

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
June 1, 2017

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Raymond Palacios, Chair
Luanne Caraway
Brett Graham
Kate Hardy
Blake Ingram
Gary Painter
Guillermo "Memo" Treviño
Johnny Walker

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MVD Docket Nos. 14-0010.LIC and 15-0013.LIC;
 SOAH Docket No. 608-14-3211.LIC
 Bates Nissan, Inc., Complainant v. Nissan North
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RULES - ADOPTIONS

Title 43, Texas Administrative Code

- | | | |
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| 10. | Chapter 206, Management
Amendments, §206.131, Digital Certificates
(Proposal Published January 27, 2017 -
42 Tex. Reg. 300) | 144 |
| | Chapter 221, Salvage Vehicle Dealers, Salvage
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Amendments, §§221.16, 221.53, and 221.73
(Proposal Published January 27, 2017 -
42 Tex. Reg. 301) | |
| 11. | Chapter 209, Finance
Amendments, §209.2, Charges for Dishonored
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(Proposal Published March 24, 2017 -
42 Tex. Reg. 1389) | 145 |
| 12. | Chapter 215, Motor Vehicle Distribution
Amendments, §215.140, Established and Permanent
Place of Business
(Proposal Published March 24, 2017 -
42 Tex. Reg. 1390) | 146 |
| 13. | Chapter 215, Motor Vehicle Distribution
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(Proposal Published March 24, 2017 -
42 Tex. Reg. 1392) | 149 |
| 14. | Chapter 217, Vehicle Titles and Registration
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(Proposal Published March 24, 2017 -
42 Tex. Reg. 1393) | 150 |
| 15. | Chapter 218, Motor Carriers
Amendments, §§218.13, 218.17, 218.56, 218.57,
218.65, and 218.73
Repeal, §218.74, Settlement Agreements
New, §218.75, Cost of Preparing Agency Record
(Proposal Published April 7, 2017 -
42 Tex. Reg. 1876) | 151 |

RULE - PROPOSAL

Title 43, Texas Administrative Code

- | | | |
|-----|--|-----|
| 16. | Chapter 219, Oversize and Overweight Vehicles and Loads
Amendments, §§219.2, 219.3, and 219.124
Repeal, §219.125, Settlement Agreements
New, §219.127, Cost of Preparing Agency Record
(Proposal Published April 7, 2017 -
42 Tex. Reg. 1885) | 154 |
| 17. | Chapter 218, Motor Carriers
Amendments, §218.61, Claims | 155 |

EXECUTIVE SESSION

- | | | |
|-----|--|------|
| 18. | The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:
<ul style="list-style-type: none"> • Section 551.071 • Section 551.074 • Section 551.076 | 142 |
| 19. | ACTION ITEMS FROM EXECUTIVE SESSION | none |
| 20. | Public Comment | none |
| 21. | ADJOURNMENT | 167 |

P R O C E E D I N G S

1
2 MR. PALACIOS: Good morning, everybody. It is
3 a great day in Austin, Texas, and we are ready to open up
4 this meeting.

5 My name is Raymond Palacios, and I'm pleased to
6 open up the Board meeting of the Texas Department of Motor
7 Vehicles. It is exactly 8:00 a.m., and I am now calling
8 the Board meeting for June 1, 2017 to order. I will note
9 for the record that public notice of this meeting,
10 containing all items on the agenda, was filed with the
11 Office of the Secretary of State on May 23, 2017.

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

17 If you wish to address the Board or speak on an
18 agenda item during today's meeting, please complete a
19 speaker's sheet at the registration table. Please
20 identify the specific item you are interested in
21 commenting on and indicate if you wish to appear before
22 the Board and present your comment or if you only wish to
23 have your written comment read into the record. If your
24 comment does not pertain to a specific agenda item, we
25 will take your comment during the general public comment

1 portion of the meeting.

2 And with that, I will go on to a roll call,
3 beginning with Board Member Caraway?

4 MS. CARAWAY: Present.

5 MR. PALACIOS: Board Member Graham?

6 MR. GRAHAM: Present.

7 MR. PALACIOS: Board Member Hardy?

8 MS. HARDY: Present.

9 MR. PALACIOS: Board Member Ingram?

10 MR. INGRAM: Present.

11 MR. PALACIOS: Board Member Painter?

12 MR. PAINTER: Present.

13 MR. PALACIOS: Board Member Treviño?

14 MR. TREVIÑO: Here.

15 MR. PALACIOS: Board Member Walker?

16 MR. WALKER: Here.

17 MR. PALACIOS: And let the record reflect that
18 I, Raymond Palacios, am here too. We have a quorum.

19 Let the record also reflect that Board Member
20 Barnwell is absent today, and that's actually going to be
21 the first item of business here to address Board Member
22 Barnwell. Under Transportation Code 1001.027(a)(4), the
23 Board by majority vote is able to excuse absences of Board
24 members from regularly scheduled Board meetings. It is my
25 recommendation that we excuse the absences of Mr. Barnwell

1 from the January 5, 2017 Board meeting and from today's
2 Board meeting.

3 Do I have a motion?

4 MS. HARDY: I move to excuse the absences of
5 Member Barnwell from the January 5 Board meeting, as well
6 as today's Board meeting.

7 MS. CARAWAY: Second.

8 MR. PALACIOS: All in favor please signify by
9 saying aye.

10 (A chorus of ayes.)

11 MR. PALACIOS: Okay. Motion carries
12 unanimously.

13 I'm happy to say that the 85th Legislative
14 Session ended a few days ago and overall I think it was
15 positive for the agency. Most of our recommendations that
16 we presented to the legislature passed. There were a few
17 items that we would have liked to have seen go through
18 that did not, but overall, I think it was a good job. I
19 just want to commend our staff, Whitney Brewster and all
20 of her staff, for all of their efforts and communicating
21 to the legislature, making a case for our recommendations,
22 and I think they just did a great, great job. I know they
23 spent countless hours down at the Capitol making our case,
24 and their efforts paid off. Caroline Love specifically
25 did a great job, and she's going to be giving a

1 presentation a little bit later today. So thank you all
2 very much.

3 Let's give them a great hand.

4 (Applause.)

5 MR. INGRAM: Mr. Chairman, I would
6 wholeheartedly agree with that but I also have to say that
7 you left out yourself.

8 MR. PALACIOS: Thank you.

9 One other interesting event that occurred, we
10 celebrated the 100th anniversary of the license plate here
11 in Texas. This happened a few weeks ago, and we were
12 recognized at the State House, they had a special event
13 for us at both the House chamber and the Senate chamber,
14 and I'll say Whitney, Shelly, Caroline, and I, and
15 Jeremiah was there, had a chance to go to the State House
16 and the Senate chambers to get recognized, and it was
17 quite the event. We had cameras out there and the media
18 was out there, and we were just overwhelmed with the
19 attention we were getting, and we were so ecstatic until
20 we noticed that Tony Romo was behind us. The ladies
21 actually took pictures with Tony Romo; I think it's in the
22 lobby somewhere if anybody wants to see it.

23 (General laughter.)

24 MR. WALKER: Is that Tony Romo Barbecue?

25 MR. PALACIOS: I think he plays football,

1 that's what I've heard -- or did. I'm a Texans fan
2 myself.

3 With that, I will turn this over now to our
4 executive director, Whitney Brewster, for the executive
5 director's report.

6 MS. BREWSTER: Good morning, Mr. Chairman,
7 members, guests and staff.

8 In addition to our service awards and
9 retirement awards, I just wanted to announce that we
10 received an Everything is Fitter in Texas Award, and this
11 is a statewide wellness program put on by the Department
12 of State Health Services, and state employees logged their
13 physical activity, and we came in third place. I
14 attribute this a lot to Caroline Love's steps that she put
15 in at the Capitol and the rest of the GSC team, but we did
16 have 73 employees participate, we came in third place, so
17 this will put in our lobby. And congratulations and thank
18 you to those who participated.

19 Moving right along, I am very excited that we
20 have expanded this agenda item to include the recognition
21 of recent retirees and employees who are reaching a state
22 service milestone. We celebrate these employees as a show
23 of our appreciation for their years of service to the
24 citizens of Texas. I want to welcome the family and
25 friends of our celebrants who have joined us this morning.

1 We appreciate the support that you have provided our
2 employees, and thank you so much for sharing them with us.

3 Chairman Palacios, and Board members, would you
4 please join me at the front of the dais to congratulate
5 our recipients, and Martha Yancey will be reading the
6 service announcements.

7 MS. YANCEY: Good morning. I'm Martha Yancey,
8 Human Resources Division. And I'd also like to welcome
9 and thank our employees' family members who came to
10 celebrate their loved ones today.

11 State service award recipients, please join our
12 Ms. Brewster and our Board members as your name is called.

13 We have one employee reaching a state service
14 milestone of 20 years today, Laura Dennis. Laura began
15 her programming career in 1987 at the University of Texas
16 where her innovative work won her a guest coaching spot at
17 UT football game. She then worked as a contractor at
18 several state agencies before coming back to state
19 employment in 2002 at the Texas Department of
20 Transportation. She is currently the application services
21 manager for Information Technology Services Division.
22 During all this time she raised three daughters, ran five
23 marathons, an ultra-marathons and a half Iron Man
24 triathlon. Congratulations, Laura.

25 (Applause.)

1 MS. YANCEY: Employees reaching a state service
2 milestone of 25 years are Andrew Gonzales. Andrew is a
3 role model to our Customer Relations Division and his
4 peers. His commitment to serve our customers and provide
5 exceptional quality service has always been a passion of
6 his. Andrew is willing to help in any way he can with a
7 sincere desire to serve others. Because of his Motor
8 Vehicle Division knowledge and experience, he was a great
9 asset in the preparation of pre-deployment activities and
10 transitioning to eLICENSING. Andrew embraces our mission
11 to serve our customers right the first time, and truly
12 represents what it means to be an ambassador to the State
13 of Texas.

14 Congratulations, Andrew.

15 (Applause.)

16 MS. YANCEY: Idalia Illa-Lopez. Idalia is a
17 vital part of our Beaumont Regional Service Center
18 operation and is loved and admired by her staff. She has
19 established great relationships with the county tax
20 assessor-collectors through her regular visits to their
21 offices.

22 The tax assessor-collectors regularly praise
23 her for her professionalism, her understanding of DMV
24 policy and procedures, and her willingness to help with
25 all their questions and needs. Idalia also played a vital

1 role in our statewide county equipment refresh project,
2 making sure all of her county offices were refreshed in
3 the most expedient manner possible.

4 Congratulations, Idalia.

5 (Applause.)

6 MS. YANCEY: And Patrick Palmer. Patrick
7 graduated from Crockett High School in Austin. Patrick
8 attended Southwest Texas State University in San Marcos.
9 He graduated in 1988 with a degree in accounting. In
10 1992, Patrick began working at the Texas Department of
11 Transportation. He has worked his entire state career
12 with TxDOT and the DMV. He is the go-to person for
13 registration and titling systems questions in finance.

14 Patrick does a fantastic job helping the
15 regional service centers with funds adjustments. He
16 enjoys watching sports and is a diehard fan of the Kansas
17 Jayhawks, the Kansas City Royals, the Kansas City Chiefs,
18 and the Boston Celtics.

19 Congratulations, Patrick.

20 (Applause.)

21 MS. YANCEY: And Sylvia White. Sylvia is a
22 customer service representative for the Consumer Relations
23 Division. She responds to registration and titling
24 questions in our contact center. She is such a dedicated
25 and selfless employee and she is admired for her strength

1 and caring spirit. She can light up your day with her
2 warm personality and smile. We truly appreciate her
3 loyalty and commitment to our mission to serve our
4 customers right the first time.

5 Congratulations to Sylvia.

6 (Applause.)

7 MS. YANCEY: And the following employees also
8 reached a state service milestone but were unable to join
9 us this morning. For 20 years: Norma Fabian, Linda
10 Martin LeDet, and Debbie Bates; 25 years: Ellen
11 Blackwell, Reney Clayton, Christine Reding; 30 years:
12 Cindy Grisham, Lois Johnson, and William Diggs.

13 And finally, we'd like to take this time to
14 congratulate the following individuals who recently
15 retired from the agency: Stella Rico, Maria Dassing, Judy
16 Miller, Paula Lancaster, Susan Price-LaSalla, Jeffrey
17 Kushaney.

18 Thank you.

19 (Applause.)

20 MR. PALACIOS: Okay. Let's move on. It's
21 always nice to recognize the employees that have been with
22 this agency through the years. This agency is an
23 organization, it's a name, but at the end of the day, it's
24 our employees that give this organization life, character
25 and personality, and make it what it is. So we're very

1 grateful that we have such a great group of people, and
2 congratulations to all those that have completed many
3 years of service with the agency.

4 We are going to move on now. We're going to
5 move the contested case that we have here to the front
6 here. I know we have a few people here that are interested
7 stakeholders in this case, so out of respect for everybody
8 that's involved in this, we're going to go ahead and move
9 this right up to the front of the agenda items. So you're
10 going to be hearing the franchised dealer's case notice of
11 termination under Occupations Code 2301.453. I'll ask Mr.
12 Daniel Avitia and David Richards to come forward.

13 MR. AVITIA: Good morning, Chairman.

14 MR. PALACIOS: And I know it's a little warm in
15 here. I believe we have somebody working on it as we
16 speak, so just bear with us.

17 Please proceed.

18 MR. AVITIA: Chairman, Board members, Ms.
19 Brewster, good morning. For the record, my name is Daniel
20 Avitia. I serve as the director of the Motor Vehicle
21 Division. Alongside me this morning is Mr. Dave Richards.
22 Jointly we'll do our best to be your subject matter
23 experts on this contested case matter.

24 Agenda item 9, which can be found on page 113
25 of your board books, is Bates Nissan's protest of Nissan

1 North America's proposed termination of their franchise.
2 This matter is being presented this morning for the
3 Board's consideration to adopt a final order.

4 As presented in your board books, this is a
5 franchised dealer termination case. The issue presented
6 in this case is whether Nissan established by a
7 preponderance of the evidence that there is good cause for
8 termination of its franchise with Bates in accordance with
9 Texas Occupations Code 2301.455. In determining whether
10 Nissan presented good cause for the termination, the
11 statute requires the Board to consider all existing
12 circumstances, including seven specific factors to
13 include: one, the dealer's sales and relation to the
14 sales in the market; two, dealer investments and
15 obligations; three, injury or benefit to the public; four,
16 adequacy of the dealer's service facilities, equipment,
17 parts and personnel in relation to those of other dealers;
18 five, whether warranties are being honored by the dealer;
19 six, the party's compliance with the franchise; and seven,
20 enforceability of the franchise from a public policy
21 standpoint.

