questions, you know. I don't have really a dog in this
10 fight. Again, saying that.

11 But if I'm understanding it right, there's a
12 sales goal of 100 cars, hypothetically, and the
13 manufacturer is going to allocate 50 cars to that
14 franchise, to that seller. They cannot take orders past
15 that. It seems to me that the only thing I can see that
16 will allow them to reach the sales goals of their
17 allocations of their -- is to purchase wholesale from
18 other dealers. And is that an accurate view?

19 Thank you.

20 MR. BLASSINGAME: Member comment?

21 MR. FERGUSON: This is -- oh.

22 MR. BLASSINGAME: Member Ferguson?

23 MR. FERGUSON: Yes. Thank you. Again, it
24 depends, but -- and we're kind of baking this into a one-
25 month goal and a one-month allocation. An allocation is

1 something that you could increase over time if you sell --
2 if there is a balanced-day supply element to that
3 manufacturer's allocation.

4 And most of them have -- some slice of their
5 allocation is based on how many -- balanced-day supply.
6 Do you have enough vehicles, compared to another dealer?
7 Gets into your sales rate that Member Doran was talking
8 about.

9 So over time, if I turn my inventory quicker
10 than Member Doran, I can earn more allocation. I'm not
11 going to get from a 50 allocation to 100 allocation in one
12 month. I don't think that's going to happen, unless
13 there's just an overabundance of supply.

14 But by the same token, I may not necessarily
15 slide down as quick, because the allocation system is
16 going to be looking back. There's always a looking-back
17 element. And do I have enough cars to to meet the sales
18 rate?

19 So some manufacturers have varying degrees of
20 balanced-day supply, but that is an element that is there.

21 So I don't want you to have the impression that somebody
22 just wakes up one day and says, meh, everybody ought to
23 sell 100 cars. And you're, like, I've got 10. I can't
24 get to 100.

25 I think it's a little more methodical. I think

1 it's a more long-range plan. And these issues that come
2 up on supply -- if you say, well, gee, I was supposed to
3 hit 100 but the plant had a strike, so I'm not going to be
4 sales-efficient. I'm not going to sell average.

5 Well, guess what? The class average is going
6 down because the plant's closed. You're measured on: did
7 you sell the percentage that the brand is selling in some
8 geography, nationally or statewide? And if the brand was
9 hitting 10 percent and the factories are closed for an
10 extended period of time and allocation drops, then the
11 brand average is going to drop.

12 So the expected average drops. And so it hits
13 every Chevrolet dealer. It hits every Toyota dealer or
14 whatever if there's a shortage, because the rest of the
15 market is going forward.

16 The other brands are still making and pushing,
17 so their market share of that brand goes down. So your
18 expected is going to go down as well. So it's a
19 multifaceted thing. And that's before you even get into
20 what Member Sullivan is talking about.

21 Who do you traditionally trade with? Who do --
22 you know, what's your history there, from that standpoint?

23 MR. BLASSINGAME: Member Doran?

24 MR. DORAN: Thank you. Member Doran.

25 So your hypothetical about the dealer only

1 getting 50 cars, but having a sales objective of 100, I
2 chafe at that hypothetical a little bit because -- and I
3 can't speak for all automakers, but the way we set sales
4 objectives -- basically, we're looking at the sales
5 history of that particular dealership. And then we're
6 going to overlay on that, what's the available inventory
7 that the dealer has to sell?

8 So the likelihood -- and again, I can't speak
9 for other manufacturers. But we're going to take into
10 consideration prior months' sales. So you're not going to
11 have a situation where, if you've been selling 50 vehicles
12 a month for the last six months, some person just sets the
13 sales objective at 100. That's not how it's supposed to
14 work, and that's not what we would do.

15 So I just wanted to make that point. So the
16 idea that you would have to make up that lost ground by
17 trying to bring in other vehicles, that's not the way it's
18 supposed to work. If you're setting the sales goals
19 accurately, as accurately as you can, it shouldn't happen
20 that way.

21 And so take for example what's happening right
22 now with CDK. We've got a large number of dealers who are
23 out of commission or are operating in limited capacity.
24 Do you think it would be fair to set the sales objectives
25 next month at the same rate that they would have been set

1 for May? No, right?

2 You have to take into consideration what's
3 going on in the market based upon that dealer's sales
4 performance. Now, if we have a non-CDK dealer, and it's
5 been business as usual for the month of June, we're going
6 to probably set their sales objective to reflect how their
7 business has been, right, based upon the inventory that's
8 available.

9 They're not going to see a change in their
10 sales objective. But we're watching and we're trying to
11 help the dealers who are not going to set the sales
12 objective unreasonably for those dealers that are CDK
13 dealers that obviously have diminished sales this month.

14 So I hope that helps a little bit. Thank you.

15 MR. BLASSINGAME: Thank you, Member Doran.

16 Member Hicks?

17 MR. HICKS: Yeah. Thank you, to be recognized.

18 In direct response to Member Donnelly's
19 question, whether gap is 50 in allocation or 50 against
20 sales target of 100, even if it's 25, there's another
21 mechanism that dealers use to try and acquire inventory
22 beyond the allocation system, and that is dealer trade
23 amongst franchise dealers.

24 So as I -- my example previously, where we grew
25 our business in Subaru -- the first year we got the

1 franchise we sold 200. We're up to 432. That was the
2 method of turning and earning through the Subaru
3 allocation model, but also acquiring Subaru inventory from
4 other dealers.

5 So there is a mechanism that helps the market
6 achieve equilibrium, where dealers that they feel the
7 pressure of too much floor plan, too much inventory, that
8 they have the model of being able to sell those vehicles
9 to other dealers at that invoiced price to help that
10 dealer possibly hit their sales target while also
11 relieving that inventory pressure on their own business
12 operation. So there is that methodology and that market
13 driver of dealer trades that helps to equalize the market.

14 Thank you.

15 MR. BLASSINGAME: Thank you, Member Hicks.

16 Member Stark?

17 MR. STARK: Yeah. Thank you very much.

18 I do want to comment that -- and I believe
19 Member Doran is referring to Toyota, and they're probably
20 the largest car company in the world for a reason. They
21 do good business. The problem is when you come into these
22 manufacturers that don't necessarily set their sales goals
23 with the same methodology as perhaps Toyota does.

24 And the example that I would give -- this
25 number that's been bandied around and that is sales

1 efficiency. So if nationally -- I use very small numbers
2 for my simple-minded math -- if nationally, there's 1,000
3 cars sold in that brand -- there's a 10 percent
4 penetration -- then you're required to sell 100 cars to
5 hit that sales efficiency goal.

6 So it's not a sales target. It's a sales
7 efficiency goal. And there are some manufacturers that
8 operate off of that methodology.

9 So in that particular instance, if I am
10 required to be 100 percent sales-efficient to get, as we
11 mentioned earlier, a C grade, and I have 50 or 75, or
12 quite frankly, 80 cars, there's zero probability that that
13 target will be reached, unless you use, as Member Hicks
14 suggested -- you could find some other dealers to sell you
15 those cars.

16 But generally speaking, you have a limited time
17 frame to do those things, and now you have several brands
18 that are tying in revenue. You know, they've eliminated
19 the actual margin on the vehicle, and they're tying in
20 revenue to hitting those targets.

21 So absolute agree. There are some
22 manufacturers who seem to do it better than others, just
23 like there are some dealers that seem to operate better
24 than others. But if that number is set on, for example,
25 sales efficiency, and there are brands that are doing

1 that, and you have whatever you may have in your market
2 that causes the inability to get there or you don't have
3 that inventory on the lot, then you lose revenue.

4 You lose market share. And as was mentioned,
5 you have a small franchise dealer that goes into a death
6 spiral that can no longer serve that market. And I do
7 think, as a point of reference, it's important to note,
8 you know, you can't ask somebody to perform beyond the
9 capacity when things are outside of their control.

10 And I believe this request also mentions the
11 manufacturer is not held to this standard if it's an act
12 of God or some other kind of natural disaster. So I think
13 it gives relief on both parties.

14 Thanks.

15 MR. BLASSINGAME: Thank you.

16 Member Hicks, do you have another comment?

17 Member Hicks, do you have a hand up? Do you have a
18 comment?

19 MR. HICKS: No, sir. Sorry. I'm trying to
20 release that hand down. Thank you.

21 MR. BLASSINGAME: Thank you.

22 Member Doran?

23 MR. DORAN: This is the last point I want to
24 make. So I think we're on the fifth question, right,
25 which is, does the language, sales goals, objectives or

1 standards, communicated to the dealer by the manufacturer
2 need definition? Or am I skipping ahead?

3 MS. JOHNSTON: We were still on the previous
4 one, but if you'd like to go into that one, please do.
5 It's the next one.

6 MR. DORAN: Okay.

7 MS. JOHNSTON: Yeah. It's --

8 MR. DORAN: Great segue.

9 MS. JOHNSTON: -- no. Great segue. Go right
10 ahead. Yes.

11 MR. DORAN: Well, so you know, we're throwing
12 around -- we've got sales efficiency over here, which is
13 really the dealer's report card. Then we've got sales
14 objectives, which are set by the manufacturer or
15 distributor to motivate the dealer, you know, to hit
16 certain sales targets.

17 But then you've got other objectives, right,
18 that the manufacturer/distributor is suggesting to the
19 dealers or is requesting of the dealers. So an
20 overarching objective that we have at Gulf States Toyota
21 is be forward. Be forward in your market. Be number one
22 in market share.

23 How do you assign a number to that? You can't,
24 because Ford's numbers go up and down, right? So I feel
25 like we're trying to take a round peg and stick it through

1 a square hole a little bit with this particular question.

2 And not to jump the gun, but I think it says,
3 do the goals need to be writing? The goals are in
4 writing, right? They're communicated to the dealers in
5 writing.

6 And trust me. The field representatives follow
7 up with those dealers to say, do you understand your
8 objective? How can we help? What are you doing?

9 Are you marketing this month? And here's the
10 way we read the inventory on the ground. Here's when your
11 next allocation is coming.

12 Have you placed your orders, right? Are you in
13 College Station and you're ordering burnt orange Tundras?

14 You might want to reconsider that. Okay?

15 Anyway, so in response to this question, does
16 the language need further definition, it's imperfect the
17 way it's written right now, because it could be
18 interpreted so many different ways. And I'm not offering
19 a correction. I'm just pointing out that I think that's a
20 fundamental challenge and flaw that we're going to
21 encounter no matter what we put down on the paper here.