22 This specific case had a week-long hearing on
23 the merits conducted by an administrative law judge of the
24 State Office of Administrative Hearings. The ALJ
25 considered the evidence and legal arguments presented

1 during the hearings on the merits, as well as Nissan's
2 exceptions to the proposal for decision and Bates's
3 replies to Nissan's exceptions to the PFD.

4 After the week-long hearing, the ALJ found that
5 Nissan did not meet its burden of proof by a preponderance
6 of the evidence to show that good cause exists for the
7 termination of its franchise with Bates. The ALJ has
8 recommended that the Board deny Nissan's proposed
9 termination of its franchise with Bates.

10 Now, the Board may change findings of fact or
11 conclusions of law by the SOAH ALJ when change is
12 justified under Texas Government Code 2001.858(e).
13 Changes can be made to the PFD if: one, the ALJ did not
14 properly apply or interpret applicable law, an agency rule
15 or a prior administrative decision; two, if a prior
16 administrative decision on which the ALJ relied is
17 incorrect or should be changed; or three, if the ALJ made
18 a technical error in a finding of fact that should be
19 changed. The Administrative Procedure Act requires the
20 Board to state in writing the specific reason and legal
21 basis for each finding of fact or conclusion of law from
22 the ALJ's proposal for decision that the Board decides to
23 change.

24 In summary, the ALJ's PFD states, again, that
25 Nissan did not meet its burden of proof to show that good

1 causes exists for the termination of its franchise with
2 Bates. The draft order has been provided for the Board's
3 consideration. This draft order is consistent with the
4 ALJ's findings of fact and conclusions of law, and again,
5 the ALJ's recommendation to the Board which was to deny
6 the proposed termination of its franchise with Bates.

7 As Mr. Duncan may have mentioned, the parties
8 are present this morning and would like the opportunity to
9 make oral arguments to the Board. In a May 24 email to
10 the parties, Mr. Duncan asked the parties to argue solely
11 the elements of Texas Government Code 2001.058(e) and
12 specify how any objectionable elements of the PFD fail
13 under the standards set forth in that section.
14 Additionally, Mr. Duncan asked the parties not to cite any
15 statements, evidence or other arguments that are not
16 already contained in the official record.

17 Members, this concludes my remarks.

18 MR. PALACIOS: Thank you, Mr. Avitia.

19 MR. DUNCAN: As Mr. Avitia mentioned, I was
20 just going to lay out the procedure. In a letter to the
21 parties, I noted that the party with the burden of proof
22 goes first and has the opportunity to reserve some time
23 for rebuttal. I believe that Mr. Donley, who is the
24 attorney for Nissan North America, will be using 18
25 minutes of his 20 in his primary and then two minutes for

1 rebuttal. Time will be kept by Ms. Nelon of my staff,
2 down here. There will be a warning light just prior to
3 the completion of each party's time. And as Mr. Avitia
4 noted, I have stressed to the parties that they should
5 limit themselves to the record and matters within the
6 record, and they should do that at all times, whether
7 making argument or referring to exhibits or testimony.

8 And with that, I believe it's Mr. Donley's
9 turn.

10 MR. PALACIOS: Okay. Thank you. Mr. Donley.

11 MR. WALKER: Who is here representing Nissan,
12 just Mr. Donley?

13 MR. DONLEY: And I have Justin O'Sullivan, who
14 is in-house counsel with Nissan from Franklin, Tennessee.

15 MR. PALACIOS: Thank you.

16 MR. DONLEY: May I proceed, Mr. Chairman?

17 MR. PALACIOS: Please, sir.

18 MR. DONLEY: Thank you.

19 Mr. Chairman, members of the Board, good
20 morning. I'm Billy Donley, I represent Nissan in this
21 case.

22 The PFD in this case establishes bad law and
23 bad policy. Nissan would ask that you not adopt and
24 believe you should not adopt this PFD under 2001.058
25 because it doesn't follow the law nor does it follow the

1 Board rules. It's bad law because it no longer allows a
2 manufacturer to give a dealer credit for all sales that
3 dealer makes, either under the Nissan dealer agreement or
4 under the termination statute 2301.455(1). Nissan is
5 actually here today arguing that it should be allowed to
6 give its dealer credit for all the sales that they make,
7 not just some subset of the sales they make, as found in
8 the PFD.

9 The PFD is wrong as a matter of law because
10 it's incorrect based on a plain reading of the dealer
11 agreement language, it's contrary to nine other cases that
12 resulted in thirteen decisions on the very dealer
13 agreement language that's before you today, it's an
14 incorrect reading of 2301.455(1) which is the termination
15 statute that's the portion about sales in relation to
16 sales in the market, and it's inconsistent with a proposal
17 for decision that's still pending in the Atkission case.

18 It's also bad law and bad policy because it
19 redefines sale of a motor vehicle to now be the sale of a
20 motor vehicle that is also registered in a dealer's
21 primary market area or area of responsibility, or ever how
22 a manufacturer might define the area where a dealer is
23 more convenient to consumers than another dealer.

24 It's also bad law and bad policy because it
25 gives Bates Nissan a pass on a tax plan -- I'm going to be

1 charitable today and call it a tax plan; I'll let the
2 Board decide what this tax plan really is and what you'll
3 call it -- but it gives Bates a pass on that tax plan
4 under which Bates failed to pay taxes on over \$2.2 million
5 in income based on improperly written down used motor
6 vehicles and the write-down of used motor vehicles which
7 could never be written down in the first place so that
8 Bates Nissan could get its taxable income down to
9 approximately \$75,000 on an annual basis.

10 And then finally, it's bad law and it's bad
11 policy because the PFD itself says there was no evidence,
12 absolutely no evidence in the record that Bates Nissan
13 provided false financial statements to Nissan from 2009 to
14 2013, when I have provided a notebook that each member of
15 the Board should have showing at least some of the
16 evidence, not all of it but a lot of the evidence that's
17 in the record about the false financial statements.

18 For these reasons, we believe the Board should
19 not be adopting this PFD. It's bad policy and it's bad
20 law.

21 And what I would like to start with is the
22 sales performance of Bates Nissan and how we got here, and
23 I'd like to start with slide number 2 which is Section 3
24 of the Nissan dealer agreement. It's vehicle sales
25 responsibility of dealers, and then you'll see 3(a) there

1 which is the general obligations of dealer says: The
2 dealer shall actively and effectively promote, through its
3 own advertising and sales promotion activities, the sale
4 at retail of Nissan vehicles to customers located with the
5 dealer's primary market area. And again, that primary
6 market area is the area provided by Nissan to its dealer,
7 Bates in this instance, where Bates is more convenient to
8 the consumers in that area than another dealer is.

9 And then (b), the other focus of this case,
10 says: Sale of Nissan cars and Nissan trucks. Dealers
11 performance of its sales responsibility -- and that's what
12 at issue in this first part of this case -- is the
13 performance of Bates Nissan sales responsibilities where
14 Nissan cars and Nissan trucks will be evaluated by
15 seller -- that's Nissan -- on the basis of such reasonable
16 criteria as seller may develop from time to time,
17 including, for example -- and then the dealer agreement
18 goes on to list out for examples.

19 For the past 40 years or so, members of the
20 Board, that reasonable criteria has been regional sales
21 effectiveness. That's what Nissan has used in Texas and
22 across the entire country, and this dealer agreement
23 language that I just went through with you is the same
24 dealer agreement language for every dealer in Texas and
25 every dealer across the country. It's standard language,

1 and over this entire period of time for over the past 40
2 years, Nissan has always been allowed to use regional
3 sales effectiveness under that language of the dealer
4 agreement.

5 Going on to the next slide, I'd like to focus
6 on 3(a) to the dealer agreement which is evaluation of
7 dealer sales performance. It says: Seller -- and again,
8 that's Nissan -- will periodically evaluate dealer's
9 performance of its responsibilities under this Section 3.

10 Evaluations prepared pursuant to this Section 3(a) will
11 be discussed with and provided to dealer, and dealer shall
12 have an opportunity to comment in writing on such
13 evaluations.

14 With regard to the regional sales effectiveness
15 and the sales issues at issue here today in this PFD with
16 regard to Bates, Nissan also followed that provision, and
17 we'll see that in the next chart which is titled Bates
18 Nissan Sales Performance, January 2009 to September 2013
19 based on regional sales efficiencies.

20 Now, the top line at the top -- let me explain
21 how this one works -- the top red line is 100 percent RSE.

22 And I'll refer to it as RSE throughout the rest of my
23 discussion. If a dealer is 100 percent RSE, that just
24 means they're average, they're a C student, they're not a
25 star, they're not a superstar, that's not what Nissan

1 requires. Simply if you're average, you then have met
2 your contractual obligations for sales performance to
3 Nissan.

4 The blue line that you see under that that goes
5 up and down from 81 percent in '09 to 75 percent in 2013
6 is Bates Nissan's RSE performance over that period of
7 time, and you see Bates never got to 100 percent. So as a
8 result, in July of 2010, Nissan sent a notice of default
9 to Bates explaining that you're not making the grade on
10 RSE, you're not doing well on sales performance, but
11 that's not all that Nissan did. There's six boxes after
12 that first one, those six boxes are an extension every six
13 months or so that Nissan provided to Bates to allow Bates
14 yet an additional opportunity to correct its deficient
15 sales performance. And at the bottom you'll see those six
16 extensions lasted for 3-1/2 years. So Nissan was very
17 patient with Bates, did all it could with Bates to try to
18 get Bates to get its sales performance up to just average
19 so that Nissan didn't have to take the ultimate step of
20 seeking to terminate Bates Nissan.

21 During this same 3-1/2 year period, the other
22 thing that's important to understand, not only was Nissan
23 sending letters, but Nissan personnel were visiting the
24 dealership: Hey, Bates, what can we do to help you;
25 here's some ideas we have; why don't you implement this or

1 implement that; advertise more to try to get your sales
2 up. What the record would reflect is Bates did none of
3 those things that were recommended, and as you can see,
4 its performance continued to suffer.

5 What does this mean? Over this period of time
6 from January '09 to September 2013, Bates Nissan was the
7 63rd dealer out of 63 dealers in Texas, based on RSE. It
8 was the worst performing dealer in Texas for that entire
9 period of time. That's why we're here and that's why
10 Nissan sought to terminate Bates.

11 Look, we understand these cases are difficult.
12 It's hard to tell someone you want to terminate their
13 business, it's hard for a board to say you can terminate a
14 business, but when you're the worst dealer over a period
15 of time like this, after having 3-1/2 years to cure and
16 Nissan sending employees out there time and time again to
17 try to correct Bates's problems and help it perform
18 better, Nissan was left with no choice. It has been very
19 patient and did all it could to help Bates.

20 So then why are we here then, what happened,
21 where did the PFD go wrong? The PFD finds that based on
22 this performance, Nissan cannot terminate Bates Nissan.
23 Well, the problem is the PFD finds that regional sales
24 effectiveness is not in the dealer agreement, it's not
25 allowed by the dealer agreement. The language we looked

1 at just a few moments ago, 3(a) and 3(b), this PFD finds
2 that Nissan can no longer use RSE, even though it had used
3 it for 40 years. Here's where that goes wrong. Prior to
4 this case, Nissan had been involved in nine other cases,
5 federal court, state court, state appellate court, and
6 state agencies, where this very same language was
7 construed by those courts and agencies and each of those
8 decisions, each case came out that RSE was allowed by the
9 very dealer agreement language that's in front of you
10 today. The only decision to find to the contrary is the
11 PFD that's before you today. So in nine other cases,
12 thirteen decisions, this dealer agreement language means
13 one thing, in Texas it's going to mean something else.
14 That makes no sense.

15 What the PFD missed was in particular was 3(b)
16 where it says that Nissan has got to use a reasonable
17 criteria. That's what Nissan is required to do. The PFD
18 itself found that RSE is reasonable. Responding to the
19 exceptions, the ALJ found that RSE is very reasonable --
20 that's the words of the administrative law judge --
21 however, still found it's not allowed by the dealer
22 agreement, and again, ignored the nine prior cases that
23 said RSE is in the dealer agreement.

24 The PFD also ignores the long course
25 performance and the history between Nissan and Bates

1 Nissan. Bates has been a dealer for 43 years. This
2 performance has been judged based on RSE for all those
3 years. Bates never said, It's not in my dealer agreement.

4 Bates never said, You can't do this. Instead Bates said,
5 I understand I'm not performing well, I need to sell more
6 cars, I understand RSE, I'll try to do better.

7 This PFD can't be accepted with this type of a
8 decision that says, well, nine other decisions say RSE is
9 allowed by the dealer agreement but Texas says it's not.
10 That's an error of law. The administrative law judge's
11 PFD should follow those other cases because they're
12 correct. They do the right analysis, they lay it all out,
13 and in fact, I've given the Board or you should already
14 have those nine cases having been delivered to you, and we
15 went through and we highlighted in yellow highlighting all
16 the language of each of those cases that support what I'm
17 telling you here this morning.

18 If the Board does nothing else in this case, if
19 you don't do anything else with regard to the PFD, the one
20 thing I believe the Board has to do is to correct that RSE
21 issue and say that RSE is indeed allowed by the dealer
22 agreement, consistent with all these other cases and
23 consistent with Section 3 of the dealer agreement. It's a
24 reasonable criteria, the PFD found it was reasonable and
25 very reasonable, and as a result, you should at least find

1 that it is allowed by the dealer agreement. We also think
2 you should allow Nissan or find that there's good cause
3 for termination as a result of the poor performance, but
4 at a minimum, you should find that it's in the dealer
5 agreement.

6 Going forward, the next thing I'd like to talk
7 about is what does this dealer agreement do to us if it's
8 accepted, because it is bad law and it's bad policy. And
9 so the slide I have on the screen now, one of the slides
10 that's already been provided to you, this would be number
11 10, shows that from October 2012 to September 2013, which
12 was one of the time periods at issue in this case. If you
13 accept this PFD, that would mean at least for that time
14 period, and I would argue that for almost every time
15 period, that 48.9 percent of the sales made by dealers
16 could no longer be counted toward whether or not they're
17 effective as a dealer.

18 And that's for this reason: the PFD finds that
19 only sales that are made and subsequently registered in a
20 dealer's PMA can be counted, those that are sold by a
21 dealer and registered outside of the PMA can no longer be
22 counted for performance measures, not only under the
23 Nissan dealer agreement -- please understand that -- but
24 also under the state statute 2301.455(1). And by the way,
25 that's inconsistent with the Atkission PFD.