22 Thank you.

23 MR. BLASSINGAME: Thank you, Member Doran.

24 Any comment from members?

25 (No response.)

1 MR. BLASSINGAME: Go ahead.

2 MS. JOHNSTON: The next question is, how could
3 a franchise dealer's refusal of inventory delivery from a
4 manufacturer impact reasonable quantity and reasonable
5 time for subsequent deliveries? Will this rule impact the
6 right of Texas dealers to refuse inventory delivery from a
7 manufacturer?

8 MR. BLASSINGAME: Member comment?

9 MR. FERGUSON: Member Blassingame?

10 MR. BLASSINGAME: Member Ferguson?

11 MR. FERGUSON: That's the rub. This proposed
12 rule conflicts with the existing statute. It says we
13 shall, manufacturer shall.

14 So if I shall, what if I back the trucks up and
15 here's your number, and here's your vehicles? And the
16 dealer says no. Who wins on that push? Right?

17 What if the dealer says, my floor plan isn't
18 big enough to take 100 vehicles, or whatever the number
19 is, okay? What happens then? This proposed rule doesn't
20 really consider these other provisions that are already
21 there for the dealers' protection.

22 They also don't consider these other issues,
23 such as you can't make me take a vehicle that I didn't
24 order. You just can't. Right?

25 As General Motors slipped into bankruptcy, some

1 dealers said, I'm going to hit the brakes here on supply,
2 because I don't know what's going to happen. I know of a
3 dealer that took every SUV they could get their hands on.

4 General Motors went into bankruptcy and they came right
5 back out, and guess who had all the inventory?

6 The guy who took the risk. That was that
7 dealer's, independent dealer's decision, business
8 decision. The other dealers made their independent
9 business decision.

10 It worked well for this dealer. It didn't work
11 well for them, but everybody had their own choice. If you
12 had someone saying, no, you've got to take these, these
13 people here who don't feel comfortable about taking it, I
14 don't know what they do.

15 Now, maybe they're going to say, I don't have
16 to take it this month. I don't have to take it next
17 month. I'll take it that third month.

18 Meanwhile, the dealer over here who's taking it
19 every month and trying to do a good job has supply, has
20 supply, and then dips because this guy decides he's going
21 to sell this month. That's the rub. Thank you.

22 MR. BLASSINGAME: Thank you, Member Ferguson.
23 Member comment?

24 MR. DURANT: Member Durant. May I be
25 recognized?

1 MR. BLASSINGAME: Member Durant?

2 MR. DURANT: Yeah. I think this gets back to
3 the definition of reasonableness. I think it's very
4 reasonable, if the dealer is refusing inventory, that they
5 not get more. And I think the word "reasonable" being in
6 here already accounts for this type of input mechanism.

7 That's all.

8 MR. BLASSINGAME: Thank you, Member Durant.

9 Comment from members?

10 (No response.)

11 MS. JOHNSTON: Okay. Would a more specific
12 definition of reasonable quantity or reasonable time
13 eliminate existing inventory allocation methods or
14 strategies?

15 MR. BLASSINGAME: Member Doran?

16 MR. DORAN: Thank you. This is Member Doran.

17 This is a bit of a recap of the answer I gave,
18 I believe, to the first question. But the answer is yes,
19 we are worried that it would eliminate the discretionary
20 allocation bucket.

21 And again, to recap what we think comes out of
22 that bucket: as an industry, you've got vehicle loaner
23 programs, where dealers can earn additional vehicles if
24 they carry the brand's loaner vehicles. Facility
25 expansions and upgrades, those carry oftentimes additional

1 allocation. Those would be at risk.

2 Remodels -- ensuring the appropriate inventory
3 level for a new dealership when it opens, that would be at
4 risk. The ability to quickly replenish inventory in the
5 event of a disaster. I know we've had some comments that
6 say that wouldn't be a problem with this proposed rule.

7 We disagree with that. The way I read the rule
8 is to say that if there is a supply shortage or something
9 that's impeding the delivery of those vehicles to all
10 dealers, it wouldn't be counted against the manufacturer.

11 What I'm talking about here is the ability to aid and
12 surge inventory from what is the discretionary allocation
13 bucket to that dealer in need that just had their
14 inventory damaged or wiped out.

15 We believe that would be at risk. And sooner
16 or later, you know, every dealer finds themselves in the
17 barrel due to a weather incident and they have an impact
18 from that. We also think it would impact dealer accolades
19 and dealer trips.

20 You know, you think about the President's
21 Award, some of these very prestigious things that dealers
22 are -- that they earn, that's tied to their performance,
23 as well as their customer service ratings that they get.
24 Those things would have to be reexamined and looked at.

25 And it could be the case that they don't apply

1 in the state of Texas anymore, but Toyota would apply them
2 in other states for other dealers. It would force, we
3 think, OEMs to send vehicles out of state because that
4 would be a more efficient way to allocate the vehicles.
5 One way or another, they're going to sell as many as they
6 can, and if that means wholesaling them to dealers outside
7 the state of Texas without all this extra stuff, that is a
8 possible outcome.

9 I already talked about how we as a distributor
10 would have to compete with the other regions, and this
11 would place us at a great disadvantage, which in turn
12 would lower the amount of vehicles that we have to
13 allocate to all of our dealers in the state of Texas. So
14 there's about eight different things that we see as
15 negative consequences coming out of this, because of the
16 elimination of the discretionary allocation methodology.

17 Thanks.

18 MR. BLASSINGAME: Thank you, Member Doran.

19 Any other member comment?

20 MR. SRALLA: Be recognized?

21 MR. BLASSINGAME: Member Sralla?

22 MR. SRALLA: Yeah. I understand the concern
23 or -- I understand the -- throwing it out that the
24 manufacturers will just allocate resources to other
25 states is one thing, but I don't -- I think that that's a

1 pretty far-out reach of a rule to expect that
2 manufacturers are just going to start selling cars and
3 motor vehicles in other states as opposed to Texas and
4 miss the Texas market.

5 MR. BLASSINGAME: Thank you, Member Sralla.
6 Member Hicks, comment?

7 MR. HICKS: Yes, sir. Thank you.

8 I don't believe the language of reasonable
9 quantity impacts the -- or eliminates, as the question is
10 being asked, a manufacturer's or distributor's ability to
11 allocate vehicles through the other methods. I think it's
12 simply the manufacturer's and distributor's responsibility
13 to allocate a reasonable quantity, whether that's through
14 turn-and-earn, supplemental, or regional hold. But I
15 don't perceive the language of this proposal in any way
16 eliminating their ability to still use those methodologies
17 of supplemental and regional hold for things like loaner
18 car programs, buy-sells, facility upgrades and things like
19 that.

20 So I believe the language of reasonable
21 quantity is only asking that dealers are provided a
22 reasonable quantity from whatever availability the
23 manufacturers have, whether that's through any of those
24 three methodologies: turn-and-earn, supplement, or
25 regional hold.

1 Thank you.

2 MR. BLASSINGAME: Thank you, Member Hicks.

3 Member Doran?

4 MR. DORAN: This is Member Doran. I
5 respectfully and adamantly disagree with that. Again, we
6 are talking about a finite commodity, vehicles that are
7 manufactured. And if we have to supply every dealer in
8 the state of Texas with enough vehicles to meet 100
9 percent sales efficiency, I don't even know if we can do
10 that.

11 But if we -- in an effort to do that, we would
12 have to draw from the discretionary bucket and exhaust it.

13 I have very little doubt about that. So that may differ
14 from manufacturer to manufacturer. Obviously, some of the
15 international name plates run a little leaner at times,
16 but I do not have much in the way of doubt that it would
17 impact discretionary income for our company.

18 Thank you.

19 MR. BLASSINGAME: Thank you, Member Doran.

20 Member Durant?

21 MR. DURANT: Thank you.

22 There is a small change, I mean, to the
23 existing inventory allocation, and it is not, as we
24 mentioned, to some of the really good OEMs and
25 distributors out there that are on top of this. It is for

1 those OEMs and distributor who have not considered this
2 death spiral in their allocation algorithms. And the idea
3 of this, I believe, is to force them to consider that and
4 put some reasonable measure into that algorithm to protect
5 against having a dealer death spiral to a point where they
6 cannot regrow their inventory, they cannot succeed in a
7 turn-and-earn.

8 Ninety percent of dealers, maybe less -- but a
9 good majority of dealers are on top of the turn-and-earn
10 system and they're doing what they need to do. Those who
11 aren't may have suffered a change in management, a
12 succession of then any one of a number of things. And I
13 think the intent of this is to have all dealers be able to
14 get back up to a C average at some point.

15 The OEMs set the objectives. So if they're
16 setting the objectives to unattainable levels, this will
17 force them to set the objectives at more reasonable
18 levels. All it needs to be is reasonable in relation to
19 the objectives that they themselves are setting. And I
20 think that word "reasonable" as we've heard a lot -- that
21 word "reasonable," if we give it a little bit more
22 definition, or without a lot of definition, just pushes
23 the manufacturers to do what the better manufacturers are
24 doing already.

25 Thank you.

1 MR. BLASSINGAME: Thank you, Member Durant.

2 Comment from Committee members?

3 (No response.)

4 MS. JOHNSTON: All right. Would it be
5 preferable to allow the TxDMV Board to interpret
6 reasonable quantity and reasonable time on a case-by-case
7 basis from the ALJ's specific finding of fact in each
8 case?

9 MR. BLASSINGAME: Committee members? Member
10 Stark?

11 MR. STARK: I think that goes to a comment I
12 made earlier which is, if you -- that is onerous and
13 requires an extensive period of time. If you ask the ALJ
14 to look at every case on a case-by-case basis, you are
15 asking a smaller franchise dealer to provide data over a
16 period of time, and then wait an inordinate period of time
17 for resolution, all while having revenue reduced.

18 I think that -- I'm not certain how they would
19 do that. Again, I'm certainly not an attorney, but I
20 think if you're going to look at these in case-by-case, I
21 think you're going to have a very full docket that goes
22 out for an extended period of time and I don't -- you
23 know, unless you could just -- unless you could come up
24 with a way that the resolution was reached quickly, which
25 I don't think you can.