1 So if you adopt this PFD, you're now telling
2 Nissan and other manufacturers throughout the State of
3 Texas that you no longer can count every sale that a
4 dealer makes, you can only count those that are made and
5 subsequently registered in that dealer's PMA, AOR, or
6 whatever that manufacturer and dealer may call that
7 geography. There's no way any dealer is going to be happy
8 to have only half of their sales counted, but that's
9 exactly what's going to happen if you adopt this PFD.

10 Continuing on with the methodologies that the
11 PFD says we should use, I've created this chart and the
12 next one that will show you that there's two methodologies
13 in the PFD that it says should be used. Under the first
14 one, what would happen to dealers like Texas of Grapevine,
15 Gunn and Trophy, when you look at the first two columns,
16 they do very well under RSE, in fact, all of them are more
17 than twice as effective as they have to be to be compliant
18 with their dealer agreement. But under the PFD's
19 methodology, Texas Grapevine, for instance, goes from
20 being number six under RSE at the top of the heap to
21 number 53 based on the PFD, Gunn goes from 7 to 60 down to
22 the bottom, and that's 60 of 63 dealers, members of the
23 Board, and Trophy goes from 8 to 40. And so if you adopt
24 this PFD, not only have you then adopted this new language
25 about a sale being only a sales that's registered in the

1 PMA, but you've also taken dealers that at this period of
2 time were performing very well and you're going to be
3 saying they're performing very poorly. They go from being
4 at the top of the heap on RSE to the bottom of the heap
5 based upon what the PFD says.

6 If you take the second methodology that's in
7 the PFD, you find the same thing. Texas of Grapevine
8 would go from 6 to 45, Gunn would go from 7 to 60, and
9 picking another dealer, Auto Nation Lewisville would go
10 from 10 to 35. Once again, by the stroke of a pen, a
11 final order adopting this PFD, dealers that otherwise were
12 performing very well under RSE become very poor dealers.

13 Let me make this even more vivid for you,
14 members of the Board. The second method in particular, if
15 you look at just 2012 sales, the information that's in the
16 record, the PFD would say that 12 of 66 dealers are
17 compliant. RSE, on the other hand, what Nissan says we
18 ought to be using and has used for 40 years, 52 of 66
19 dealers are compliant. So this PFD automatically is going
20 to say the vast majority of Nissan dealers for this period
21 were not compliant when Nissan would say, well, we thought
22 they were doing a pretty darn good job. And if you take
23 this 2013, '14, '15, '16, '17, you're going to find these
24 same kind of numbers. All I can use here today is what's
25 in the record.

1 If you look at the twelve-month rolling period
2 ending September 2013, you find the same thing, the PFD
3 would say eleven of 66 dealers are compliant -- that's
4 what happens if you adopt this PFD today -- and RSE, the
5 way Nissan would say it should be allowed to do it and
6 it's done it for 40 years, 44 of 66 would be compliant.

7 As you can see, the way Nissan wants to do it
8 is reasonable, as the PFD has stated, it's very
9 reasonable, as the PFD has stated, is in line with what
10 all the other decisions throughout the country, federal
11 courts, state courts, state agencies have found, and
12 that's what you should find in this case: RSE is allowed
13 by the dealer agreement, it's a reasonable way to do this,
14 and Bates Nissan's poor performance should be subject to
15 termination.

16 I'm going to switch gears here just for a
17 moment, I only have a little bit of time left, but I want
18 to talk quickly about the tax plan. This tax plan allowed
19 Bates Nissan to write off over 500 new and used vehicles.

20 No dealer in the country, not one, not one dealer has
21 ever tried to write off a new motor vehicle -- or I
22 shouldn't say write off, write down a new motor vehicle's
23 value, not one. Bates Nissan did. And then they also
24 improperly wrote down used. They did that not because
25 they thought they could write them down, they wrote them

1 down so they could get to a \$75,000 number in taxable
2 income. Wouldn't we all like to do that? Wouldn't we all
3 like to decide how many dollars we're going to pay on
4 income our taxes on? We'd all like to do that. Well,
5 that's what Bates did, and if you adopt this PFD, they get
6 away with it.

7 And in coming up with this scheme, what they
8 then do, once they start monkeying with the value of those
9 vehicles, it impacted the profits for the dealership, they
10 told Nissan they made I believe it's \$2.5 million in
11 profit over this period, they told the IRS we only made
12 \$300,000 in profit, there's a \$2.2 million gap there,
13 members of the Board. That is what they were shielding
14 and not paying taxes on based on what they did here. When
15 you roll that into the financial statements, it affects
16 all kinds of things -- and I want to show you this
17 quickly -- it affects return on sales, net working
18 capital, effective net worth, monthly profit, total
19 profit, net profit, net earnings, new and used gross, new
20 and used gross profit per unit. All of those things then,
21 once submitted to Nissan, in the financial statements are
22 false.

23 And so as a result, you've got poor sales
24 performance under RSE, you've got a tax plan that can't
25 stand, you can't just decide you're going to pay taxes on

1 \$75,000 and do whatever you have to to get it there, and
2 you can't submit false financial statements to a
3 manufacturer. For all those reasons, we believe good
4 cause has been proven to terminate Bates, but again, at
5 the very minimum, to align Texas with all the other cases,
6 all the other judges that have decided the RSE issues, you
7 should at least find that RSE is allowed by the dealer
8 agreement.

9 Thank you very much.

10 MR. PALACIOS: Thank you, Mr. Donley.

11 Now we have speaking on behalf of Bates Nissan,
12 Mr. Dave Coffey.

13 MR. COFFEY: Thank you, Mr. Chairman. Thank
14 you, Board members. My name is David Coffey, and I
15 represent Bates Nissan in this matter, I proudly represent
16 this dealership.

17 And everything that you have heard for the last
18 20 minutes is mostly misdirection or it is a little bit of
19 truth mixed with a great deal of misdirection. There has
20 not been a single dime of unpaid taxes in this case, not
21 one. The \$2.2 million that Mr. Donley was talking about
22 an accumulated -- yes, Mr. Walker?

23 MR. WALKER: Please introduce the rest of your
24 party, please.

25 MR. COFFEY: Yes. I apologize, I should have

1 done that. I am here with my client, Bobby Bates, the
2 dealer principal for Bates Nissan.

3 Thank you, Mr. Walker. That was an oversight
4 on my part.

5 Again, back to this tax issue, there was not a
6 dime of underpaid taxes. The minute that we heard that
7 Nissan was coming up with this concocted argument about
8 underpayment of taxes, we went and hired the best tax
9 lawyer in Washington, D.C. to advise us on just how we
10 were supposed to be valuing these used cars that Mr.
11 Donley was talking about. He said, You have aggressively
12 valued them but you have not violated any laws or rules,
13 however, you have failed to document how you did it.

14 And so we're going to the IRS, we're going to
15 file a form with the IRS which discloses that for the
16 prior four years we've done it this way. That may not be
17 in full accord with all the Revenue Rulings that might
18 apply to this, so we are going to go ahead and do it this
19 way in the future which does comply with all of the
20 Revenue Rulings that are involved here. And it's a very
21 murky complicated area, that's why we had to hire special
22 tax counsel to guide us through it.

23 At any rate, the IRS accepted our proposal, all
24 taxes have or will be paid, there was no underpayment of
25 taxes. What there was was undervaluation of inventory as

1 compared to the cost of that inventory, and when you sell
2 the cars, you have to recapture the differential between
3 the undervalue -- if you want to call it -- undervaluation
4 of the inventory and the actual sales price. All of that
5 was done and it will all be done into the future and the
6 IRS is perfectly happy with the proposal that our tax
7 counsel made to the IRS. For the IRS it's a dead issue,
8 no penalties, no criticism, no nothing on the tax issue.

9 And for Nissan to come in here making these
10 kinds of allegations when they know that they are false,
11 they knew they were false when they made them, but to
12 sling this stuff around and drag my client's name through
13 the industry as a tax cheat is incorrigible in my opinion,
14 it should not be allowed. There's nothing we can do about
15 it at this point in time, the Board might be able to, but
16 there's nothing that we can do about it because they have
17 a right to say anything that they want to say.

18 Let's go back to the sales performance. You
19 heard a lot of highfalutin argument about how this is
20 going to break the industry, all these bad things are
21 going to happen because of the way that this judge
22 construed this contract. This judge, Judge Bennett, is
23 the best that SOAH has. He's a contract expert and he's
24 an administrative law expert. He actually teaches
25 administrative law at the University of Texas. He doesn't

1 make mistakes, he certainly doesn't make the kind of wide-
2 ranging mistakes that Mr. Donley is claiming were made in
3 this case. All he did was construe paragraph 3 of the
4 contract as creating an obligation only to sell vehicles
5 within your own PMA. The way he came to that conclusion
6 is because that's exactly what Article 3 of the contract
7 says: Your obligation, dealer, is to sell/service your
8 own PMA.

9 The reason why we have this differential
10 between the way things are done now and the way things
11 were done in 1989 when that contract was signed is because
12 back then the distributors wisely attempted to get their
13 dealers to service their PMA -- in other words, take care
14 of your PMA, don't try to invade your neighbor's PMA and
15 steal his sales away from him, you take care of the
16 customer in your PMA. My client, from the very beginning,
17 40-year history has always done that because they know
18 that that's how you take care of your neighbors, your
19 friends and neighbors in Killeen, your customers, you take
20 care of them by servicing your PMA.

21 Since then, the distributors have decided that
22 the way you increase your market share, you bragging
23 rights, your money is to get your dealers to invade each
24 other's PMA, steal sales from the other dealers, which in
25 turns forces them to steal from other dealers, which in

1 turn forces everybody in your brand, once you get started
2 doing that, you're trying to steal sales away from Toyota,
3 Honda -- I used the wrong term, steal -- take away sales
4 from Honda and Toyota and eventually end up with Nissan on
5 the top of the heap instead of Toyota. That's what's
6 really going on here.

7 All my client did was try to service his own
8 PMA as he had been taught as a dealer for 40 years to do.
9 He didn't get with the new program quickly enough where
10 you sell volume -- and Mr. Palacios probably knows about
11 this -- where you sell volume and you hope to make your
12 gross profit per unit on the back end with incentive
13 monies. That is the new paradigm that's going on in the
14 industry right now. My client didn't get with the program
15 fast enough, he fell behind, and NNA comes in with this
16 RSE nonsense which is not part of the dealer agreement,
17 it's never been part of the dealer agreement, it's
18 something that USAI, an industry think tank, dreamed up 20
19 years after this contract was entered into.

20 And all the judge said was: Nissan, you're
21 going to have to live with your bargain, you're going to
22 have to comply with the actual language in paragraph 3 of
23 the contract. The judge did not propose some new way of
24 analyzing sales performance like Nissan says he did. They
25 had half of their briefs full of all this first method and

1 second method -- in other words, if you adopt this judge's
2 new methods of analyzing sales performance, all these bad
3 things are going to happen. He didn't do any of that.
4 All he said was: Here is the exact language of the dealer
5 agreement, you have to service your own PMA.

6 So how did Bates Nissan do in servicing its own
7 PMA? We look at two ways that we can come to that
8 determination. We can look at the total number of sales
9 that he made in his PMA as compared to how other dealers
10 dominate their PMA, or we can look at the percentage of
11 expected that Bates managed to capture as compared to
12 other dealers managed to capture in their PMA, and Bates
13 came out either average or better than average in both of
14 those metrics. So the judge said: Look, NNA, if you're
15 going to terminate him under RSE, when he does this well
16 in the two metrics that actually fit under your contract,
17 you're going to have to terminate half your dealers.

18 So it's not like this judge came up with some
19 starry-eyed new way of looking at things that's going to
20 destroy the whole industry and everything that Nissan
21 tries to do in its magnanimity, they're simply going to
22 have to follow their contract or they're going to have to
23 change their contract to comport with the new reality that
24 they are impressing upon dealers now. That's all that
25 this PFD stands for.

1 Not tax cheating, no underpayment of taxes, and
2 Bobby Bates ran his dealership exactly the way his family
3 had always run it for 40 years because they were still
4 running it under the old business plan of taking care of
5 your PMA. They did not get with the new program quickly
6 enough and so they were candidates for termination.

7 Every one of these issues that Mr. Donley has
8 paraded before you this morning, they have already been
9 considered by Judge Bennett, the ALJ at SOAH. You have a
10 letter from Mr. Bennett in your packet, it's a letter of
11 August 16, 2016, it's referred to by your counsel as the
12 exceptions letter, and Judge Bennett carefully considered
13 all of the arguments that NNA was making in that letter
14 and he knocked every single one of them down, and in fact,
15 even took issue within NNA on the way that they were I
16 won't say hiding the ball but saying things in footnotes
17 that really should have been said up front at the top of
18 NNA's exceptions and not hidden in a footnote.

19 The point is this case has been litigated, what
20 you have heard this morning from NNA is not elements of
21 2001.058, you've heard a rehash of the entire case already
22 been considered by the judge, already knocked down in a
23 letter in response to NNA's exceptions, and we would
24 simply urge you to do what your staff is recommending that
25 you do because this decision is right, it is just, it is

1 unassailable. Anyone who attaches their credibility to
2 NNA's attempt to overturn this PFD is simply going to end
3 up looking foolish on appeal. So we would urge you to do
4 what your staff is urging you to do, and that is to adopt
5 this PFD and this final order and put this three-year
6 nightmare to rest for the Bates family.

7 MR. PALACIOS: Just for the record, staff has
8 not made a recommendation to our Board either way.

9 MR. COFFEY: I saw a proposed final order and I
10 understood that that was the staff's recommendation. If I
11 erred on that, I apologize.

12 That's all I have.

13 MR. PALACIOS: Thank you, Mr. Coffey. I will
14 entertain questions.

15 MR. WALKER: David, there's been a lot thrown
16 out there on PMA and on RSE, and so I think, let me ask
17 David this question real quick. David, PME, is that our
18 terminology?

19 MR. DUNCAN: None of this terminology. David
20 Duncan, general counsel.

21 MR. WALKER: So none of this is in law.

22 MR. DUNCAN: None of this is from statute.

23 MR. WALKER: All of this PMA and this RSE is
24 terminology that's used by dealers and manufacturers only?

25 MR. COFFEY: You've cut right to the chase of

1 this whole case, and that is PMA and RSE. A PMA is a
2 primary market area, it is a selection or collection of
3 census tracts that a distributor assigns to a dealer as
4 his area of responsibility, that's the PMA. And this gets
5 back to what I was saying, the way this industry used to
6 run -- and properly so, in my opinion -- is that dealers
7 were encouraged and contracts were written so that dealers
8 had to take care of their own PMA and not go out and grab
9 the easy sales from the extremities, let's say, of
10 somebody else's PMA. Take care of your own people in your
11 primary market area.