1 I think that would be very difficult for
2 your -- for a dealer body to withstand. Thanks.

3 MR. BLASSINGAME: Thank you, Member Stark.

4 Comment from members? Member Doran?

5 MR. DORAN: Thank you. Member Doran here.

6 On this one, of course, we would respond, yes,
7 it is preferable to have the Board interpret reasonable
8 quantity and reasonable time, because it takes into
9 consideration the particular circumstances of that
10 particular case. Now, as it relates to the comment that
11 we just heard about the duration of the legal process as
12 it relates to a complaint, I think that's a whole other
13 Advisory Committee topic that the industry could weigh in
14 on.

15 It does -- it's different in different states,
16 right, that we operate in. Some will force the parties to
17 the table within the first 30 days to have some type of
18 mediation. I know there's a mediation process here at the
19 DMV. This is basically a gut check for the parties on the
20 merits of their proposed arguments in the case.

21 So I think, you know, that's a different
22 conversation and one that I think the industry would be
23 willing to have. But as it relates to this specific
24 question here, yes, allowing the DMV to interpret these
25 terms as set forth in the statute is the right way to go.

1 Thank you.

2 MR. BLASSINGAME: Thank you, Member Doran.

3 Member comment?

4 (No response.)

5 MS. JOHNSTON: Last question. Is there any
6 other fact-finding you would recommend the Department
7 would undertake before deciding whether to make rules on
8 this issue?

9 MR. BLASSINGAME: Member comment?

10 MR. SULLIVAN: Presiding Officer, Member
11 Sullivan. May I be recognized?

12 MR. BLASSINGAME: Member Sullivan, yes.

13 MR. SULLIVAN: Thank you. This might be a good
14 time for me to raise my earlier point about data, actually
15 finding out if complaints have been filed, and if so, what
16 the numbers were, what the resolution was, SOAH's role in
17 any decision making or recommendations back to the agency,
18 things like that, just hard data.

19 Thank you.

20 MR. BLASSINGAME: Thank you.

21 Member comment? Member Doran?

22 MR. DORAN: So other fact-finding that I think
23 would be beneficial to the Department here would be to
24 engage directly with the OEMs on this, particularly as it
25 relates in the context of a rule that was just adopted by

1 the Environmental Protection Agency that's going to
2 require basically two-third of all new vehicles sold will
3 have to be battery electric vehicles by 2032. This
4 federal mandate, I think it's worth the DMV looking at
5 what is the impact going to be on that as it relates to
6 our allocation systems and how we allocate vehicles.

7 We're all going to be struggling with that, I
8 think, as we work through how to comply with federal
9 regulations. And so the landscape eight years from now in
10 terms of the model mix that we get from the manufacturer
11 and what those government dictates are as to what vehicles
12 can be sold by retail dealers is going to be markedly
13 different than it is today.

14 And so if we're going to build this for the
15 future, we really have to understand what those impacts
16 would be. So thank you.

17 MR. BLASSINGAME: Thank you, Member Doran.

18 Comment from members?

19 MR. SULLIVAN: Yes, sir, Presiding Officer.
20 Member Sullivan. May I be recognized?

21 MR. BLASSINGAME: Member Sullivan, you're
22 recognized.

23 MR. SULLIVAN: Thank you.

24 Ms. Moriaty, are there any OEM members on the
25 Advisory Committee?

1 MS. MORIATY: Well, we have OEM
2 representatives. At least, that's Mr. Ferguson's position
3 here. I'm not sure that we have OEMs themselves, but I
4 can go back and look at the list and double-check.

5 MR. SULLIVAN: Could I ask a question of Member
6 Ferguson and Member Duran, please --

7 MR. BLASSINGAME: Please.

8 MR. SULLIVAN: -- Presiding Officer? Thank
9 you.

10 Since you represent -- based on what Ms.
11 Moriarty said, you represent OEMs, what would -- how would
12 the best process -- what would the best process look like
13 for input from the OEMs? I'll ask both of you this -- a
14 little bit of an open question, and I apologize. But
15 we've heard from dealers.

16 We have a rule petition from an association
17 that represents franchise dealers. This all involves the
18 OEMs and distributors. So how do we make sure we
19 engage -- that we consider their input and the impact on
20 their business and how they would potentially look at
21 their relationships and their actions to franchise
22 dealers?

23 Thank you, Presiding Officer.

24 MR. BLASSINGAME: Member Ferguson?

25 MR. FERGUSON: Yeah. Thank you.

1 The real answer, I don't know how they would
2 respond, because everybody does it different. I know of
3 OEMs who say your sales efficiency will bonus if you're at
4 80 percent. You don't even have to make a C.

5 You know, that's pretty generous. Others may
6 have different requirements. You could survey them all
7 and you could contact all of the manufacturers to go
8 through that process.

9 What I think you will be back to the table with
10 is everybody does a little bit different. There's not one
11 rule that's going to -- one size that's going to fit all,
12 and we're going to be right to be saying, you know, the
13 statute's not too bad when it says reasonable quantity and
14 reasonable time, and you go forward.

15 Back to Member Stark saying it's kind of hard
16 on a small dealer to take on these factories. It's kind
17 of hard on the factories to go through this process too
18 for add-points, relocations, and all that. As Member
19 Doran said, that's a different issue. That is the
20 procedural process.

21 Perfect? It's not perfect. Could it improve?

22 Sure, it could improve. But I think you would have to
23 get all of these data from the manufacturer to see what
24 they're doing.

25 I mean, it's my understanding that this rule is

1 being pushed primarily by one dealership that lost a court
2 case, and they're still in that court case. There was a
3 rule or statute offered at the Legislature last session,
4 and they let it sit there. So what we're being asked to
5 do as a subcommittee is say we know better than the Texas
6 Supreme Court which currently has the case, and that we
7 know better than the Legislature.

8 That's a pretty bold step to take. And to your
9 point, I'll be completely honest. This rule has been
10 running like a freight train through this subcommittee.

11 This was introduced on May 14, and we're here
12 June 25. It took me 10 years to get the Mercedes' second
13 point in Austin through. Now, had a little problem with
14 Berkshire Hathaway.

15 But then the next applicant came in and the
16 dealer that was protesting it in the interim said, I'll
17 take it. We said, you've already got one. We're going to
18 put this guy in.

19 But this rule is sitting here in less than
20 45 days. How does that happen? And the answer is some
21 people in the industry who proclaim that they represent a
22 big group, don't. And they're -- and this is being -- I'm
23 not talking about staff.

24 This is being pushed by forces outside through
25 this thing as quick as possible. And that's disturbing,

1 because we are a subcommittee that is supposed to do what
2 we're doing today.

3 Member Durant, Member Stark, they're voicing
4 what their concerns are. That's part of the process. And
5 I admire that. I respect their views.

6 But there's some views that aren't being
7 considered, because they never were consulted. And so to
8 your point, would you do it? I think you'd have to go
9 survey the major manufacturers. Who are they?

10 That's a decision that has to be made. And how
11 do they look? And that's going to take a long time. And
12 by the time we get the survey done, somebody's going to
13 move and change what they do.

14 And so it's always going to be changing. It's
15 always going to be in flux. That's why I go back to the
16 current statute that says reasonable quantity, reasonable
17 time.

18 Let's see what the circumstances are to
19 determine reasonable. That would be my answer to your
20 question.

21 Thank you.

22 MR. DORAN: May I respond?

23 MR. BLASSINGAME: Member Ferguson, thank you.

24 Member Doran?

25 MR. DORAN: Thank you.

1 So Member Sullivan, I think I have a reasonable
2 response to this, but I don't think we're going to get all
3 of the manufacturers in a room talking about their
4 proprietary allocation systems and all that. I think
5 there's some antitrust issues that might arise by doing
6 that.

7 However, as it relates to Toyota, the way we
8 historically hear substantive issues from our dealers is
9 through our dealer council. And Group 1 has raised issues
10 before that come up before our dealer council. Dealer
11 council is a collection of dealers that are nominated and
12 elected by their fellow dealers to represent all the
13 interests of our dealer body before Toyota and GST.

14 And it's not hard to get on that agenda, right?

15 So if Group 1 has a question about, what would the impact
16 of this rule be to the Toyota dealers, we can put that --
17 if that was the request, it could be placed on the dealer
18 council agenda and it would be taken up, analyzed,
19 presented, and frankly, deliberated in front of a
20 representative body of the Toyota dealers. And we would
21 take their input back, right? That's how we would handle
22 that.

23 Surveys -- I agree with Member Ferguson.
24 That's another way to approach it, albeit, you know, it
25 would take -- it would probably be part of that process as

1 well. And we would believe that those dealers that serve
2 on dealer council, that it's incumbent upon them and it's
3 their duty to contact their fellow dealers and to share,
4 what are your concerns about the allocation system, and
5 bring those concerns to that dealer council meeting,
6 right? So that's how we would handle that.

7 Thank you.

8 MR. BLASSINGAME: Thank you, Member Doran.

9 Member Durant, speak.

10 MR. DURANT: Thank you.

11 The proposal was put forward earlier, and I
12 think it's a good one, that we look at the complaints on
13 this one. However -- and let me remind you about my
14 background. I'm the general counsel for 19 franchise
15 dealerships in Texas, Oklahoma and Florida. And I have
16 never once advised any one of my clients that they should
17 make a complaint against their OEM.

18 And the reasons are multi-fold, but it boils
19 down to the fact that these relationships are just so
20 complex, that setting them awry in one little complaint,
21 fair, justified, or whatever it may be, has just a
22 hurricane of downstream effects that you can't anticipate.

23 And it's better always to engage the manufacturer
24 directly. Even if you don't get the outcome you want, it
25 improves the relationships.

1 So just the quantity of complaints on this
2 matter might not adequately represent the amount of
3 concern that the dealer body has.

4 Thank you.

5 MR. BLASSINGAME: Thank you, Member Durant.

6 Any other comment from members?

7 (No response.)

8 MR. BLASSINGAME: Ms. Johnston, is that all?

9 MS. JOHNSTON: Yes, that's the last -- that was
10 the last question.

11 MR. BLASSINGAME: Well, let's take a five-
12 minute break and reconvene.

13 (Whereupon, there was a short recess.)

14 MR. BLASSINGAME: David, are there any public
15 comments on Item 2.A.?

16 MR. RICHARDS: Yes, Mr. Chairman. The first
17 commenter is Cathy DeWitt.

18 MR. BLASSINGAME: We will now here from Cathy
19 DeWitt.

20 Please approach the podium. State your name
21 for the record, and if you are presenting -- if you are
22 representing anyone. You'll have three minutes.