12 All of that changed, and at some point they
13 came up, USAI, this think tank in Detroit -- or California
14 came up with a methodology for encouraging dealers to
15 invade other dealers' PMAs and it's called RSE, or retail
16 sales index or retail sales. So the idea is that you give
17 credit to dealers for sales made outside their PMA and
18 those sales can go towards the RSE number that the
19 manufacturer assigns to you based on its determination of
20 what your expectation for your PMA should be. All of this
21 is pseudoscience, it's junk science, and anybody who
22 really understands these concepts will tell you the same,
23 it's junk science. But it does do one thing, it
24 encourages dealers to not concentrate on their own PMA
25 anymore but to concentrate on their neighbor's PMA, and it

1 incentivizes to go out and quit taking care of your own
2 PMA and to take care of your other neighboring dealer's
3 PMA. It's all bad practice for the industry in a lot of
4 people's opinions, including mine.

5 But you did get to the core of the problem, the
6 problem is you have a methodology that's designed for
7 encouraging sales outside of your PMA; whereas, you have a
8 contract that only impresses you with a duty to take care
9 of the customers within your PMA. So there is the core of
10 the sales performance issue in this case. Judge Bennett
11 went right to the heart of it, he said, This is what the
12 contract says, you can't come in 40 years later with some
13 new interpretation of the contract and try to terminate
14 this dealer based on your new interpretation. What you
15 need to do if you want to do that -- and the judge said
16 you can do it -- he said go out and change your contract.

17 You heard Mr. Donley say they haven't changed
18 the contract in 40 years. Well, most distributors change
19 it every two to five years, and that takes into account
20 the new way of doing business, the new way of looking at
21 things, they revise the contract to come into accord with
22 the actual business reality. Nissan, for whatever reason,
23 has decided not to do that and they should be required to
24 live with the consequences.

25 MR. WALKER: So, David, the factory, I guess,

1 gets the information of registrations of where the car is
2 registered at. That's where they get the address, whether
3 it's in the PMA or whether it's in RSE?

4 MR. COFFEY: That's exactly right, and that is
5 really more -- Ms. Caraway can tell you more about that
6 than I can, but basically, as I understand it, consumers
7 are allowed to register their cars in several different
8 places: they can register them where they live, they can
9 register them where they work, and in fact, I'm not sure
10 that there's much of a prohibition on where a consumer can
11 register the car after he buys it from the dealer.

12 But you're right, the distributor keeps track
13 of where these registrations occur: do they occur inside
14 the PMA where the dealership is located and the car is
15 sold, or do they get registered somewhere else. The
16 factories call the registration somewhere else as outsell
17 from the dealer's perspective, the factories call sales
18 registered within the PMA from another dealer as insell
19 into that dealer's PMA. They keep careful track of all
20 this stuff. They know when a dealer is not taking care of
21 his PMA and they know when a dealer is invading somebody
22 else's PMA, and to create an RSE scheme which encourages
23 the dealers to do the latter instead of the former --
24 which is what the contract says he should be doing --
25 that's just a big scam on the industry.

1 MR. WALKER: So I think I'm getting a good
2 understanding of what's going on here. So the
3 manufacturer can come up and say this is your RSE -- let's
4 just use Houston, for example -- and it's inside the 610
5 Loop in Houston, that's your area of where you should be
6 selling cars and that's where we're going to recognize
7 your sales for our sales performance. But if I go an
8 bought an ad on all the TV channels in Houston which is
9 all the way -- it goes halfway to Austin is where that TV
10 channel would be advertising, if I bought all that
11 advertising and I went out here and all of a sudden
12 everybody from Hempstead and from Katy and from Pearland
13 all came to my dealership and bought cars because we had a
14 big blowout 4th of July sale, then Nissan is not giving
15 credit for those sales?

16 MR. COFFEY: No. Nissan is giving credit for
17 those sales. What Nissan is arguing is that the judge's
18 PFD is going to preclude them giving credit for those
19 sales in the future, which is pure malarkey.

20 MR. WALKER: That's my point.

21 MR. COFFEY: That is a good point. Basically,
22 they're contradicting their own contract, they're saying
23 that we'll not be able to give credit for these sales in
24 the future. That's not true. All they have to do is
25 change the contract any which way they want it, or change

1 the rules by which the construe their contract. They can
2 do anything they want to with their contract.

3 MR. WALKER: So let's go back now -- and I read
4 this but I don't remember where it was -- so if Bates had
5 been using the PMA as total sales of the cars, how would
6 they rank in that group of 60 vendors at that point in
7 time?

8 MR. COFFEY: I think what you're doing is
9 drawing attention to that issue of PMA being the market as
10 opposed to the entire Houston area, let's say, or Central
11 Texas area being the market. We really just have to go --
12 the market is not defined anywhere, the grand term
13 "market" is not defined in the law. It is defined in the
14 contract, however, as the PMA. So the judge was simply
15 saying: I'm just going to go with what your contract
16 says, Nissan, and I'm going to hold you to that contract;
17 you say that the dealer only has obligation or
18 responsibility to sell vehicles within the dealer's own
19 PMA. That then by definition is the market.

20 So as far as sales regarding sales in the
21 market -- which is the statutory term, we have to look at
22 the PMA as the market -- that's where the judge said, Look
23 at these two ways of determining how Bates did under in re
24 sales in the market with the market being the PMA. And he
25 gave you the statistics; it's pages 14 through 16 of his

1 PFD, he gave you the exact stats that you need to make
2 this determination in your own mind, and Bates did as well
3 as anybody, he was at least average and better than
4 average in a lot of cases under those two metrics. That's
5 why the judge said, Nissan, if you're going to terminate
6 this dealer for failing to -- for breaching paragraph 3 of
7 your dealer agreement, you're going to have to terminate
8 about half of your dealers, including the neighboring
9 dealers to Killeen which were Temple and Waco, I believe
10 it was. Bates was doing better than both of them.

11 By the time this proceeding was over, Bates was
12 the number one import dealer in Killeen. He was
13 outselling Honda, which is unheard of, he was outselling
14 Toyota, which is unheard of. In other words, once he
15 realized that NNA wanted volume sellers instead of dealers
16 who take care of their PMAs, he went out and hired a guy
17 named Kevin Adams from an Austin dealership who was used
18 to that high volume, high pressure type of sales, and that
19 guy just started beating the bush for sales and he started
20 producing the volume that Nissan wanted.

21 And what we never could understand is in
22 December of 2013, when the notice of termination went out,
23 Bates had already achieved 125 percent RSE, which means
24 that he was 25 percent better than average, and Nissan
25 still wanted to terminate him. I mean, what more can the

1 guy do to please the manufacturer than change everything
2 about his dealership and go from a dealership that takes
3 care of the customers to one that moves the iron at any
4 cost? The stats show that they did this, they went to 125
5 percent of RSE. How in the world can Nissan continue to
6 want to terminate him?

7 But what does Nissan do? Instead of patting
8 Bates on the back and saying good job, keep it up, they
9 concocted this whole tax argument that because Bates was
10 choosing the lower of cost or market for its inventory
11 valuation and because in some cases Bates was valuing its
12 inventory lower than the cost of that inventory that that
13 was tax fraud and reporting false financial information to
14 NNA.

15 Again, I'm not going to call NNA a liar, but I
16 have never in 35 years of practicing law seeing any
17 responsible corporation take the kinds of positions that
18 NNA took in this case. They knew that everything they
19 were saying about Bates being a tax cheat was a lie, they
20 knew it because we had already gone to the IRS and gotten
21 all of that worked out. But instead of saying, okay, we
22 give up, you've done all of the right things, Mr. Bates,
23 we're going to drop the termination, no, they added that
24 as a ground for termination because they knew they had
25 lost on the sales performance issue.

1 So you have good questions, Mr. Walker. I hope
2 I have answered them adequately.

3 MR. WALKER: Yes, good, just sometimes a little
4 too long.

5 MR. COFFEY: I'm a lawyer.

6 (General laughter.)

7 MR. PALACIOS: Any more questions for Mr.
8 Coffey?

9 MR. WALKER: I have one more question. Yes or
10 no answer. Is this the only dealership Mr. Bates has or
11 does he have other dealerships?

12 MR. COFFEY: It's the only dealership he has.

13 MR. WALKER: Thank you.

14 MR. PALACIOS: Mr. Graham.

15 MR. GRAHAM: And I've got about a thousand
16 pages of documents here and I'm doing my best to kind of
17 keep my fingers in all the pages, so bear with me.

18 MR. COFFEY: You know who to blame.

19 MR. GRAHAM: I do see in Nissan's proposal,
20 although it wasn't this way this morning but it was
21 included in a binder that I was provided last night, that
22 they do define your primary market area in coverage
23 specifically. Do they define your RSE in coverage area
24 specifically? I mean, looking at this document right here
25 that shows what your primary market area is, do you have a

1 document like this that shows your RSE?

2 MR. COFFEY: We do not generate documents like
3 that. I think probably Nissan had USAI, this think tank
4 that works for most of the manufacturers, probably had the
5 USAI generate those maps. But I think the core of your
6 question is do the manufacturers, such as NNA, define a
7 dealer's PMA for him, and yes, they do. And in fact, in
8 many cases -- I don't think in NNA's case -- but in many
9 cases part of your contract is something called a PMA
10 addendum or structure list where they basically say here
11 are the census tracts that belong within your PMA, these
12 are the census tracts that you're responsible for
13 servicing.

14 MR. GRAHAM: Right. And that's clear on the
15 PMA, we see that, we can see that. The reason I'm asking
16 this question -- I'm not going to beat this horse too long
17 because I think that Board Member Walker has already asked
18 a lot of the key questions to clarify, but I've read
19 through the dealer agreement and I keep seeing PMA, PMA in
20 the dealer agreement, I really don't think I ever saw RSE
21 in there. And so I just see a lot of definitions of PMA,
22 I don't see any definitions of RSE, and in Nissan's own
23 presentation I see PMA, I don't see RSE, and I was asking
24 if that document existed or if it's ever been clearly
25 defined, if you are to meet sales based on RSE, has it

1 ever been defined. And maybe it's everything other than
2 PMA, I guess that would be what they would say.

3 MR. COFFEY: That is an astute observation and
4 one that the judge, Judge Bennett, spent a lot of time
5 discussing, and that is where is RSE in this contract, it
6 isn't in there. What Nissan tried to do was to cobble
7 together a bunch of lines of boilerplate from another
8 section of the contract and say this is RSE. Well, the
9 term RSE was not in there, the formula for RSE was not in
10 there, absolutely nothing in there other than we can use
11 reasonable ways of judging your sales performance. That
12 was the only thing in there, and I think you heard Mr.
13 Donley talk about that earlier.

14 Well, you cannot take general boilerplate which
15 contradicts the exact express language of your paragraph 3
16 and say that this overrides paragraph 3. We can impose
17 RSE on you even though paragraph 3 is entirely
18 contradictory to the whole concept of RSE. The reason
19 it's contradictory to the entire concept of RSE is because
20 RSE allows you to register or make your sales anywhere.
21 They all get counted towards your RSE number, whereas,
22 your only obligation under the contract is to make sales
23 within your own PMA. So you have a complete contradiction
24 of the two ideas.

25 MR. GRAHAM: Okay. Just kind of wanted to

1 clarify that.

2 So I'm going to leave that topic and move to
3 the tax, a couple of questions on the tax concerns. There
4 was just a comment made that was along the lines of
5 dealers -- I believe no dealers use write-downs other than
6 Bates. That comment was just made in the presentation.

7 MR. COFFEY: I heard it too, Mr. Graham, and I
8 know you're a franchise car dealer.

9 MR. GRAHAM: I'm truck, not car.

10 MR. COFFEY: Okay. I know you're a franchised
11 dealer of some sort. You may or may not use lower of cost
12 or market to do your end-of-year inventory valuation, I
13 suspect that Mr. Ingram probably does and is probably more
14 familiar with this concept, he's a used independent car
15 dealer so he deals with used cars and he probably does
16 have a lot of familiarity with lower of cost or market,
17 but it is an approved methodology by which any business,
18 not just a car dealer can say, hey, my inventory has
19 become devalued over time, people getting in and out of it
20 using it as demonstrators, that sort of thing, and you can
21 elect lower of cost or market.

22 Bates Nissan did that, and unfortunately, it
23 aroused the hire of NNA because they had nothing else to
24 complain about.

25 MR. GRAHAM: I guess let me interrupt you and

1 ask are you aware of whether there's any other dealers
2 that use this, do you have firsthand knowledge?

3 MR. COFFEY: Many other dealers use it. It's
4 almost impossible to determine how many do, but lots do.
5 It is a standard way of valuing your inventory. But I
6 think what Mr. Donley said was that Bates was the only
7 dealer in the country that used lower of cost or market on
8 new vehicles. That is not in the record anywhere. I
9 don't know where he came up with that but it is not in the
10 record. And in fact, I'll tell you what is in the record
11 and that is that many people do it for used vehicle
12 inventory, we did not do any kind of a survey to determine
13 how many do it for new vehicle inventory but neither did
14 NNA, or if they did, they certainly didn't put it in the
15 record, so that just came out of nowhere.

16 MR. GRAHAM: Thank you.

17 One other question at this time regarding the
18 financial statements, which is the second key aspect to
19 NNA's case for termination. In essence, I believe what we
20 have is that you were reporting twelve-month pre-tax
21 numbers to NNA and then not giving them the thirteenth
22 month or post-tax numbers, which is just after tax
23 considerations. And the question I'm going to ask you is
24 was that clear, is that defined? I mean, are you required
25 to provide them a thirteenth month?

1 MR. COFFEY: That is the key to this whole tax
2 false filing gambit that NNA tried. No, in direct answer
3 to your question. It was really garbled in the record as
4 to just exactly whether dealers were required to provide
5 thirteen-month statements to Nissan. I went after Mr.
6 Steiner on deposition on that issue. He's a 30-year man
7 with NNA, if anybody is supposed to know, he'd be the guy
8 who'd know, and he said, No, we don't want thirteen-month
9 statements because they are tax documents and all they do
10 is skew the numbers that we want out of the twelve-month
11 financial statements. So for 40 years the Bates, they had
12 never been told that you're supposed to file those, they
13 had never filed them, and Mr. Steiner confirmed on
14 deposition that NNA doesn't require them to be filed.

15 There were also three memos from NNA that went
16 into the record, and those were unambiguous. They said if
17 you prepare thirteen-month statements, it is optional
18 whether or not you file them with us or not -- in other
19 words, we don't care.

20 MR. GRAHAM: Okay. Got it.

21 And do I understand that their argument is the
22 way that you were doing tax reporting was questionable,
23 but I just wanted to clear that up.

24 No other questions at this time.

25 MR. PALACIOS: Thank you, Board Member Graham.

1 Are there any other questions for Mr. Coffey?
2 I have one question. The issue of lower cost or market,
3 do you know the methodology that was used by our client to
4 write down vehicles?

5 MR. COFFEY: It was haphazard. It was loosely
6 based on the auction values for the same make and model of
7 cars, but we don't have any documentation which is why he
8 had to go to the IRS and say, hey, we've been doing it
9 this way, it may not be right but we're going to fix it by
10 doing it this other way in the future. IRS said, Fine.
11 In more direct answer to your question, we had a lot of
12 testimony on here's how we did it based on auction values
13 of vehicles, but we have no documentation for that, and we
14 cannot conclusively say that the same methodology was used
15 consistently all the time throughout all the years, which
16 is why we had to do what we did with the IRS to begin
17 with.

18 MR. PALACIOS: Thank you.

19 Any other questions?

20 MS. HARDY: I've got one. Just clarification.

21 So for 3-1/2 years, and the RSI/RSE is an industry
22 methodology to measure dealer performance for the most
23 part.

24 MR. COFFEY: RSI is.

25 MS. HARDY: RSI. So for 3-1/2 years, Nissan

1 used that methodology to measure all dealer performance.
2 Right?

3 MR. COFFEY: Well, they claim that they used it
4 for 40 years, but that's not what the record shows. I
5 asked all of their executives, all of their witnesses, how
6 long have you been using it. They said, well, it's been
7 used for a long time but we can't give you an exact period
8 of time. That was Mr. Steiner and Ms. --

9 MS. HARDY: But it was used across all dealers,
10 state and nationally?

11 MR. COFFEY: As best we know, NNA used it the
12 same for all dealers for whatever period of time they used
13 it.

14 MS. HARDY: So between '09 and '13, I guess the
15 3-1/2 years where Bates was underperforming, and I don't
16 know if it's quarterly performance updates that are used
17 or not, that you meet with a dealer who's underperforming,
18 who goes on a specific program.

19 MR. DONLEY: Monthly.

20 MS. HARDY: Monthly. Okay. So for 3-1/2 years
21 that Bates was counseled on performance, as any other
22 dealer would be with poor performance.

23 MR. COFFEY: I'd like to comment on that,
24 because we heard from Mr. Donley that Bates has somehow
25 waived his right to complain about the use of RSE because

1 he knew about it and if he wanted to complain about it, he
2 should have done it years ago. The fact is the record has
3 a lot of testimony from my client to the effect that, hey,
4 they only started using RSE four or five years ago, they
5 never explained to me how it worked or what it meant or
6 any of that stuff, but when the factory says we're going
7 to judge you this way, you simply accept it and do it. He
8 didn't waive anything is my point.

9 MS. HARDY: And then you mentioned that the
10 dealer's performance has improved.

11 MR. COFFEY: Markedly improved. He went from
12 being one of the worst to one of the -- well, into the top
13 half of Texas Nissan dealers. He's outselling Honda, he's
14 outselling Toyota in his market area. It has vastly
15 improved. The last numbers I saw he was 100-and-something
16 percent of RSE. He was 125 percent at the time they sent
17 out the notice of termination, and he stayed above 100
18 percent thereafter.

19 MS. HARDY: So his performance to date has been
20 consistently over 100 percent.

21 MR. COFFEY: It has been.

22 MS. HARDY: Since 2013, is that it?

23 MR. COFFEY: Yes, that's correct.

24 MS. HARDY: Okay. That's all, Mr. Chairman.

25 MR. PALACIOS: Thank you, Board Member Hardy.

1 Any other questions for Mr. Coffey?

2 (No response.)

3 MR. PALACIOS: Thank you very much, Mr. Coffey.

4 Mr. Donley, I believe you had a few minutes
5 left in your presentation, and we'll save time for
6 questions for you as well.

7 MR. DONLEY: Thank you, Mr. Chairman. I
8 appreciate that.

9 If I could, I'll bring my PowerPoint
10 presentation back up.

11 Let me try to answer a few of the questions
12 that have been raised. First off, Mr. Coffey referred to
13 RSE as junk science that's not in the dealer agreement. I
14 provided each member of the Board -- and apparently you
15 didn't get it until last night, unfortunately -- but
16 there's nine cases and thirteen decisions that say it's
17 not junk science, it's reasonable and it's what Nissan is
18 allowed to use under this dealer agreement. State courts,
19 trial courts, state appellate courts, a federal court and
20 state agencies in I believe Ohio, Florida and maybe New
21 Hampshire, the only one that says it's junk science is
22 Bates Nissan. Everyone else that has considered this,
23 considered the issue of whether or not RSE is in the
24 dealer agreement and whether or not it's reasonable has
25 said it's allowed by the dealer agreement and it's

1 reasonable.

2 The nine cases that I provided to the members
3 of the Board, I actually went through and I highlighted
4 for you in yellow highlighting that language that I'm
5 referring to in each of these cases. There is not one
6 case anywhere in the country that has found that RSE is
7 unreasonable, junk science or not allowed by the dealer
8 agreement.

9 Member Graham, you asked a questions about
10 write-downs. Maybe I misspoke, so let me be clear, there
11 were two CPAs that testified on behalf of Bates, there
12 were two CPAs that testified on behalf of Nissan, one of
13 which was a fraud examiner. The two on behalf of Bates in
14 particular does work for all types of car dealerships
15 throughout the country, hundreds of them, I asked them on
16 the record: Have you ever seen even one new car dealer
17 even attempt to write down the value of a new motor
18 vehicle? Answer: No.

19 There is no evidence that any other dealer
20 anywhere in this country has ever attempted to write down
21 a new motor vehicle other than Bates Nissan. You can't do
22 it, members of the Board, it's unlawful. That's why
23 dealers don't do it. If they could do it, it would be a
24 tax advantage to dealers and they would do it. But not a
25 dealer in the entire country has done that.

1 With regard to how long Nissan has been using
2 RSE, I want to go back to that. Now, again, the cases
3 that I've provided to you, they say that Nissan at the
4 point in time of these cases had been using RSE for about
5 30 years. Some of these cases are over ten years old, I
6 believe, some of them are just last year. When I do the
7 math, that's about 40 years based on these cases that
8 we've now cited to the Board that Nissan has been using
9 regional sales effectiveness.

10 With regard to the question about PMAs, yes,
11 indeed, Nissan provides, just like all manufacturers, a
12 PMA -- other manufacturers call it an AOR -- to their
13 dealers. It's where that dealer is most convenient to the
14 consumers in that area versus another dealer. But with
15 regard to the question on the RSE, that's a mathematical
16 calculation. An update on where that dealer stands with
17 regard to RSE is provided to that dealer monthly; every
18 month they get their RSE number and they know where they
19 stand.

20 What Nissan is wanting to do in this case is
21 say: Board, let us give dealers credit for every sale
22 they make, every sale they make in terms of deciding RSE
23 as opposed to -- and I'll wrap up -- as opposed to just
24 giving them credit for sales that are also registered in
25 their PMA, that's just a subset. As I showed you in 2012,

1 that means Nissan would have to ignore half the cases.

2 Member Walker, you asked the question: Is all
3 this just about dealer agreements and nothing about the
4 law? It's also about the law. This case is also about
5 2301.435.

6 MR. PALACIOS: Thank you, Mr. Donley.

7 Do we have any questions for Mr. Donley?

8 MR. GRAHAM: I do. I want you to know that
9 your nine cases weren't given in vain. I actually looked
10 through them.

11 MR. DONLEY: Thank you very much.

12 MR. GRAHAM: And I did notice that every one of
13 these cases were from states excluding Texas. How would
14 you respond to the question of how Texas statute applies
15 to the interpretation of RSE, and on a state-by-state
16 basis, are these cases truly relevant in Texas when
17 statute could impact how we look at the dealer agreements
18 and what is required?

19 MR. DONLEY: Thank you for that. And actually,
20 several different questions in there, so let me take it as
21 I see it and see if I can help.

22 You're exactly right, not one of these nine
23 cases arises in Texas, so then why is Nissan relying upon
24 them? Because that dealer agreement language can only
25 mean one thing. The Texas statute 2301.455 does not

1 impact what the dealer agreement itself means. Instead,
2 one of the statutory factors is whether or not Bates
3 Nissan is in compliance with its dealer agreement. So if
4 the dealer agreement allows RSE to measure performance and
5 Bates Nissan is not compliant with RSE, it's not in
6 compliance with its dealer agreement. That's a statutory
7 factor.

8 Now, separate therefrom is 2301.455(1).
9 2301.455(1) is sales in relation to sales in the market.
10 That's a separate statutory factor which I was trying to
11 mention just a moment ago, and in this case the ALJ has
12 said, the PFD says not only under the Nissan dealer
13 agreement is RSE not there, Nissan, you can't use it, you
14 can only look at sales that are also registered in the
15 PMA, this PFD says you also have to use that same
16 methodology for sales in relation to sales in the market
17 under 2301.455(1).

18 So Member Graham, I hope you see I've answered
19 your question. Two different issues there as to the
20 interpretation of the contract, it can only mean one
21 thing, even under the state statute, just whether or not
22 they breached it, the separate issue is the interpretation
23 of sales in relation to sales in the market under
24 2301.455(1).

25 MR. GRAHAM: Thank you.

1 MR. DONLEY: And I've got to state one more
2 thing. Although I haven't looked, I can be certain of
3 this, each of the states that you see where these nine
4 cases come from, each of those states have a different and
5 separate termination statute from the other, and as you
6 can see, even with each of those states having a separate
7 dealer termination statute, they still arrive at the same
8 conclusion on the dealer agreement language that RSE is
9 reasonable and allowed by the dealer agreement.

10 MR. GRAHAM: One other question. As I look in
11 regards to the second key aspect of this case which is the
12 inappropriate financials, and I'm looking at your slide
13 that points out Nissan's contention that Bates provided
14 Nissan with incorrect financial data, including all of the
15 things listed, return on sales, et cetera.

16 MR. DONLEY: Correct.

17 MR. GRAHAM: Which was the twelfth month
18 document.

19 MR. DONLEY: Not only the twelve-month, but
20 once they did it the first time -- so based on the time
21 parameters in this case, 2009 to 2013, that was the time
22 period we looked at in this case, not before and not
23 after, that's where we were -- once Bates Nissan started
24 taking the improper write-downs of these used and new
25 motor vehicles, that inflated the profits on the next

1 financial statements submitted to Nissan when it came to
2 that December when they had to start catching up with
3 profits. And so once they started catching up with what
4 they had written down the year before, it inflated the
5 profits and then that started rolling into the next
6 January, February, March, April and May, and so now it
7 rolls into ever every subsequent month financial statement
8 as well as the year-end financial statement because they
9 have overstated profits to Nissan based on the improper
10 write-downs and understated profits to the IRS.

11 MR. INGRAM: Just a followup on that, though.
12 I mean, if the write-offs -- this is an assumption -- if
13 the write-offs were approximately the same from year to
14 year, then the effect nets out zero.

15 MR. DONLEY: But they weren't the same from
16 year to year. If I could show you a chart on that, I
17 think I might be able to help. This was a chart that was
18 actually created during the course of the trial that shows
19 exactly what happened, and so when you're looking at 2010
20 you can see there were recovered profits, that was
21 vehicles that had been written off in '09, profits
22 recovered in 2010 of \$121,000, you can see going down
23 three more lines, taxable income reported \$74,988, wanted
24 to get that \$75,000 number. And to get there ultimately
25 you see at the bottom three lines there had to be

1 additional inventory write-downs of \$277,477. That was to
2 get that tax goal of about \$75,000 in taxable income.

3 Here's why I showed this, Member Ingram. The
4 next year in 2011, if you look at the inventory write-
5 downs of new and used, it's \$442,000, the next year it's
6 \$813,000, the next year \$726,000 for a total of \$2.2
7 million. Let me show you how that worked. So in the
8 first year to get to the \$74,988, Bates had to write down
9 78 used improperly. And by the way, Bates's expert
10 testified, I asked him -- he knows all about this, he
11 represents all kinds of dealers doing their accounting and
12 their financial work -- I said, Did you see any evidence
13 other than Bates Nissan made these numbers up in their
14 head and wrote them down on their financial statements and
15 tax returns to provide to Nissan and to provide to the
16 IRS? And he said, No, I didn't see any evidence they did
17 anything other than make these numbers up in their head.
18 That's in the record from Bates Nissan's own expert.

19 And so then we go to 2011 to continue to
20 through with this plan -- and again, I'll be charitable --
21 Bates in 2011 to get to \$68,000 in taxable income, that's
22 the fourth line down, it had to write down 29 new -- and
23 we can't find one dealer in the country that does that,
24 you can't do it -- and they had to write down 78 used for
25 write-downs of \$442,000. That got them to \$68,000 in

1 income.

2 2012, and what's happening, now when you go
3 from 2011 to 2012, you've got to recover that profit that
4 you just improperly wrote down the year before, and so now
5 when you get to 2012, you see the write-offs go very high
6 because they've got to not only take care of the profit
7 made in that year but also the profits from the prior year
8 that were improperly written down, and so now you're
9 writing down 54 new, 99 used for a total of \$813,000.

10 And then finally, you get to 2013 and it's
11 \$726,000. The only reason, there's only reason why it
12 went down between '12 and '13 and that was because Bates
13 ran out of cars to write down. If it had had more cars on
14 its lot, new or used, that \$726,000 would have been higher
15 because, as you can see, the taxable income reported in
16 2013 was \$100,000, it couldn't reach its \$75,000 goal.

17 And by the way, the reason why we know this was
18 this overall plan to get to \$75,000 was Bates testified to
19 that. The other thing we know is there's actually
20 documents in the record where Bates would take the cars on
21 the lot, new and used, start writing them down, see if
22 they got it to \$75,000 in income, if it didn't, get its
23 pencil out again, erase some of them, change the numbers
24 to get to \$75,000.

25 And I will agree with the Board, it is

1 appropriate to have a taxable income goal of \$75,000 if
2 you can take lawful deductions to get there, but you can't
3 in the first instance decide I simply want to pay taxes on
4 \$75,000 and I'm going to do whatever I have to to get
5 there, which is what Bates Nissan did.