23 MALE VOICE: Presiding Officer Blassingame, may
24 I ask a procedural question before she begins, please?

25 MR. BLASSINGAME: Yes, sir.

1 MALE VOICE: So public comments are directed to
2 members of the Advisory Committee, correct? Is there
3 any -- and I don't know who's going to speak, so this
4 isn't a set-up. Is there an opportunity for Board
5 Advisory Committee members to ask questions, or walk me
6 through this, please.

7 MS. MORIATY: Right. So we'll have our public
8 commenters come up and give public comments. As long as
9 we stay within the topic today that we're posted for, we
10 should be good.

11 You can ask the commenters whatever you want
12 ask. You guys can talk together about whatever they say.
13 We've just got to stay within the topic that we're posted
14 for. So --

15 MALE VOICE: Okay. That's helpful. Thank you.

16 MS. MORIARTY: Surely.

17 MALE VOICE: Thank you very much.

18 MR. BLASSINGAME: Thank you --

19 MALE VOICE: We would ask for your permission,
20 if we --

21 MR. BLASSINGAME: Yes, sir.

22 MALE VOICE: -- [inaudible] ask questions?

23 MR. BLASSINGAME: Yes, sir.

24 MALE VOICE: Thank you.

25 MS. DeWITT: All right. Good morning. My name

1 is Cathy Dewitt. I'm the Southwest Regional Manager for
2 General Motors.

3 If that surprises you, I'm four days on the
4 job. So bear with me. Jeffrey Perry, who is our expert
5 on this issue, had to be somewhere else.

6 So I also have written comments from him that
7 you can all review. And also he will always be, you know,
8 available as we go through this process. But you know,
9 one of the things that we've gone through here -- I've
10 gone through lots of different rulemakings.

11 And you know, rulemakings, you know -- I've
12 always seen, unless it's addressing such legislation that
13 it's doing rulemaking for, is that there's an
14 established -- you know, there's the established problem
15 and it is providing clarity. And I think a big concern
16 right here is, I think there's more questions than answers
17 in [inaudible] one of this. And I think it would change a
18 lot of things that would be very disruptive to the market.

19 GM supports its dealers, but we don't think
20 this black-and-white approach is appropriate to -- I think
21 it removes market-base incentives. And I don't think that
22 it establishes a problem that isn't already resolved, that
23 you can't already have resolved, you know, through the
24 dispute system. So we appreciate you not moving forward
25 with this, but we are happy to work with you. And I would

1 be happy to connect you with our experts in this area.

2 MR. BLASSINGAME: Are there any questions or
3 comments by the Committee?

4 (No response.)

5 MS. DeWITT: Oh, thank you for that. I
6 appreciate it.

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

8 MS. DeWITT: When I have business cards, I look
9 forward to giving them to all of you so you can contact
10 me.

11 MR. BLASSINGAME: Thank you.

12 Who's our next?

13 MR. RICHARDS: Mr. Chairman, members, the next
14 comment is Drew Campbell, Alliance for Automobile
15 Innovation.

16 MR. BLASSINGAME: We will now hear from Drew
17 Campbell.

18 Please approach the podium and state your name
19 for the record, and if you are representing anyone. You
20 will have three minutes.

21 MR. CAMPBELL: Thank you, Mr. Chairman. My
22 name is Drew Campbell. I'm here on behalf of the Alliance
23 for Automotive Innovation. We represent most of the OEMs
24 here in the United States.

25 I'm here this morning to represent the

1 automakers' concerns with the petition the Texas Auto
2 Dealers Association sent to the DMV on May 14. TADA's
3 petition would disrupt the allocation system used in the
4 industry today commonly known as turn-and-earn. This
5 means the dealers selling vehicles faster will have more
6 vehicles allocated to them, and dealers selling vehicles
7 slower would have fewer vehicles.

8 This helps dealers in the network avoid
9 problems from having too much inventory or too little
10 inventory. The petition conflicts with that long-
11 established practice because it proposes that a dealer's
12 sales objectives would take priority over sales velocity
13 created by a minimum number of vehicles that the
14 manufacturer must deliver. The manufacturer would have an
15 obligation to deliver services -- or deliver vehicles even
16 if the dealer had not earned them.

17 The problem would just escalate, as well.
18 Dealers are not required to accept the allocation offered
19 to them by the manufacturer. A dealer that declines
20 allocation would likely see its inventories decrease.
21 That in turn means that its sales volume will likely
22 decrease, which could put it behind its sales targets.

23 The longer the dealer continues to accept less
24 allocation and falls farther behind its sales objective,
25 the more vehicles the manufacturer could be required to

1 provide later, because the petition requires the
2 manufacturer to deliver the number of vehicles required to
3 meet the objective. So the petition could require a
4 manufacturer to deliver a large number of vehicles to an
5 underperforming dealer.

6 The petition would also have harmful effects on
7 consumers because it could cause situations in which
8 vehicle inventories are misaligned with consumer demand.
9 Vehicle allocation that would otherwise have gone to
10 higher-performing dealers that earned their allocation may
11 need to be shifted to underperforming dealers in order to
12 comply with the petition. Allocating vehicles to stores
13 that are not selling quickly will mean that consumers in
14 areas with high demand will have less inventory. For
15 these reasons, the Auto Innovators respectfully ask the
16 Committee to recommend against any rulemaking on this
17 topic.

18 Thank you, sir. And anybody have any
19 questions?

20 MR. BLASSINGAME: Any questions from the
21 Committee?

22 (No response.)

23 MR. CAMPBELL: Thank you, Mr. Chairman.
24 Appreciate the opportunity.

25 MR. BLASSINGAME: Thank you, sir.

1 MR. RICHARDS: Mr. Chairman, members, the next
2 commenters is Laura Matz, Volkswagen Group of America.

3 MR. BLASSINGAME: We will now hear from Laura
4 Matz.

5 Please approach the podium, state your name for
6 the record, and if you are representing anyone. You will
7 have three minutes.

8 MS. MATZ: Hello, members of the Motor Vehicle
9 Industry Regulation Advisory Committee. My name is Laura
10 Matz. I represent Volkswagen Group of America, as a
11 member of the Alliance for Automobile Innovation.

12 In addition to the previous remarks, the
13 petition from the Texas Automobile Dealers Association is
14 unnecessary because there is no problem to resolve. These
15 terms do not need further definition because they apply
16 fair and recognize that not every situation is the same.

17 Another confusing part of the petition is that
18 it states the manufacturer's obligation is to deliver
19 vehicles, and that appears to apply even if the dealer has
20 not ordered the vehicles or has not told the manufacturer
21 how the dealer would like the vehicle configured. The
22 obligation to deliver the vehicles appears to apply even
23 if the dealer does not want the vehicles and will not
24 accept delivery. The effect of this petition would be to
25 regulate allocation in a way that sets minimum allocation

1 numbers on sales objectives.

2 In 2023, the Texas Legislature declined to pass
3 a bill that did just that, Senate Bill 2195. The Texas
4 DMV should decline the invitation to do something via
5 rulemaking that the Legislature declined to do through
6 legislation.

7 Further, the petition conflicts with in current
8 state law, specifically, existing sections of Chapter
9 2301. Under the petition's language, a manufacturer would
10 have an obligation to deliver a vehicle to a dealer upon
11 communication of a sales goal to the dealer. But sections
12 of Chapter 2301 say that a manufacturer may not require
13 the dealer to accept delivery of vehicles not ordered.

14 The petition does not reference an ordered
15 vehicle. The petition's language could require a
16 manufacturer to comply with conflicting obligations to
17 deliver vehicles and to not require the dealer to accept
18 the delivery.

19 In addition, the petition would cause
20 unfairness and inequitable treatment among all dealers in
21 the state. Under the turn-and-earn system, manufacturers
22 are able to equitably treat dealers in the allocation of
23 vehicles by optimizing the day's supply of inventory to
24 dealers in the state. The petition could result in some
25 dealers having significantly different days' supplies of

1 inventory other than same line made [phonetic] dealers in
2 Texas. That is because it could force manufacturers to
3 give certain dealers more allocation than they have
4 earned.

5 There is a finite number of vehicles that are
6 produced by factories and available to be allocated. The
7 rule that requires a manufacturer to give more allocation
8 to Dealer A could require giving less to Dealer B. High-
9 performing dealers that have high sales efficiencies could
10 have their allocations reduced because the petition would
11 require manufacturers to allocate the vehicles to an
12 underperforming dealer.

13 For these reasons, we ask the Committee to
14 recommend against rulemaking on the petition. Thank you
15 very much for your consideration.

16 MR. BLASSINGAME: Thank you, Ms. Matz.

17 Member Sralla, you have your hand up?

18 MR. SRALLA: Yes. I have a question for Ms.
19 Matz there. On the rule that she -- or she cited that the
20 Legislature declined in this last legislative session.

21 Was that a bill that made it all the way to the
22 floor? Or was that something that got killed in
23 committee? Or how far did that go?

24 MS. MATZ: That was actually a bill introduced
25 by a senator in the Texas Senate, and it was referred to

1 Business and Commerce, and the Committee actually never
2 heard that legislation.

3 MR. SRALLA: So it wasn't declined by the
4 Legislature. It was just declined by the Committee?

5 MS. MATZ: It was not heard. For whatever
6 reason when typically bills don't move, they do see that
7 it might be not necessary to move that. And so the
8 Committee -- the Chairman chose not to hear the bill.

9 MR. SRALLA: Thank you.

10 MS. MATZ: You're welcome.

11 MR. BLASSINGAME: Thank you, Member Sralla.

12 Any other members with questions? Member
13 Doran?

14 MR. DORAN: It's not a question. It's just a
15 comment on that exchange. The Senator who offered the
16 bill actually met with stakeholders after the bill was
17 filed, and it was at that point that he and his staff --
18 I'll just say -- obtained a greater appreciation for the
19 impacts of the legislation on the motor vehicle industry
20 in Texas.

21 I don't know whether it was his desire or not
22 to move the bill forward or if that was the Committee's
23 will, but that's as far as it got in the process, as Ms.
24 Matz indicated. Thank you.

25 MS. MATZ: And that's exactly right. I also

1 attended that meeting, and it was well-vetted.

2 MR. BLASSINGAME: Any other questions from the
3 Committee?

4 (No response.)

5 MR. BLASSINGAME: Thank you, Ms. Matz.

6 MS. MATZ: Thank you.

7 MR. RICHARDS: Mr. Chairman, the final
8 commenters on Agenda Item 2.A. is John Montford.

9 MR. BLASSINGAME: We will now hear from John
10 Montford.

11 Please approach the podium, state your name and
12 record -- for the record, and if you are representing
13 anyone. You will have three minutes.