6 MR. INGRAM: As a followup question, are
7 dealers required to give you their tax return annually?

8 MR. DONLEY: They do not provide their tax
9 return. I also don't believe they're required to, to
10 answer that more directly.

11 MR. WALKER: So what is the relevance here of
12 this tax IRS issue with respect to cancellation of the
13 dealership?

14 MR. DONLEY: Well, the dealer agreement says
15 that a dealer cannot willfully violate the law, and when
16 you create a plan like this --

17 MR. WALKER: Okay. So stop right there.

18 MR. DONLEY: Yes, sir.

19 MR. WALKER: So willfully violated the law.

20 MR. DONLEY: Tax laws and regulations. Yes,
21 sir.

22 MR. WALKER: So have there been some criminal
23 charges filed against Bates?

24 MR. DONLEY: Not that I'm aware of, I wouldn't
25 know one way or the other.

1 MR. WALKER: What criminal law has he violated?
2 If you're going to make that statement, tell me what
3 criminal law he's violated.

4 MR. DONLEY: I don't know if there's one or
5 not, I have not looked into that. We looked at tax laws
6 and regulations.

7 MR. WALKER: Sir, you just made a statement to
8 this Board that he has violated criminal law. I want you
9 to tell me what it is that he violated.

10 MR. DONLEY: If it sounded like I said that, I
11 didn't mean to say that, I said a willful violation of the
12 law is what I meant to say, so I want to be clear on that.
13 That's what the dealer agreement says. I believe it's
14 12(8)(b) or so says that it's a willful violation of the
15 law or regulations, and so that's what we're relying upon.

16 MR. WALKER: So you're trying to allege that he
17 is violating the laws which you're alleging, so you're
18 using that as your podium to cancel this dealer's license?

19 MR. DONLEY: It's certainly one of the issues
20 here. We've got sales performance which we believe stands
21 separate, and that alone is good cause for termination,
22 but certainly this tax plan would also be good cause for
23 termination, and certainly the two together should be, and
24 then that rolls into the financial statements that had
25 false information that was submitted to Nissan. So

1 certainly, you look at one of them, we believe, to get
2 there, but certainly in the aggregate we believe you get
3 there.

4 MR. GRAHAM: Quick clarification for David
5 Duncan. Am I remembering that sales performance alone is
6 not justification for termination?

7 MR. DUNCAN: That is a very broad question.
8 The statute requires that the Board consider all existing
9 circumstances, including that list of seven factors. So
10 one of the seven factors is the party's performance under
11 the franchise agreement. That is the bulk of what we have
12 been talking about today is one factor.

13 MR. TREVIÑO: Mr. Donley, can you comment on
14 the improvement performance prior to the final termination
15 letter?

16 MR. DONLEY: I'm glad you asked that question
17 because it's not quite as it was stated. So for 3-1/2
18 years, Nissan gave Bates Nissan the opportunity to get to
19 100 percent RSE. We've seen that, provided the notice
20 every six months, in addition to other information, kept
21 extending the opportunity to become compliant with the
22 dealer agreement. Finally, getting towards the end of
23 that 3-1/2 years, Nissan finally sent a letter out, and
24 let me, if I may, get out that slide that raises that
25 issue. Finally, in the sixth cure period, this sixth NOD

1 extension, on April 10, 2013, Nissan finally said, This is
2 your last opportunity, there will be no more extensions,
3 this is your last chance, we've given you 3-1/2 years,
4 this is your last opportunity.

5 And so by the time we get to September 2013
6 which is when the cure period expired, which means at that
7 moment, Bates, either you've made the grade or you
8 haven't, that's what Nissan was looking at, so Nissan did
9 not get the information, the Polk data -- which is now
10 IHS -- didn't get the data on that for about 90 days, in
11 other words, there's a lag on getting the data on what
12 happened between April and September. And so period ended
13 September 30, it takes about 60 to 90 days to get the
14 data, when they looked at the data as of September 30,
15 2013, they still didn't make the grade and Nissan moved
16 forward with the termination.

17 Now, after the notice of termination was
18 issued, or after that last cure extension was issued,
19 Bates finally decided, after all these years, we're going
20 to get busy and try to sell cars. As Mr. Coffey stated,
21 Bates did get above 100 percent RSE after the last cure
22 period ended. What does that really tell us? One, during
23 this whole 3-1/2 year period, had Bates Nissan cared to,
24 it could have become sales effective, it could have gotten
25 over 100 percent RSE, it just didn't care to, it kept

1 stringing Nissan along for these 3-1/2 years.

2 And the fact that it got to over 100 percent
3 after its last cure notice had expired, the PFD says
4 that's not enough to excuse its poor sales performance
5 over this entire period of time that it was given to
6 correct its performance. And I agree with that, I think
7 that's appropriate. Otherwise, dealers can play games
8 with the manufacturer and say, you know, I'm not going to
9 do better until I finally get that last notice from you
10 and I know you really mean and then all of a sudden I'll
11 get busy and try to sell cars.

12 MS. HARDY: Is the 3-1/2 years the normal
13 timeline to work with an underperforming dealer to get the
14 notice of cure?

15 MR. DONLEY: Absolutely not. Often you see
16 that a manufacturer will only give a dealer six months,
17 they might give them nine, they might give them twelve,
18 but rarely do you see a manufacturer go outside of a
19 twelve-month period in terms of giving a dealer an
20 opportunity to correct their performance. If a dealer is
21 starting to do better, they might get longer, if the
22 manufacturer wants to continue to work with the dealer,
23 they might get longer, but the norm would be six months to
24 twelve months, somewhere in that range, not the 3-1/2 year
25 period you see that Nissan provided to Bates.

1 MR. GRAHAM: So as I look at the financial data
2 that you provided, I'm kind of struck by you just made the
3 comment that during that time frame they didn't sell cars,
4 they didn't perform. and the reality is they sold cars,
5 they were very profitable, they just didn't perform and
6 sell as many as Nissan wanted them to sell. Would that be
7 an accurate statement?

8 MR. DONLEY: That's not accurate in this
9 regards. What you see on these financial statements also
10 includes parts, service, used cars and all of those
11 things. And what we can't figure out, what no one was
12 able to figure out throughout the course of this case,
13 whether it be Nissan's experts or Bates's experts, is what
14 are the true profit numbers for Bates because they were
15 taking the improper write-downs. And so the numbers you
16 see here, we know what the write-downs were, we know what
17 Nissan told the IRS, but what the actual profit numbers
18 were, nobody in this case could back into and determine
19 how much Bates Nissan made or didn't make during this
20 period. None of the experts could, theirs or ours.

21 MR. GRAHAM: Thank you.

22 MR. PALACIOS: Mr. Donley, I have a question
23 for you.

24 MR. DONLEY: Yes, sir.

25 MR. PALACIOS: You've referred to Bates use of

1 the lower of cost or market accounting as --

2 MR. DONLEY: With all due respect, Mr.
3 Chairman, I did not refer to lower of cost or market.
4 They did not use lower of cost or market. They snatched
5 numbers out of the air, made them up in their head, as
6 their expert testified to. I'm sorry, I didn't mean to
7 interrupt you, but I did not say lower of cost or market.

8 MR. PALACIOS: Okay. So you don't believe it's
9 legitimate, that it's a scheme, as you said, a scheme, not
10 a lawful deduction, and you said it's an improper write-
11 down.

12 MR. DONLEY: Absolutely.

13 MR. PALACIOS: Did any of your experts the
14 inventory to ascertain that they had improperly written
15 down the inventory?

16 MR. DONLEY: To what the value of the improper
17 write-downs were?

18 MR. PALACIOS: Right.

19 MR. DONLEY: Not on the used but on the new we
20 know, so every number you see up here on new, for
21 instance, 2011 of \$162,000, that would be improper, you
22 can't write down new at all. We don't know on used.

23 MR. PALACIOS: So let me ask you on new, you're
24 stating that it's illegal and improper to write down new
25 inventory. I don't know if I necessarily agree with that

1 statement. If a dealer has inventory that, let's say, has
2 aged, one year, two years old -- which sometimes
3 happens -- would it be improper to write that inventory
4 down?

5 MR. DONLEY: I don't know standing here, I
6 don't know all the rules that may impact that.
7 Obsolescence and things like that may impact it, so if
8 that's what you're talking about, that's certainly --

9 MR. PALACIOS: So that may not be improper,
10 illegal or a scheme to write down new inventory.

11 MR. DONLEY: If you meet certain exceptions.

12 MR. PALACIOS: In certain cases it would be
13 proper.

14 MR. DONLEY: I think there are certain
15 exceptions, none of which did any of these new vehicles in
16 this case meet by any stretch, based on all the testimony
17 and records.

18 MR. PALACIOS: Okay. So your experts testified
19 that this inventory was not aged or was in need of write-
20 down.

21 MR. DONLEY: In no way appropriate for write-
22 down as new, no way, no how.

23 MR. PALACIOS: Because your statement was no
24 new inventory should be written down which, again, I sit
25 on a twenty group and I know several dealers that do this.

1 Maybe Nissan doesn't but I can tell you General Motors
2 dealers do write down new car inventory if it's aged.

3 MR. DONLEY: And again, depending on how aged
4 and whether it's obsolete and things of that nature, that
5 may impact it. Again, all the experts testified they knew
6 of no reason or any way in which Bates could write down
7 the new in this case.

8 MR. PALACIOS: So again, let me get back to the
9 used then. Are you saying that you have issue with the
10 new inventory but not the write-down of used inventory?

11 MR. DONLEY: Also issues with used because as
12 the PFD found, those write-downs were, quote, not in good
13 faith. They didn't use lower of cost or market. As his
14 expert testified, he just made the values up in his head.

15 MR. PALACIOS: Mr. Coffey testified that it was
16 somewhat haphazard but they used auction values. Do you
17 dispute auction values?

18 MR. DONLEY: I dispute auction values. In
19 fact, I think if you look at the record, you would see
20 that -- and I don't remember all the ways so if I misstate
21 one of these, please forgive me, but I think there was
22 testimony that maybe sometimes it was auction value, maybe
23 sometimes wholesale, maybe sometime clean used, other
24 things I just made it up. There's all kinds of things in
25 the record about how he did it, and ultimately that's what

1 caused his expert, Mr. Davis from Memphis, Tennessee, to
2 testify: Based on everything I've seen, I have no reason
3 to believe that Bates did anything other than make these
4 values up in its head. And that's almost a quote. I'm
5 the one that asked that question and received that answer.

6 So they weren't using lower of cost or market or anything
7 that another car dealer would recognize.

8 MR. PALACIOS: Sometimes auction value,
9 sometimes clean book. I mean, there was a basis for it,
10 maybe it was consistent.

11 MR. DONLEY: No.

12 MR. PALACIOS: You're saying it was totally
13 made up.

14 MR. DONLEY: And I didn't mean to interrupt
15 you, so my apologies. Even when they said auction value,
16 there was no evidence it was auction value. That's why
17 the testimony bounced all over the place, and that's what
18 caused Bates's own expert to say: Based on what I've
19 seen, they just made these values up in their head.
20 There's nothing to support any other way in which they
21 claim they did it.

22 MR. PALACIOS: I guess the way to support --
23 did anybody actually value the vehicles to be certain they
24 were undervalued, overvalued? Do you know if they were?

25 MR. DONLEY: I believe -- and I'm stretching my

1 memory here a little bit, but I believe there's evidence
2 in the record on some deal files that were actually
3 produced by Bates that show there was no way to align the
4 write-downs on those vehicles versus anything that was
5 claimed as to how they were written down, for instance,
6 auction values. And it was based on the only deal files
7 that were produced. There was no way to line them up with
8 any reasonable or appropriate way to write down vehicles,
9 even for those that were produced, I would say cherry-
10 picked by Bates.

11 MR. PALACIOS: Okay. Thank you.

12 MR. DONLEY: Thank you.

13 MR. PALACIOS: Any further questions for Mr.
14 Donley?

15 (No response.)

16 MR. DONLEY: Mr. Chairman, members of the
17 Board, thank you for your time.

18 MR. PALACIOS: Thank you, Mr. Donley.

19 Are there any further questions? If not, I
20 will entertain a motion.

21 MR. WALKER: I make a motion that we accept the
22 SOAH decision as it is because I don't see there's any
23 evidence that's been brought to us today that changes the
24 technique or that there's no evidence -- we can't go back
25 and find new evidence that it was wrong with respect to

1 interpret the applicable law. I think the applicable law
2 has been applied correctly. I think that the
3 administrative decision, there's no technical errors in
4 that, and in that light, I don't think that the Board has
5 the ability to overturn SOAH's ruling at this point in
6 time.

7 MR. INGRAM: I'll second.

8 MR. PALACIOS: Thank you. There's a motion by
9 Board Member Walker to accept the PFD, a second by Board
10 Member Ingram. All in favor please signify by raising
11 your right hand.

12 (A show of hands.)

13 MR. PALACIOS: We have Board Member Graham,
14 Board Member Ingram, Board Member Caraway, Board Member
15 Walker, Board Member Treviño, and Board Member Painter
16 voting affirmative.

17 All those opposed.

18 (A show of hands.)

19 MR. PALACIOS: Board Member Hardy is opposed.
20 Motion carries. Thank you very much.

21 MR. AVITIA: Board members, thank you.

22 MR. PALACIOS: We'll move forward now, moving
23 along to the next item on our agenda, over to briefing and
24 action items, we'll start with Finance and Audit, TxDMV
25 Fund update by Ms. Flores and Ms. Bankhead.

1 Let's take a five-minute recess.

2 (Whereupon, a brief recess was taken.)

3 MR. PALACIOS: Okay, ladies and gentlemen,
4 let's move forward. We were about to hear a presentation
5 from Ms. Flores and Ms. Bankhead. Sorry for leaving you
6 hanging, but appreciate your patience.

7 MS. FLORES: Thank you. For the record, Linda
8 Flores, chief financial officer for the Texas Department
9 of Motor Vehicles.

10 This agenda item 5.A is a presentation of the
11 activities in the DMV Fund for the month ending April 30,
12 2017. This is a briefing item and no action is required.

13 On page 7 of your board book, you will see a
14 simple financial statement that reflects revenues and
15 expenditures for the DMV Fund. As you know, the DMV Fund
16 was created September 1 of last year. We began receiving
17 deposits related to the processing and handling fee last
18 November. It started trickling in because the fee itself
19 went into effect January, but we did receive a few dollars
20 in November and December, but the bulk of it has been
21 coming in as of March and April.