14 MR. MONTFORD: Mr. Chairman and members, my
15 name is John T. Montford. I'm here representing General
16 Motors. I reside in San Antonio, but I am a registered
17 lobbyist in Texas and other places.

18 I've had the privilege of working for General
19 Motors now for a number of years. I was able to work
20 under Ed Whitacre when we went to Detroit in 2010, and
21 then worked in Washington, D.C., as head of public policy,
22 and currently representing General Motors, particularly in
23 Texas. We are here respectfully in opposition to the
24 request of the Texas Automobile Dealers Association, Item
25 2.A., relative to allocations concerning reasonable

1 quantity and reasonable time.

2 I listened carefully to the comments relative
3 to these proposals, and I found them certainly
4 interesting. I don't think any responsible manufacturer
5 is insensitive to the needs of our dealers. However, our
6 position is, first of all, adequate law, existing law, is
7 perfectly capable of taking care of any irregularities or
8 complaints relative to these allocations.

9 We're not insensitive to the needs of our
10 dealers. Frankly, selling too many cars in excess of your
11 allocations is a good problem to have. And certainly, we
12 want to sell all the cars responsibly that we can.

13 Ms. DeWitt has given you pretty much a summary
14 of the position of General Motors, and I don't want to be
15 redundant, but just to highlight a couple of those, we
16 feel like the proposed requirements are vague. We feel
17 like the requirements related to reasonable timing are at
18 best confusing based on the complexity of this business,
19 the industry, and certainly, relationships with individual
20 dealers fails to take into account existing inventories.
21 Doesn't take into account important logistical delays
22 beyond the control of either the manufacturer or the
23 dealer.

24 The proposed change, we believe, rewards
25 underperforming dealers to the detriment of other dealers

1 that invest time, money, energy and strong effort to be
2 strong performers. And certainly, it would dismantle, we
3 believe, our current allocation system.

4 General Motors deeply appreciates the
5 opportunity to do business in Texas. Texas, ladies and
6 gentlemen and members of the Committee, is a beacon of
7 free enterprise in our economic system. It stands out as
8 inviting free competition, inviting consumer protection,
9 and inviting entrepreneurship and a profit motive. And we
10 believe that the existing law really is satisfactory to
11 address these needs.

12 But in summary, I'd like to leave you with this
13 thought. Do you really want the State of Texas to
14 micromanage these issues? I have had the privilege of
15 serving on a number of boards, and one of the things you
16 do not want to do is try to micromanage day-to-day
17 operations.

18 We believe there are adequate remedies for
19 unfairness, allegations, particular complaints. So I'll
20 leave you with that thought. Do you really want the State
21 of Texas to micromanage our industry?

22 Thank you very much. And I would respond to
23 any questions, Mr. Chairman.

24 MR. BLASSINGAME: Any questions from the
25 Committee?

1 (No response.)

2 MR. MONTFORD: Thank you very much.

3 MR. BLASSINGAME: Thank you, sir.

4 Hearing no questions, I will move onto the next
5 agenda item. It's going to be Agenda Item 2.B., consider
6 Rule Amendments to 43 Texas Code Chapter 215.245.

7 I will turn the meeting over to Corrie
8 Thompson, Director of Enforcement, for a briefing on the
9 draft proposed amendments to 43 Texas Administrative Code
10 Chapter 215, vehicle distribution; 215.245, availability
11 of motor vehicles.

12 MS. THOMPSON: Thank you, Officer Blassingame.
13 Again, Corrie Thompson, Director of the Enforcement
14 Division. So now, in Item 2.B., for briefing and
15 discussion at this point -- I believe there's a later item
16 on the agenda that will allow for recommendations from the
17 Advisory Committee regarding the language of the rule.

18 But to brief you on this matter, several weeks
19 ago, the Department became aware of an issue where bad
20 actors are essentially taking VINs located in dealer
21 advertisements and then using them in cloned or stolen
22 vehicle operations. So we have a rule, 43 Texas
23 Administrative Code 215.245, that says that if an
24 advertised price pertains only to one specific motor
25 vehicle, then the advertisement must also disclose either

1 the vehicle's stock number or the VIN -- is the current
2 language.

3 Well, what we've proposed in the rule language
4 that was contained in your packet is that that language be
5 changed to the vehicle's stock number which must be unique
6 to the specific motor vehicle advertised, or the last 8
7 digits of the VIN.

8 So the advertising rules exist for basically
9 consumer protection elements, right? We want to make sure
10 that we are being truthful, not misleading, presenting
11 truthful information in these advertisements that we're
12 giving to the customers. This rule in particular speaks
13 to bait and switch tactics, essentially.

14 So if there's one vehicle that a dealer is
15 advertising at a specific price, we want to add that
16 additional identifying marker onto that advertisement so
17 that when the consumer reaches out to the dealer to engage
18 in discussions about that vehicle, they know in fact that
19 that is the vehicle that they are discussing, as
20 identified again by that stock number or the VIN.

21 So the concern here is that criminals are
22 taking that VIN and using it in cloned, stolen vehicles.
23 And so how do we remedy that problem? And I see it a
24 number of different ways. We can leave it as is.

25 And why would we want to do that? Because

1 franchise dealers have a stock number for their vehicles.

2 Our smaller, independent dealers who might want to
3 advertise in this manner, one vehicle at one price, might
4 not have any set, identifying number that they can use to
5 support that advertisement. And so we'd be removing the
6 alternative to use the VIN. So we can leave it as is.

7 We can completely remove VIN from it, again,
8 and leave the stock number. But again, that presents the
9 problem -- or we can use certain numbers from the VIN.

10 And so in looking at these matters and looking
11 at the VIN makeup, we're trying to, one, get guidance on
12 what you think we should do with the rule language. And
13 if the recommendation from the Advisory Committee happens
14 to be that we do use a portion of the VIN in the
15 advertisement and leave it as stock number or VIN -- but
16 certain digits of a VIN? Which digits do we use, if
17 that's the route you want to go?

18 And so at this point, I'd like to open that up
19 for discussion with the group.

20 MR. BLASSINGAME: Thank you, Ms. Thompson.

21 Committee member?

22 MR. DONNELLY: Committee Member Donnelly to be
23 recognized.

24 MR. BLASSINGAME: Committee Member Donnelly,
25 you're recognized.

1 MR. DONNELLY: Being a small independent and
2 such you were talking about, we do have a stock number.
3 We typically use the last six of the VIN. It wouldn't be
4 a problem as far as an independent dealer in that
5 scenario, especially given the safety, of removing the VIN
6 completely. So wouldn't be an issue for us.

7 MR. BLASSINGAME: Thank you, sir.

8 Any other comments from the Committee?

9 Member Bradburn, go ahead.

10 MR. BRADBURN: Thank you, sir.

11 I would have to agree with Ms. Thompson on
12 that. I'm currently working several cases. One actually
13 was a cloned, stolen vehicle I recovered where the
14 suspects actually went to a dealership in the Houston area
15 and took a VIN off an advertisement that was online.

16 The victim paid over 20,000 cash, and
17 surprisingly, an independent dealer then issued a buyer
18 tag they shouldn't have issued for that same vehicle. So
19 I would strongly encourage taking anything to do with the
20 VIN, including the last six. Because if you use a VIN
21 decoder and have the last six of a VIN, you can build a
22 VIN.

23 Thank you.

24 MR. BLASSINGAME: Thank you. Member Elam?

25 MR. ELAM: Thank you. Member Elam here. RV

1 industry smaller dealers do lack the ability to address
2 stock numbers in all cases. However, we see an issue with
3 reducing the number of VIN numbers being used as a very
4 meaningful move forward, because we too have had instances
5 where those VIN numbers have been replicated.

6 So yes, shortening the VIN number in some
7 capacity would be good for us.

8 MR. BLASSINGAME: Thank you, Member Elam.

9 Committee members, questions? Committee Member
10 Doran?

11 MR. DORAN: Member Doran. A couple of issues
12 that I want the group to think about in the context of
13 this proposal -- and I fully recognize that we want to do
14 whatever we can to prevent fraud. I think that's
15 important. I think that's part of the charge that the DMV
16 has here in Texas.

17 A couple things I think we want to balance
18 here. The first is, there are certain aspects of having
19 the VIN number on the advertisement that are, I will say,
20 in the pro-consumer space, right?

21 So for example, before a customer ever sets
22 foot in the dealership -- perhaps it's after hours, it's a
23 Saturday night or a Sunday. They may be browsing that
24 dealer's inventory and they see the VIN number. Now, what
25 does that allow them to do in preparation for their dealer

1 visit on Monday or Tuesday?

2 Well, they can contact their lender and line up
3 financing, which they would not be able to do if we remove
4 the VIN. They can contact their insurance company and get
5 an insurance quote, which may impact the affordability
6 decision that they have to make as to whether they can buy
7 that particular vehicle.

8 If it's a used vehicle, they may want to run
9 the CARFAX report. They may want to do a title search.
10 They may want to run the VIN number against the recall
11 database. All these things a prospective customer could
12 do today, and they may not be able to do that if we remove
13 all of the VIN numbers.

14 The other issue that I see here -- and I'm glad
15 we have so many and such a diverse group of dealers on
16 this Committee, because from our standpoint, you know, the
17 buying process is becoming more and more transparent and
18 more and more online. And so what that means is, there's
19 a closer integration between the manufacturer and
20 distributor and the dealer as it relates to the display of
21 their inventory, particularly today where we have, in some
22 instances, some inventory shortages in certain places.

23 So dealers are able to look deeper into the
24 pipeline to see what's going to be built, what's the
25 production schedule. Manufacturers and distributors are

1 not working off of dealer stock numbers. That's a
2 creation of the dealer. They're doing this all by VIN
3 numbers.

4 So you have a data stream that's coming from
5 the manufacturer and distributor that is then going into
6 the dealer's DMS system. And then depending upon how that
7 dealer, I assume, has that DMS system configured, it will
8 then be displayed as part of their inventory on their
9 individual website. It may also get piped out to third-
10 party websites as well, right?

11 We don't have visibility to all that. That's a
12 dealer decision. But I think we need to look long and
13 hard at what would be the IT cost that that dealer has to
14 bear by redacting a portion of that VIN number?

15 There may be a cost associated with that. I
16 don't know what that would be, but that would be the
17 dealer's responsibility. It may be as simple as one line
18 of code.

19 You know, you check the box. I only want to
20 display model year, color, engine type, and mileage. And
21 it's a simple removal of a data set. But it may be much
22 more involved than that.

23 And I guess the dealers have to figure out, is
24 this something I'm willing to be spend \$500 on per car?
25 You know, is it \$5,000 IT, you know, change order? Or is

1 it more?

2 And so I think -- I'm hoping that the
3 conversation today elicits some detailed feedback from the
4 dealers as to how this would impact their operations.
5 Because the way I read the rule, the proposal, it would
6 not impact the manufacturer or distributor in terms of our
7 websites and what we display.

8 And if I'm wrong about that, you know, please
9 do correct me, but that's not how we read the rule. So
10 you're still going to be able to go to, you know,
11 Chevrolet.com, Toyota.com, and presumably look at this
12 inventory at the VIN level. So let's -- I think we should
13 consider all that as we're trying to assess the value
14 proposition of the rule.

15 Thank you.

16 MR. BLASSINGAME: Thank you, Member Doran.

17 Member Elam, you have your hand up?

18 MR. ELAM: Let me take that down.

19 MR. BLASSINGAME: Thank you, Member Elam.

20 Member comment?

21 MALE VOICE: I'm not sure how you're going to
22 stop crooks from just driving around at night looking at
23 VIN numbers on cars.

24 MR. BLASSINGAME: Member comment?

25 MR. DURANT: May I be recognized?

1 MR. BLASSINGAME: Member Durant?

2 MR. DURANT: I did some research on this issue,
3 and background. My stores have experienced significant
4 vehicle theft. And I'm aware that there is a significant
5 problem with vehicle theft, and some of those are sold for
6 parts. But we're aware that some are, you know, falsely
7 labeled with our official VIN plates and then resold.

8 So anything that we can do to help our police
9 in catching these criminals and eliminating these bad
10 actors, I'm in support of. However, I don't know if this
11 one goes far enough. We can eliminate all of the VINs on
12 dealer websites in Texas and you still have Oklahoma.

13 You still have Louisiana. You still have
14 dealer websites in Ohio. Name any other of the 49 states,
15 and we still have a problem.

16 I've also found a way to generate VINs. There
17 are currently two websites, if you search, where you can
18 easily generate a VIN and it's very accurate. VINs are
19 not too challenging to build yourself. NHTSA has guides
20 on how to decode VINs that could be reversed into making
21 your own artificial VIN.

22 So my concern here, and certainly the dealers
23 are willing to go through hardship and expense to fix the
24 problem if it will eliminate the crime, but my concern
25 here is that this will not do what the objective is.

1 MR. BLASSINGAME: Thank you, Member Durant.
2 Member Bradburn, you have your hand up?

3 MR. BRADBURN: Thank you. I appreciate the
4 opportunity to speak again.

5 Just to show a level of -- excuse me --
6 sophistication with these, I'm dealing with them every
7 day. They like to use a real VIN. I understand the
8 websites he was talking about. I use those all the time
9 when I buy paper tags online.

10 You don't want to use a real VIN. But they're
11 so sophisticated. They're finding a real VIN that's a
12 similar vehicle. They make a title that looks almost
13 legitimate.

14 In one of the recent cases, they actually made
15 a fraudulent Texas ID card to go along, so when the buyer
16 was buying the car, he thought he was getting a legitimate
17 vehicle. They may touch out of state, but if they touch
18 out of state, it's not going to be a Texas title.

19 In one of the cases I have right now -- I have
20 several -- you know, it was a fake ID, faked this. It
21 came with a paper tag. The victim actually ran a CARFAX.

22
23 So he was buying a 2020 Chevy Traverse. I
24 think he actually got a 2019 Traverse when you found the
25 hidden VINs, et cetera. But that victim was doing his due

1 diligence.

2 So whatever we can do. I don't want to put the
3 dealers out, but as a law enforcement officer, we have a
4 huge problem.

5 Just one last comment. I don't want to rehash
6 the paper tag fiasco, but that went on for so long, it got
7 out of hand. I really think we need to put a stop on this
8 VIN swapping now before it completely gets out of hand,
9 because it's pretty bad right now.

10 Thank you.

11 MR. BLASSINGAME: Thank you, Member Bradburn.
12 Committee comment?

13 MR. SULLIVAN: Yes, sir. Presiding Officer,
14 Member Sullivan. May I be recognized?

15 MR. BLASSINGAME: Member Sullivan, you're
16 recognized.

17 MR. SULLIVAN: Thank you. I want to be
18 recognized for following the rules. It's hard for me to
19 do that, but I'm doing pretty good. All right.

20 So I visited with our internal -- my teammates
21 at Group 1, and I'd like to offer some input. We support
22 the agency's effort to reduce fraud and theft. That is
23 our highest priority.

24 I just want to offer a couple of comments, that
25 as you go down the road, to consider this. It would not

1 be costly for us to prevent the VIN from being displayed
2 on our websites. However, our partners like Cars.com and
3 Autotrader, to receive fees that they can use to advertise
4 the vehicles could be effected. So it's the fee to the
5 third-party vendors that support the dealers in their
6 advertising.

7 And then, lastly, the vendor that lists our
8 vehicles on our websites may find it difficult to obtain
9 vehicle specifications to accurately list them to the
10 public. So those are just comments. We're not opposed to
11 the rule, and we certainly applaud the agency for the
12 effort.

13 Thank you, Presiding Officer.

14 MR. BLASSINGAME: Thank you.

15 Committee member comment? Committee Member
16 Doran?

17 MR. DORAN: Okay. I would just like to throw
18 out there that we would be willing to participate with
19 DMV, TADA, any other stakeholders in a public awareness
20 campaign on this issue. Because it sounds like based on
21 what Member Bradburn was saying, you know, the victim at
22 the time of the purchase is unknowingly buying a vehicle
23 that has the wrong VIN number or has this false VIN number
24 assigned to it.

25 So the extent there's an opportunity there to

1 engage in a public awareness campaign on that, you know,
2 check your VINs four or five times. Look all over the
3 car. And you know, that is a risk of buying a vehicle
4 online, sight unseen.

5 And you know, a buyer that comes in and
6 actually lays hands on the vehicle -- now, I know there's
7 ways that you can go out, and you know, buy little
8 placards and things that are designed to go where the
9 actual stamped VINs are on the vehicles, but I don't see
10 any downside of doing a public awareness campaign on this.

11 And we would fully support that.

12 Thank you.

13 MR. BLASSINGAME: Thank you, Member Doran.

14 Comment from members? Questions?

15 MR. FERGUSON: Officer Blassingame, Member
16 Ferguson.

17 MR. BLASSINGAME: Member Ferguson, you're
18 recognized.

19 MR. FERGUSON: Yes. The last four digits of a
20 VIN, what do those describe on the vehicle?

21 MS. THOMPSON: Corrie Thompson, Director of
22 Enforcement. I'm very glad you asked. I have a handy
23 diagram in front of me which discusses what the numbers
24 and their placement identify.

25 So the last six digits are the serial number

1 for the vehicle. And so as you heard members discuss,
2 those are the specific identifiers that thieves are in
3 fact using to recreate these for the cloned, stolen
4 vehicles. And so we put the last eight digits into the
5 proposed rule language and are coming before the Committee
6 to see if there's a better pattern, a different pattern
7 that we should be including in this ruling, or if we
8 should revert back to leaving it as is.

9 That's the purpose of opening it up for
10 discussion. The additional identifiers, outside of six,
11 are the year of the vehicle, and then the plant where the
12 vehicle was assembled. So the last eight that we're
13 covering right now in the proposal are the specific
14 vehicle identifiers.

15 MR. FERGUSON: So is that like the vehicle's
16 Social Security number?

17 MS. THOMPSON: Essentially, yes. Like the
18 vehicle serial number, yes.

19 MR. FERGUSON: Okay. Yes.

20 MR. BLASSINGAME: Thank you, representative.
21 Committee members, questions, comments? Member
22 Hicks, you're recognized.

23 MR. HICKS: Yes, sir. Do we have any data that
24 this approach in reducing the number of digits from the
25 VIN has had an impact, a positive impact to vehicle theft

1 in any other state? Thank you.

2 MS. THOMPSON: Corrie Thompson, Director of the
3 Enforcement Division. Two things.

4 One, no, I do not have any data that would
5 speak to your question. And two, I have been informed
6 that we did have a change to the rule language and we are,
7 in the proposed language, using the last four digits. We
8 initially had it proposed as eight, and given the concern
9 that the last six were the serial number, moved it to four
10 digits for that clarification.

11 MR. BLASSINGAME: Any other comments from the
12 Committee?

13 MR. BRADBURN: Member Blassingame, Member
14 Bradburn, real quick, please?

15 MR. BLASSINGAME: Member Bradburn?

16 MR. BRADBURN: Just to answer the last question
17 partially, not scientifically, the last month, we
18 presented on a CARFAX panel nationwide about this topic
19 and about the tag topic. And it seemed pretty much across
20 the board, in all 50 states, everybody is having the same
21 cloned stolen problem. It's just not Texas.

22 That was all, sir.

23 MR. BLASSINGAME: Thank you, Committee Member
24 Bradburn.

25 Any other comments or questions from the

1 Committee?

2 (No response.)

3 MR. BLASSINGAME: David, are there any public
4 comments to Item 2.B.?

5 MR. RICHARDS: Yes, Mr. Chairman. The first
6 commenter is Drew Campbell, Alliance for Automobile
7 Innovation.

8 MR. BLASSINGAME: We will now hear from Drew
9 Campbell.

10 Please approach the podium, state your name for
11 the record, and if you are representing anyone. You will
12 have three minutes.

13 MR. CAMPBELL: Thank you, Mr. Chairman. I'm
14 Drew Campbell. I'm here representing the Alliance for
15 Automotive Innovation.

16 And without belaboring all the things that
17 we've heard so far, I think that our group would ask for a
18 delay of consideration of this advertising rule simply
19 because it feels like we don't have all the facts yet.
20 There are things that, I think, to be considered -- this
21 rule was originally put in place, as was mentioned before,
22 as a consumer protection device so that consumers felt
23 confident about the fact when a car was advertised for a
24 particular price, that vehicle was actually available for
25 that particular price. But there's a lot of moving parts

1 here, and I think the industry would be very much
2 interested in participating in any kind of conversation as
3 we move forward.