22 You can see we've collected \$16.9 million
23 related to that processing and handling fee. In total in
24 the fund itself we've received \$93.2 million, in addition,
25 we had the one time transfer, for a total of \$116.2

1 million in the fund. Expenditures, at the same time,
2 totaled \$71.5 million for operating expenses, and once you
3 add in the fringe benefits, credit card convenience fees
4 and our Texas.gov fees for the online processing and
5 handling transactions, that comes to a total of \$83.7-.
6 As of the end of April, we have a fund balance of \$32.5
7 million.

8 With respect to the processing and handling
9 fee, we are receiving, as we expected to receive, we
10 believe we're going to hit at the end of the year of about
11 \$38 million for that particular fee. I can tell you that
12 expenditures are matching what we've seen in the last five
13 years as an agency, so there's nothing unexpected.
14 However, this is the first year that we actually have our
15 own fund and we can manage the fund, so we keep a very
16 close eye on all of the deposits and the cash going out
17 the door because we are having to live within our means,
18 but I believe that we will have a net cash balance in a
19 positive number and I believe it will be probably close to
20 this \$30 million at the end of August.

21 And I'm available for any questions.

22 MR. PALACIOS: Board Member Walker.

23 MR. WALKER: I know I've asked this question,
24 Linda, and I apologize because I it's redundant, but
25 professional fees of \$5.75 million, tell me why that is so

1 high.

2 MS. BANKHEAD: Renita Bankhead, assistant chief
3 financial officer, for the record.

4 The professional fees includes our payments for
5 DCS, for the data center consolidation contract. Those
6 payments fall under professional fees, so that and
7 subcontractor costs also, but the vast majority of that
8 are the payments we make to the Department of Information
9 Resources, and the payments we made for RTS.

10 MR. WALKER: So RTS is in that also?

11 MS. BANKHEAD: A portion of RTS is in there.

12 MR. WALKER: How much of it is RTS, ballpark?

13 MS. BANKHEAD: We're going to have to get back
14 with you with that number.

15 MS. FLORES: We have the total that we spent
16 through the end of April.

17 MR. WALKER: I guess my real question would go
18 to you said part of that, so on the part of that number.

19 MS. FLORES: So that \$5 million is made up of
20 several things. As Ms. Bankhead indicated, there is a
21 portion for DCS. Our DCS budget is about \$9 million for
22 the year, and we get an equal, pretty consistent bill from
23 DCS, so \$9 million into 12 months is roughly \$800-,
24 \$700,000 a month, so that's going to be a portion of it.
25 Another portion is what we are paying Deloitte for the

1 deliverables. That's the piece that we don't have the
2 month of April. I know what we've paid them in total for
3 the year which is about \$9 million, but how much of that
4 was in April, I can't tell you at this time.

5 MR. WALKER: We're recognizing a part of that
6 expenditure in another also. Right?

7 MS. FLORES: Yes, sir. For the automation
8 itself, we also recognize some contract services, computer
9 software and a large portion is the maintenance portion.
10 What we've paid year to date is \$800,000, so in total for
11 the automation, it's \$10.3 million for the year. How much
12 of that is in April, we'll have to go back and break out
13 for you.

14 MR. WALKER: So I have another question under
15 your summary page there it says here that our collections
16 of all revenues, including Fund 6 and Fund 1, are under
17 our projections.

18 MS. FLORES: Actually, you're getting a little
19 ahead of us. That's in the quarterly financial report.
20 Yes, sir.

21 MR. WALKER: I'll hold the question then.

22 MS. FLORES: If no one has any other questions,
23 we'll move on to the quarterly report.

24 MR. PALACIOS: Please do.

25 MS. FLORES: So we've covered the TxDMV Fund.

1 I will just go directly into the My Plates contract and
2 just give you an update there. My Plates is almost to the
3 point where they've met their \$15 million obligation to
4 the State of Texas. Through April they've collected \$13-
5 specifically against that obligation. In total they have
6 deposited almost \$26 million to general revenue. We
7 believe that they're going to hit that obligation probably
8 by the first part of the fall of this year.

9 MR. WALKER: The contract still has two more
10 years. Correct?

11 MS. FLORES: Yes, sir. November 19, 2019.

12 So back to your point, Mr. Walker, that you
13 just brought up, year-to-date in total we are realizing
14 more revenue than we saw last year. We've collected \$1.13
15 million compared to FY 16, \$1.12-. While we're collecting
16 more revenue, we're not hitting our targets as we thought
17 we would. We thought there would be at least a 2 percent
18 growth from last year. We're not seeing that specifically
19 in the number of registered cars, so that impacts Fund 6
20 as well as the DMV Fund. Oversize/overweight is still
21 holding in their slump, but we did anticipate that slump,
22 but overall I think where we're seeing the decrease is in
23 registered vehicles. We believe that's a result of single
24 sticker as well as some other exempt vehicles not having
25 to be registered. Other than that, we really don't have

1 any other factors to provide for you as far as what that
2 decrease is relevant to.

3 MR. WALKER: So how would single sticker have
4 an effect on the number of cars being registered?

5 MS. FLORES: Inspections of a car. A lot of
6 cars may not have been able to pass inspection, and
7 therefore --

8 MR. WALKER: But they still had to pass
9 inspection.

10 MS. BREWSTER: Whitney Brewster, executive
11 director. It wasn't linked to registration prior to,
12 therefore, they could register their vehicles independent
13 of the inspection process, now they are unable to do so.
14 So they have to pass inspection to be able to register
15 their vehicle. That is something that we believe
16 anecdotally might have contributed to the slowdown of the
17 registration numbers.

18 MR. INGRAM: It's a logical conclusion. Even
19 something as simple as a check engine light will prevent
20 the car from passing inspection.

21 MR. WALKER: Really? Mine is on right now.

22 MR. INGRAM: You won't be able to get it
23 inspected until that's off. So there's a lot of cars with
24 check engine lights that could be something as simple as
25 that, it's just a process to get it off.

1 MS. FLORES: That really concludes the
2 information on revenues for the quarterly report. I'll
3 let Ms. Bankhead take it from here and talk about
4 expenditures.

5 MR. TREVIÑO: Before you move on there, first
6 off, I wanted to compliment you, Ms. Flores and Ms.
7 Bankhead for your work in this area, I know it's a tough
8 job. I was wondering about the method of registration.
9 How is online doing? Is any of that stuff starting to
10 play into your revenue numbers?

11 MS. FLORES: Yes, sir. The number of
12 registered vehicles does impact our deposits because we
13 are relying on registration renewals from the online. We
14 did see a dip in April. We do believe, however, we're
15 going to hit our \$38 million target. That was an eight-
16 month or seven-month number because we didn't start until
17 January, so we are watching it closely. Even though it
18 dipped, it was a less than 5 percent dip, so we still feel
19 like that our target of \$38- is still good for the year.
20 What it will do in May, you know, we're kind of anxious to
21 see. They're still reconciling the numbers, so we'll have
22 a better idea of those May revenues here in a couple of
23 days, so the next time you see this report, I'm hoping
24 that that number spikes back up a little bit.

25 MS. BREWSTER: Mr. Chairman, if I may?

1 MR. PALACIOS: Yes.

2 MS. BREWSTER: We projected for FY17 that we
3 would have 19 percent online transactions. We hit that in
4 January but then it dipped down in April to 18 percent, so
5 there is obviously some fluctuation from month to month.

6 MR. TREVIÑO: Thank you.

7 MS. BANKHEAD: Renita Bankhead, assistant chief
8 financial officer, for the record again.

9 As of the end of April, our expenditures
10 totaled \$86.8 million, and we've kind of talked about
11 professional fees a little bit already. The other big
12 thing we have are contract services which are basically
13 the contract for the license plate production. We also
14 have about \$42 million in encumbrances. The majority of
15 those encumbrances are the grants for ABTPA, the last part
16 of their grants, plus the remainder of our license plate
17 contract, and as we spoke before, the data center services
18 contract.

19 Moving on to capital budget. The majority of
20 our capital budget consists of expenditures for automation
21 and most of that is related to RTS and the eLICENSING, the
22 completion of the eLICENSING system. Any balances in
23 automation are available for carryforward to fiscal year
24 '18. We have specific appropriation authority this
25 biennium that allows us to move those monies forward. We

1 also received authority to move those monies into the new
2 biennium for the upcoming biennium as part of the 85th
3 Legislature.

4 The data center project budget costs as of the
5 end of April totaled \$4.6 million, and this is, as Linda
6 said before, well within what is available that we have
7 budgeted, so the problems we had in the past with DCS,
8 we've kind of passed that so we have plenty of money for
9 that.

10 Finally, at the end of February we put together
11 a midyear review, and our remaining balances that we show
12 in this presentation, it includes some of those balances
13 because the expenditures that we approved during the
14 midyear process, those were not processed until May, so
15 they'll be still showing up as remaining balances. Most
16 of that will be carryforward that we'll be able to carry
17 forward to '18 as automation. We also include in that
18 \$1.6 million in lapses that we were directed to provide to
19 the State as part of the hiring freeze. For the midyear
20 review we approved \$5 million in additional funding for
21 postage and registration paper, just to make sure that we
22 had sufficient postage to be able to mail registration
23 materials.

24 The budget staff, as we spoke about at previous
25 meetings, they're going to be reviewing budget balances in

1 June to identify any other funds that we may be able to
2 use for one-time purchases prior to the end of the year,
3 but note that any balances that we have, with the
4 exception of GR, will lapse to the DMV Fund and this will
5 increase our fund balance to be able to support department
6 appropriations. So the only money that's probably going
7 to get lapsed and moved somewhere else will be the money
8 for the salaries for the hiring freeze.

9 MR. WALKER: So the salary lapse goes to the
10 general fund, any other lapse goes to the DMV Fund.

11 MS. FLORES: Actually, Board Member Walker, we
12 have not received final instructions from the Governor's
13 Office. They have asked us for information from numbers,
14 what do we expect to lapse through August 31.

15 MR. WALKER: It was \$12 million, wasn't it?

16 MS. FLORES: It's approximately \$2 million.
17 Yes, sir. But we will wait for the final instructions
18 from the Governor's Office as to how we're directed to
19 lapse the money, if you will, whether it lapsed to the DMV
20 Fund or they ask us to process a transfer to a particular
21 account within the State Treasury.

22 MS. CARAWAY: Two million or twelve?

23 MS. FLORES: It's two, it's approximately \$2
24 million. We have approximately 60 vacancies at this time,
25 60-62, I believe, and we were directed at January 31

1 whatever we had vacant, cost out that cost expenditure
2 through August 31. In the meantime, we also had some
3 people leave the agency, so that number has grown and
4 we're estimating approximately \$2 million lapse, with
5 benefits -- that's the other thing, the benefits also are
6 tied to that number.

7 MR. WALKER: Okay. Let me clarify. I said \$12
8 million because I'm reading right here and it says here:
9 The department anticipates lapsing approximately \$12
10 million in primary consisting of fund set-aside payments
11 for the Texas.gov. So we're going to lapse \$12 million
12 but \$2 million of the \$12- is for salaries.

13 MS. FLORES: Correct.

14 MR. WALKER: My original question was, I guess,
15 of the \$12 million how much of that lapsed money will go
16 to the DMV Fund versus how much goes to the general fund?

17 MS. FLORES: Well, right now we don't know.
18 The whole \$12- is related to the DMV Fund at this point,
19 but if the Governor's Office comes back and says, okay,
20 TxDMV, I want you to take the money related to the hiring
21 freeze and move it from here to there, then it will be
22 approximately \$10 million to the DMV Fund.

23 MR. WALKER: So \$10 million is going to stay in
24 our fund?

25 MS. FLORES: Yes, sir.

1 MR. WALKER: Okay, that's good.

2 MS. FLORES: At least \$10-.

3 MR. TREVIÑO: This may not be a budget question
4 but are the hiring freezes starting to have an effect on
5 operations in any way?

6 MS. FLORES: I'm going to let Ms. Brewster take
7 that one.

8 MS. BREWSTER: Thank you, Mr. Treviño, for
9 asking that question. We do have for consideration by the
10 governor some exemptions, we've requested a waiver for
11 certain positions within the agency, some in the Consumer
12 Relations Division, the call center as well as our
13 Enforcement Division, for a total of, I believe, seven
14 positions.

15 MR. WALKER: One more question. So since our
16 revenue estimates are off, according to this, I think it
17 says \$40 million right here on our projections, will that
18 affect our LAR going forward from this previous year that
19 we've got anticipated going forward?

20 MS. FLORES: At this time, no, sir. The
21 appropriations have been preliminarily approved, it
22 happened on Saturday, this past Saturday. Our
23 appropriations are set at \$332.9 million. If in the
24 course of a given year our revenues are not enough and
25 fund balance -- let me clarify, our revenue deposits and

1 fund balance are not sufficient to cover our
2 appropriations out of that fund, it would impact the
3 agency, we would have to scale back. Just like any
4 private business, if you don't have the money coming in or
5 don't have reserves, then you would have to scale back.

6 MR. WALKER: So I guess my question is in our
7 LAR that we requested, and you just prior to this
8 statement said that we have been aggressive in the past on
9 some numbers anticipating registrations to go up that
10 didn't go up, so in our LAR were we still appropriating
11 with an anticipation that it's going to continue to grow
12 or that it was flat or that we're going to have some more
13 decline going into the next two years?

14 MS. FLORES: Based on the trends that we have
15 seen, our growth rate was not as great as we have done in
16 the past. We have normally used about a 2-1/2, 2 percent
17 growth rate in registrations. We scaled that back to one
18 percent growth. So we were seeing some of those trends so
19 we did not grow it as aggressively as we have in the past.

20 MR. WALKER: Thank you.

21 MS. FLORES: And we believe we're going to hit
22 the target.

23 MR. WALKER: That's my question: are we going
24 to hit our target?

25 MS. FLORES: We're going to hit our targets.

1 So segueing into the next biennium, this
2 particular line item is also a briefing, it's a
3 preliminary operating budget, no action is requested at
4 this time. We will be putting this back in front of the
5 Board in August for final approval. We are just now
6 coming off the appropriations process where, as you know,
7 we did pretty well for an agency. We requested \$367.8
8 million, we received \$332.9 million. I think one of the
9 bigger wins for the agency is we actually got new staff
10 which is kind of unheard of these days. We got three new
11 staff to take care of the Camp Hubbard campus, three new
12 staff, 13 new staff for the Special Investigations Unit
13 that will be looking at preventing fraud, waste and abuse.