4 But thank you, Mr. Chairman. We just ask for a
5 delay of consideration.

6 MR. BLASSINGAME: Any questions for Drew
7 Campbell?

8 MR. CAMPBELL: Thank you, Mr. Chairman.

9 MR. BLASSINGAME: Thank you, Mr. Campbell.

10 MR. RICHARDS: Did you sign up with two, Mr.
11 Campbell? Okay. Yeah.

12 That is all the public comments on 2.B.

13 MR. BLASSINGAME: Any other comment from the
14 Committee?

15 (No response.)

16 MR. BLASSINGAME: Hearing none, I will move to
17 the next item on the agenda. It's Item 2.C.,
18 recommendations of Advisory Committee for presentation to
19 the Board.

20 Now that the Committee has been briefed by the
21 TxDMV staff on TADA's rulemaking petition and draft
22 proposed amendment to Chapter 215, it is time to discuss
23 and vote on any recommendations that we as an Advisory
24 Committee want to present to the Texas DMV Board.

25 To assist the court reporter in getting an

1 accurate record, please cite the -- to the blue page,
2 number at the top, right-hand side of your written
3 materials and the line number located on the left-hand
4 side of the draft amendments to Chapter 215 when
5 discussing any portion of the provisions in the written
6 materials the TxDMV staff provided you. Any
7 recommendations for this Advisory Committee should be made
8 in the form of a motion that the Advisory Committee votes
9 on, unless TxDMV staff are willing to accept an informal
10 comment.

11 An example of the motion is, I move that the
12 Advisory Committee recommend to the TxDMV Board that the
13 proposed amendments to Section 215.120 should be modified
14 to add the clause that says, X.

15 Members, do you have any recommendations to the
16 present DMV Board regarding TADA's rulemaking petition?

17 MR. SULLIVAN: Presiding Officer, Mike
18 Sullivan. I'd like to be recognized, please.

19 MR. BLASSINGAME: Mr. Sullivan, you're
20 recognized.

21 MR. SULLIVAN: Thank you. Procedural question.
22 Forgive me.

23 Can you walk us through the quorum count, where
24 we are, how many votes would be required for passage or
25 non-passage of an amendment or item? And then also how

1 would an abstention play into the vote count?

2 MS. MORIATY: Sure. So we just need a simple
3 majority of those present. And one, two, three, four,
4 five, six, seven, eight -- 12. We have 12 present, so
5 we're going to need seven, including the Chairman. So an
6 abstention would not count toward that majority.

7 MR. SULLIVAN: Is an abstention counted as a
8 no?

9 MS. MORIATY: No, you could just not vote, too.
10 You would be welcome to just say, I abstain, and it would
11 be counted neither as a no nor as a yes.

12 MR. SULLIVAN: Okay. Thank you.

13 Thank you, Presiding Officer.

14 MS. MORIATY: But in the end, we've got to get
15 to a majority. So it would essentially act as a no
16 because you would not be counting toward the majority.
17 Does that make sense?

18 MR. SULLIVAN: The majority of the quorum or
19 the majority for the vote?

20 MS. MORIATY: Majority for the vote.

21 MR. SULLIVAN: Okay.

22 MS. MORIATY: You would exist for quorum. Yes,
23 absolutely. You are in the room.

24 MR. SULLIVAN: Okay. All right. Thank you.

25 MR. BLASSINGAME: Thank you, Committee member.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The Advisory Committee does not have any formal recommendations for the Department requiring a vote, but provided great discussion and information to the Department considering and drafting the rules --

MS. MORIATY: Mr. Chairman, sir, I'm sorry. This is Laura Moriaty. I just want to make sure that nobody had a motion before we --

MR. BLASSINGAME: Yeah, yeah.

MS. MORIATY: -- because we just had a procedural question. If there are any motions, I just wanted to make sure we had an opportunity to get them.

MR. BLASSINGAME: Do we have any motions?

MR. DURANT: I move for a vote.

MR. BLASSINGAME: What's your motion? Member Durant, what's your motion?

MR. DURANT: Member Durant. I would move for a vote on this proposal.

MS. MORIATY: But so -- I'm sorry. This is Laura Moriaty.

As an example, you could say, I recommend that the Board move forward with rulemaking on TADA's petition, or I recommend that the Board reject TADA's petition. Those would be motions. We don't have a motion on the table yet, though, so there's nothing to vote on.

1 MR. BLASSINGAME: Does that answer your
2 question, Member Durant?

3 MR. DURANT: Yes. I would move that TADA -- or
4 that the Board accept TADA's proposal.

5 MR. BLASSINGAME: We have a motion on the
6 floor. Do we have a second for the motion?

7 MR. STARK: Stark. I second the motion.

8 MR. BLASSINGAME: We have a second and a motion
9 made. We'll need to take a vote now.

10 MR. RICHARDS: See if there's any discussion.

11 MR. BLASSINGAME: Is there any discussion?

12 MR. BRADBURN: Can we clarify what we're voting
13 for, please?

14 MR. BLASSINGAME: Member Bradburn, yes.

15 MS. MORIATY: So the motion on the table is
16 that the Board accept TADA's petition for rulemaking,
17 which would mean that we would move forward, that the
18 agency would move forward with the rulemaking process.
19 But this is just a recommendation. You are recommending
20 to the Board that the agency move forward with the
21 rulemaking process on TADA's petition for rulemaking.

22 MR. BRADBURN: Thank you, ma'am.

23 MR. BLASSINGAME: Member Doran?

24 MR. DORAN: Question for staff on the motion.
25 Would that mean -- if this motion carried, would that mean

1 that you'd be presenting it to the Board on Thursday, or
2 would it be in a future meeting?

3 MS. MORIATY: So we can clarify the motion.
4 That's an excellent point. There is proposed -- we would
5 not be -- I'm sorry.

6 We are not posted to do it on Thursday, but we
7 should also -- I'm hearing two voices in my head at once.

8 The other point that Ms. Thompson just made is we should
9 clarify the motion to say whether we want this rule
10 language to be the rule language that we go forward with
11 or if there are any adjustments. It sounds like Member
12 Durant's motion was to go forward with the rule language
13 as put forth by TADA.

14 So I'm going to -- with your permission, Member
15 Durant, I'm going to clarify your motion to say that his
16 motion is to recommend to the Board that we move forward
17 with rulemaking on the TADA petition with the rule
18 language as presented by TADA.

19 MR. DURANT: Thank you. And I approve.

20 MR. BLASSINGAME: Does that clarify?

21 MR. DORAN: Yes. Thank you.

22 MALE VOICE: Point of order.

23 MR. BLASSINGAME: Point of order.

24 MALE VOICE: My question is if the vote
25 carries, does that get presented as if we passed and were

1 in favor of the action in that?

2 MS. MORIATY: Yes. So if the vote carries on
3 this one, it will be brought to the Board as a
4 recommendation from your Committee that we go forward on
5 the TADA language. You would be in support of the TADA
6 language.

7 Now, the Board will obviously have its own full
8 process with its own votes to propose. If the language
9 got out of that, it would go to public comment in the
10 *Texas Register* like all -- this is all future process.
11 And again, this is not at the next Board meeting, because
12 we are not posted for it.

13 But yes, this Committee would be telling the
14 Board that you are recommending that we move forward with
15 the TADA proposal.

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

18 MALE VOICE: I hope so. Thank you.

19 MR. BLASSINGAME: Okay. Member Bradburn -- I'm
20 sorry -- Member Doran?

21 MR. DORAN: Member Doran. I'm also troubled by
22 that, because it presents the image that everything's
23 copacetic in terms of the Advisory Committee's thoughts
24 about this particular recommendation. And you know,
25 obviously, if you go back through the record today, that's

1 not the case. So --

2 MS. MORIATY: So Member Doran could vote
3 against this resolution, if you don't feel that it
4 reflects the will of the Advisory Committee.

5 MR. DORAN: Follow-up question, if it's -- if I
6 may?

7 MR. BLASSINGAME: Follow up.

8 MR. DORAN: But when it's presented by either
9 Officer Blassingame or staff to the Board, will you
10 provide input as to how the vote went or give commentary
11 about the deliberations and information that was shared
12 today?

13 MS. MORIATY: Officer Blassingame will be
14 presenting, and he would absolutely have that opportunity
15 to explain to the Board what the meeting was like and what
16 happened.

17 MR. DORAN: Thank you.

18 MR. BLASSINGAME: Does that answer your
19 question, Member Doran?

20 MR. DORAN: Yes, it did. Thank you.

21 MR. BLASSINGAME: Very good.

22 MR. SULLIVAN: Presiding Officer, may I be
23 recognized? Member Sullivan.

24 MR. BLASSINGAME: Member Sullivan, go ahead.

25 MR. SULLIVAN: I had not thought of this, but

1 based on Member Doran's comments, how would you present
2 this to the Board if it passes -- big if? If it passes,
3 how would you couch the conversation and presentation on
4 our behalf?

5 MR. BLASSINGAME: I think accurately. The vote
6 will be so many for, so many against. Beyond that, I
7 can't really recommend anything.

8 Member Doran?

9 MR. DORAN: Follow-up question. Would you be
10 able to share the fact that there was public comments
11 presented on this? I know we haven't seen that in some of
12 our Advisory Committee --

13 MR. BLASSINGAME: Yes.

14 MR. DORAN: -- meetings before? Thank you.

15 MR. BLASSINGAME: Yes.

16 MALE VOICE: Point of order?

17 MR. BLASSINGAME: Yes, sir?

18 MALE VOICE: Mr. Sullivan eloquently pointed
19 out that we don't have all the facts. And there's a lot
20 of background that would need to be exposed before I'd
21 want to vote on something moving forward to people who may
22 take that comment as we're in favor of it. So I've got a
23 real problem with this moving forward, especially just on
24 the basics that we don't have all the information.

25 Those are my comments. Thank you.

1 MR. BLASSINGAME: Good comment. And you can
2 choose not to vote. If you choose not to vote, it won't
3 be counted as a positive vote. Does that explain?

4 MALE VOICE: So if I choose not to vote, is
5 that the same as no?

6 MS. MORIATY: You can vote no, sir.

7 MALE VOICE: Okay. Thank you.

8 MR. SULLIVAN: Presiding Officer, Member
9 Sullivan. May I be recognized?

10 MR. BLASSINGAME: Member Sullivan, you are
11 recognized.

12 MR. SULLIVAN: Thank you. My questions are
13 very well intentioned. Let me say that to staff and to my
14 colleagues here.

15 But if this passes and you're charged as
16 Presiding Officer with presenting the item to the Board,
17 I'd like some assurance, some public assurance, the Board
18 would be well aware of the intensive discussion today and
19 the concerns. So that it's not just a thumbs-up or
20 thumbs-down presentation, and not just that you would
21 present it honestly, because I know you would, and I hope
22 you know that.

23 But I think we have to incorporate the two and
24 a half hours, soon to be three hours, that we've spent
25 here talking about issues. And I need help -- I don't

1 want to say I need assurance. That's a bully. I'd like
2 to figure out how this discussion is conveyed to the
3 Board.

4 Does that makes sense?

5 MS. MORIATY: If I may --

6 MR. SULLIVAN: Can someone help me with that?

7 MS. MORIATY: -- yeah, if I may, Chairman? So
8 this is just your first resolution vote, right?
9 Regardless of what happens here, we could have subsequent
10 resolutions that say the Committee resolves to inform the
11 Board of its extensive discussion of potential risks
12 involved in this, and it remains -- concerns remain
13 regarding the impact this would have on automobile
14 distribution in Texas. You know, you could have
15 subsequent resolutions that further nuance the first vote
16 you take.

17 MR. SULLIVAN: Okay. Thank you, General
18 Counsel and Presiding Officer. I hope you take my
19 comments in the light that I intend them, because --

20 MR. BLASSINGAME: Understand.

21 MR. SULLIVAN: -- some of us volunteer and some
22 of us were appointed. Some of us are present and some of
23 us are not. There's just a lot that's gone into this.

24 And I want to -- actually, now that I have a
25 moment, I want to thank everyone for their input, even if

1 they disagree with me. So I appreciate everyone
2 participating. It's been a very professional and cordial
3 discussion.

4 Agency support has been tremendous and I can't
5 thank y'all enough for allowing me to be a part of this
6 process. Thank you.

7 MR. BLASSINGAME: So we have a motion from a
8 member and a second on the motion. So if there's any
9 further discussion, it needs to happen now, or we'll call
10 for a vote.

11 MR. BRADBURN: Member Bradburn. I had a
12 question.

13 MR. BLASSINGAME: Member Bradburn, you're
14 recognized.

15 MR. BRADBURN: I'm trying to remember Robert's
16 Rules of -- we could also possibly table this vote and not
17 have it today.

18 MS. MORIATY: If the Committee doesn't want to
19 have this resolution, we could rescind the resolution and
20 say that there were no resolutions that came from the
21 Committee. That's certainly a possibility.

22 MR. BRADBURN: Thank you.

23 MR. BLASSINGAME: Does that answer your
24 question?

25 MR. BRADBURN: Yes, sir, it did. Thank you.

1 MR. BLASSINGAME: I will now call for a vote.
2 Members, when I call your name, please state
3 your name for the record and whether you support the
4 motion or not. If you support the motion, please respond
5 by saying support, and if you do not support the motion,
6 please respond by saying no.

7 Member Bradburn?

8 MR. BRADBURN: Member Bradburn, no.

9 MR. BLASSINGAME: Member Donnelly?

10 MR. DONNELLY: Member Donnelly, support.

11 MR. BLASSINGAME: Member Doran?

12 MR. DORAN: Member Doran, no.

13 MR. BLASSINGAME: Member Durant?

14 MR. DURANT: Member Durant, support.

15 MR. BLASSINGAME: Member Elam?

16 MR. ELAM: Member Elam, support.

17 MR. BLASSINGAME: Member Ferguson?

18 MR. FERGUSON: Member Ferguson, no.

19 MR. BLASSINGAME: Member Gonzalez?

20 (No response.)

21 MR. BLASSINGAME: Member Hall?

22 (No response.)

23 MR. BLASSINGAME: Member Hayter?

24 MR. HAYTER: Member Hayter, no.

25 MR. BLASSINGAME: Member Hicks?

1 (No response.)

2 MR. BLASSINGAME: Member Murphy?

3 MR. MURPHY: Member Murphy, no.

4 MR. BLASSINGAME: Member Prather, Sr.?

5 (No response.)

6 MR. BLASSINGAME: Member Provost?

7 (No response.)

8 MR. BLASSINGAME: Member Sims?

9 (No response.)

10 MR. BLASSINGAME: Member Sralla?

11 MR. SRALLA: Member Sralla, support.

12 MR. BLASSINGAME: Member Stark?

13 MR. STARK: Stark, support.

14 MR. BLASSINGAME: Member Sullivan?

15 MR. SULLIVAN: Member Sullivan, no. Oppose.

16 Do not support.

17 MR. BLASSINGAME: Member Thomas?

18 (No response.)

19 MR. BLASSINGAME: Member Vitela?

20 (No response.)

21 MR. BLASSINGAME: And I, David Blassingame, do

22 not support the motion. So the noes won.

23 Chapter 215, members, recommendations? Do you
24 have any recommendations to present to the Texas DMV Board
25 regarding the draft amendments to Chapter 215, motor

1 vehicle distribution?

2 (No response.)

3 MR. BLASSINGAME: The Advisory Committee does
4 not have any recommendations for the Department requiring
5 a vote, but has provided a great discussion and
6 information for the Department to consider these rules.

7 Are there any motions from any members?

8 MR. BRADBURN: Member Bradburn. May I speak?

9 MR. BLASSINGAME: Member Bradburn, you're
10 recognized.

11 MR. BRADBURN: Thank you. Confirming this
12 would be a motion to support the DMV's policy about the
13 VINs on the cloned, stolen vehicles?

14 MR. BLASSINGAME: Yes.

15 MR. BRADBURN: Member Bradburn. I would like
16 to vote that we follow the DMV's implementation and
17 support that amendment.

18 MR. BLASSINGAME: We have a motion from Member
19 Bradburn. Do we have a second on the motion?

20 MR. DONNELLY: Member Donnelly. I second that.

21 MR. BLASSINGAME: Member Donnelly.

22 Any further discussion?

23 MR. DORAN: Member Doran.

24 MR. BLASSINGAME: Member Doran?

25 MR. DORAN: I'm just going to say, Member

1 Bradburn, I'm almost always with you on law enforcement
2 driven motions, but I'm likely to abstain on this one,
3 simply because I do not know what the impact, the total
4 impact is going to be on our dealers, as well as our
5 manufacturer partner at this time. And without that
6 information, I can't take the rational, reasonable and
7 educated decision on this motion today.

8 Thank you.

9 MR. BLASSINGAME: Thank you, Member Doran.

10 Any other comment from members? Any
11 discussion?

12 (No response.)

13 MR. BLASSINGAME: Hearing none, I will call for
14 a vote.

15 Members, when I call your name, please state
16 your name for the record and whether you support the
17 motion or you do not support the motion.

18 Member Bradburn?

19 MR. BRADBURN: Member Bradburn, yes.

20 MR. BLASSINGAME: Member Donnelly?

21 MR. DONNELLY: Member Donnelly, yes.

22 MR. BLASSINGAME: Member Doran?

23 MR. DORAN: No.

24 MR. BLASSINGAME: Member Durant?

25 MR. DURANT: Member Durant, present.

1 MR. BLASSINGAME: Not voting one way or
2 another?

3 MR. DURANT: Sorry. I had not decided.

4 MR. BLASSINGAME: Okay. Member Elam?

5 MR. ELAM: Yes. Member Elam.

6 MR. BLASSINGAME: Member Ferguson?

7 MR. FERGUSON: Member Ferguson, present.

8 MR. BLASSINGAME: Member Gonzalez?

9 (No response.)

10 MR. BLASSINGAME: Member Hall?

11 (No response.)

12 MR. BLASSINGAME: Member Hayter?

13 MR. HAYTER: Member Hayter, yes.

14 MR. BLASSINGAME: Member Hicks?

15 (No response.)

16 MR. BLASSINGAME: Member Murphy?

17 MR. MURPHY: Member Murphy, present.

18 MR. BLASSINGAME: Member Prather?

19 (No response.)

20 MR. BLASSINGAME: Member Provost?

21 (No response.)

22 MR. BLASSINGAME: Member Sims?

23 (No response.)

24 MR. BLASSINGAME: Member Sralla?

25 MR. SRALLA: Member Sralla, support.

1 MR. BLASSINGAME: Member Stark?

2 MR. STARK: Stark, present.

3 MR. BLASSINGAME: Member Sullivan?

4 MR. SULLIVAN: Member Sullivan, abstain.

5 MR. BLASSINGAME: Member Thomas?

6 (No response.)

7 MR. BLASSINGAME: Member Vitela?

8 (No response.)

9 MR. BLASSINGAME: And I, David Blassingame, do
10 support the motion. Let the record show that there are
11 seven votes for and one vote against and the rest were
12 abstains. Committee members voting yes.

13 So the Committee voted yes on the resolution.

14 MS. MORIATY: Yes. We got to a majority, sir,
15 of seven.

16 MR. BLASSINGAME: I will now move on to Agenda
17 3, public comment.

18 Are there any public comments from the public?

19 MR. RICHARDS: Mr. Chairman, no, there are
20 not.

21 MR. BLASSINGAME: We will now move on to
22 adjournment. Unless there's any further business, I'd
23 like to entertain a motion to adjourn.

24 MR. SRALLA: So moved.

25 MR. BLASSINGAME: Let's try it again. Unless

1 there are any further business, I would like to entertain
2 a motion to adjourn.

3 MR. SRALLA: So moved.

4 MR. BLASSINGAME: Do I have a motion from
5 anyone to adjourn the meeting?

6 MALE VOICE: So moved.

7 MR. SRALLA: Member Sralla. Motion to adjourn.

8 MR. BLASSINGAME: Who else is --

9 MR. BRADBURN: Member Bradburn, second.

10 MR. BLASSINGAME: -- on the motion? All in
11 favor?

12 (A chorus of ayes.)

13 MR. BLASSINGAME: Let the record show that the
14 vote is unanimous. It is now noon, 12:00 p.m, and we're
15 adjourned.

16 (Whereupon, at 12:00 p.m., the meeting was
17 concluded.)

C E R T I F I C A T E

MEETING OF: TxDMV Motor Vehicle Regulation Advisory
Committee

LOCATION: Austin, Texas

DATE: June 25, 2024

I do hereby certify that the foregoing pages,
numbers 1 through 128, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Elizabeth Stoddard before
the Texas Department of Motor Vehicles.

DATE: July 9, 2024

/s/ Adrienne Evans-Stark
(Transcriber)

On the Record Reporting
7703 N. Lamar Blvd., #515
Austin, Texas 78752