14 We've lined out for you all, and you can also
15 follow this in your board book on page 25, the exceptional
16 line items that were approved and what was not approved.
17 We got the money for campus maintenance, \$9.8 million; we
18 got almost \$2 million for Special Investigations, that
19 also includes four new cars; \$1.7 million for CVISN; and
20 \$800,000 of restoration of automation.

21 During the appropriations process, we asked for
22 \$12 million for automation. Legislative Budget Board went
23 out with a recommendation where they cut our base -- and
24 that's kind of unheard of -- but they cut our base almost
25 \$5.7 million. Going into January, we asked for \$1.6

1 million of that back; we got \$800,000. So didn't have 100
2 percent success but it was still pretty good. They did
3 not approve any of the restoration of the reductions made
4 to Automobile Burglary Theft and Prevention, nor did they
5 approve the exceptional item for the additional grants.

6 MR. WALKER: So on that deal there you say we
7 got new automobiles, but it doesn't show there unless it's
8 under the Special Investigations.

9 MS. FLORES: It's under the Special
10 Investigations Unit, it's part of that \$1.9-.

11 MR. WALKER: How much of that is for vehicles?

12 MS. FLORES: About \$100,000 for cars at about
13 \$25- apiece.

14 MR. WALKER: Four cars at \$25,000?

15 MS. FLORES: Five cars. Sorry. Five cars at
16 \$20-. I think it's four cars at \$25,000, it is four.

17 MR. WALKER: That's a pretty cheap automobile.

18 MS. FLORES: We get a discount.

19 MR. WALKER: Really? Can I get a deal in there
20 with you?

21 (General laughter.)

22 MS. FLORES: As I like to refer all the
23 vendors, you can contact the Comptroller's Office and I'm
24 sure that they can help you in that endeavor.

25 We also, as part of the appropriations process,

1 got a couple of new riders that are going to be attached
2 to our bill pattern. The very first one, which is
3 something that we're already doing, is that the agency
4 will be required to submit an annual report on the DMV
5 fund, revenue collections, expenditures and fund balances.

6 There was a lot of interest in the DMV Fund during some
7 of the committee hearings and especially in regards to our
8 fund balance. So fund balances are the right of the
9 legislature to reallocate and use as they see fit, so it's
10 really important for us to kind of keep an eye on the
11 amount on that fund balance.

12 The other thing that we were successful in
13 receiving was a UB authority, unexpended balance
14 authority, to move unspent dollars associated with the
15 move for Bull Creek. As you know, and you kind of can see
16 some of the construction efforts going on here, TxDOT is
17 doing some repairs and renovations. They're working in
18 the parking lots this summer, they're redoing Building 6
19 to accommodate our Motor Carrier staff, and that
20 particular physical move was appropriated special dollars,
21 about a million four, to move. So knowing that we weren't
22 going to do it by August 31, we did request and receive
23 the authority to move forward those dollars into
24 September. So we believe that that move will actually
25 occur January 2018.

1 Member Walker, you asked about what our targets
2 are for '18-19. This kind of shows you where the revenue
3 collections have been by year. We started at \$3.13- in
4 '12-13, we estimate that our total collections will jump
5 to \$3.86 billion.

6 This particular slide shown on page 29 of your
7 board book lays out the targets that we're operating
8 under. Approximately \$1.8 billion by the end of August
9 31, and we've grown it to \$1.9 billion in '18.

10 The other question that you may wonder is is
11 this going to be enough to cover -- are the DMV Fund
12 revenues enough to cover our obligations. You can see we
13 believe that we are going to have \$182.9 million to cover
14 \$189.4 million in expenditures. This in itself will help
15 us grow the fund balance but not by much, but it will
16 grow.

17 And this is just another slide of the My Plates
18 highlights. As I've already mentioned, what they've
19 deposited to general revenue, what they've accumulated
20 against their \$15 million obligation, and we've indicated
21 the number of plates that are still currently available,
22 115, and their top selling plate is still the Lone Star
23 Black.

24 And with that, I'll turn it over to the
25 operating side of the agency.

1 MS. BANKHEAD: The expenditure portion of this
2 budget begins on page 34 of your materials. The
3 preliminary fiscal year '18 budget is \$165.2 million. As
4 with '17 as far as expenditures were concerned, our budget
5 for '18 also tracks the same way. Most of that is
6 allocated to registration and titling activities.

7 One of the previous slides that you saw showed
8 that the majority of the budget is funded by
9 appropriations supported by the DMV Fund. It also
10 includes federal funds, estimated balances from '17 for
11 capital projects that are available for carryforward, and
12 general revenue. The '18 budget includes the approved
13 exceptional items for vehicles for the Special
14 Investigations Unit, we also have vehicles in our
15 baseline, also, headquarters maintenance and also
16 automation, plus funding for 779 FTEs that includes the 16
17 new FTEs we received.

18 MR. WALKER: Where are they appropriated?

19 MS. BANKHEAD: The 13 FTEs?

20 MR. WALKER: No. Where are all the FTEs in all
21 of this, just by area? I don't see salaries or labor in
22 that cost line.

23 MS. FLORES: It's all split out.

24 MR. WALKER: So we've delegated those
25 throughout all the different regions.

1 MS. FLORES: Yes, sir.

2 MR. WALKER: In other words, Jimmy Archer is
3 under administration.

4 MS. BANKHEAD: Under program administration.

5 MR. WALKER: So we have divided all of our
6 people, the 711 FTEs?

7 MS. FLORES: Yes, sir.

8 MR. WALKER: So what would be capital be
9 limited to?

10 MS. FLORES: We have PCs for the counties and
11 the county upgrade and technology upgrades. That's about
12 \$5 million a year for capital. When you bundle a PC and
13 printers and it's over \$100,000, it becomes capital. We
14 also have agency PCs that's also included under capital
15 just because of the volume that we're buying.

16 MR. WALKER: So 18 percent of our budget is
17 capital expenditures of computers?

18 MS. BANKHEAD: This is by agency activities,
19 not so much by operating budget categories, so capital
20 would include our capital projects such as automation,
21 such as the data center, that kind of thing. So when you
22 look at program administration there on the bottom, that
23 19 percent, that's where we include Motor Carrier, that's
24 where they're included, and then registration and plates,
25 that's where VTR is. Central administration would include

1 finance, that kind of thing, and Information Technology
2 includes not only IT but also EPMO, Enterprise Project
3 Management. So that's kind of how things kind of shake
4 out as far as our agency activities are concerned.

5 MR. WALKER: Thank you, Renita.

6 MR. TREVIÑO: So regional offices would also be
7 in capital?

8 MS. FLORES: No, sir. The regional offices
9 would primarily be under registration and titles, under
10 that blue pie slice, 10 percent. There's where the
11 regions are because they're supporting that function.

12 MR. TREVIÑO: Thank you.

13 MS. BANKHEAD: To continue, on page 38 of your
14 materials we show an estimated obligation for fiscal year
15 '18, as Linda stated before, of \$189.4 million, and this
16 includes our operating budget plus other obligations that
17 we're taking into account that must be counted against the
18 DMV Fund, which are fringe benefits about \$13 million, and
19 then \$11.2 million in payments for online transactions
20 that we have to pay to TexasOnline. Those things are
21 obligations, they're not included in our operating budget
22 but we're including them as things that we have to take
23 into account because they go against our fund.

24 The next slide is capital budget. The largest
25 portion of our capital budget of \$30 million is other

1 technology projects, and those other technology projects,
2 the two big ones are data center consolidation and the
3 county technology support. Under automation initiatives,
4 we're planning on funding that with estimated balances
5 from '17 from projects. The amount that we have in this
6 preliminary document is still a preliminary number. We
7 will be working through this number for the next month and
8 in August we will give you a better number of what that
9 will be because there will be some approvals that will be
10 necessary for that UB process to take place.

11 What we're planning to fund with that UB
12 automation is the Web Lien project, fraud reports,
13 enhanced fraud reports or fraud reports, online certified
14 records, call upgrades, and some other things. These
15 things are listed on page 41 of your board book. There's
16 a list of those items there and there's some descriptions
17 on the following pages.

18 Finally, the final thing that we're going to
19 include in the final budget in August will be a list of
20 the budgeted fiscal year '18 contracts, those that you
21 have to approve and those ones that you have to have
22 notification. So once we get that included plus our final
23 UB amount, plus there were a few little tweaks and they
24 didn't impact the amount, but kind of the classification
25 of expenditures through the end of the session, we will

1 incorporate all of that and present it back to you at the
2 August Board meeting.

3 MS. FLORES: And in closing, I just kind of
4 wanted to recognize all the staff who did help in either
5 preparing, reviewing, running fiscal notes around and bill
6 analysis. It truly did take a village, all of the
7 division staff, the coordinators that we have who met
8 every week to talk about bills and who needed to do what
9 and who was going to a committee hearing, our financial
10 staff, Ms. Brewster for knocking on doors and pounding the
11 pavement, as well as Mr. Palacios. It really does show in
12 the agency's appropriation numbers how well we did,
13 because without that, it would not have gone as well. So
14 I would like to recognize everyone involved in this
15 effort, big shout out. Appreciate it.

16 (Applause.)

17 MS. FLORES: And that concludes our
18 presentation.

19 MR. PALACIOS: Thank you very much, Ms. Flores
20 and Ms. Bankhead. We appreciate your presentation.

21 Now we'll move on to the next item on our
22 agenda, we'll hear from Ms. Sandra Menjivar on the
23 Internal Audit Division status report.

24 MS. FLORES: Are we not going to do the
25 facilities update?

1 MR. PALACIOS: Yes. Go ahead. Sorry.

2 MS. FLORES: Real quick. On facilities, as you
3 know, we moved in March the Corpus Christi Regional
4 Service Center. We are currently in the process of
5 beginning routine weekly meetings on the San Antonio move.

6 The anticipated move date there is August, before August
7 31 because that's when our money runs out for the move --
8 money doesn't run out.

9 And as well as Bull Creek. We do have final
10 drawings for the office configuration, we're ordering the
11 parts that we need for the modular. As I mentioned
12 earlier, we're going to move in January, or at least
13 that's the expected due date is January 2018. We are
14 trying to escalate that move up sometime in the fall in
15 order to get out of the area that we're in where the
16 developer has indicated a desire to start turning dirt, as
17 they say, so we do want to be out of there when they start
18 with their construction.

19 MR. WALKER: That's January of '18?

20 MS. FLORES: Actually, the developer Milestone
21 indicated that they were receiving their city permits in
22 August, so technically, they can start work, however, we
23 have a lease, or TxDOT has a lease for us to remain there
24 until February 2018. So there might be some conflict
25 between the developer doing some of his work and us

1 residing in the area, however, Mr. Duncan has indicated
2 that they need to be a good neighbor, and if not, we will
3 take it up with the developer.

4 MR. WALKER: So do we know what they're going
5 to put over there?

6 MS. FLORES: It's retail, I believe.

7 MR. DUNCAN: David Duncan, general counsel.

8 The development that has been filed with the
9 city was amended a couple of times, you can watch it
10 online, it's mixed use residential, so there's some single
11 family, there's some multifamily, and then there's retail
12 up near the street. They had originally planned on taking
13 Jackson Avenue, which comes in right in front of the
14 building, and running it through the development and
15 coming out on 45th Street, but that was something that the
16 neighborhood association strongly opposed, so they took
17 that out.

18 MR. WALKER: So what kind of impact will that
19 have on our accessibility getting in and out of here?
20 Because I drove from the hotel today -- now we're getting
21 into war stories -- it took me longer to get from the exit
22 to the building than it did from downtown to the exit,
23 which is unusual.

24 MR. DUNCAN: They are required to do a baseline
25 traffic study and then a mitigation proposal. That's part

1 of their development plan. I know the neighborhood
2 association is watching that very closely, especially with
3 the addition of retail, retail is a big deal in the
4 neighborhood, and so I know that that's part of what
5 they're talking about. And they are talking about
6 widening Bull Creek and that's part of the plan, and also
7 they were not real specific about it but having some kind
8 of exit, not running a street through but having some kind
9 of exit from the neighborhood, from that development
10 directly to 45th, which means currently there are houses
11 all the way down 45th on the other side of that
12 development so they'd have to buy some of these houses,
13 make a road there or make an entrance there.

14 MR. WALKER: I'm glad I don't have to drive it
15 every day.

16 MS. FLORES: That concludes the facilities
17 update at this time.

18 MR. PALACIOS: Thank you so much for the
19 update, ladies.

20 Now we'll move on to the Internal Audit
21 Division report. Good morning, Ms. Menjivar.

22 MS. MENJIVAR-SUDDEATH: Good morning. For the
23 record, my name is Sandra Menjivar-Suddeath, Internal
24 Audit director, and I am presenting item 5.E which is the
25 Internal Audit Division's status that begins on page 57 of

1 your board book.

2 The first part of the Internal Audit Division
3 status is our current fiscal year Internal Audit Plan and
4 where we stand on it. The first item is the continuous
5 monitoring of vehicle registrations and title transaction
6 advisory service. This is an advisory service for the
7 Vehicle Titles and Registration Division to help identify
8 the reports that could be used to monitor fraudulent
9 transactions. We're in field work on this and we plan to
10 have the report done by July, and we'll be releasing it at
11 that time.

12 The next item is the Internal Audit
13 recommendation followup engagement. This is to follow up
14 on all Internal Audit recommendations that had an
15 implementation date before December 31, 2016. There's a
16 total of 125 recommendations, we're about 75 percent
17 through that. We are seeing that most of the
18 recommendations have been implemented. We'll be providing
19 a report to the Board in August with the total results and
20 which ones were not implemented and which ones were
21 implemented.

22 The next item is the Fiscal Year 2018 Internal
23 Audit Plan. This is, again, to identify the high risk
24 areas for next year and what audit will be working on for
25 next year. We are in field work on this and we plan on

1 releasing that and preparing that for the August Board
2 meeting.

3 The next item is the annual quality assurance
4 review. Our standards require us that we internally on an
5 annual basis review ourselves to see if we're meeting our
6 standards. We are in the planning process of that but we
7 will have a compliance letter ready to go for the August
8 Board meeting.

9 And then next two items are actually completed
10 reports. The first one is the Registration and Title
11 System refactoring single sticker post-implementation
12 review audit. This audit was focused on the data
13 reliability of the COGNOS reports. The COGNOS application
14 is the reporting tool that pulls out RTS data and provides
15 information both to the counties and department users.
16 Our audit focused on the department users, specifically
17 Finance and Administrative Services, as well as Vehicle
18 Titles and Registration.

19 We overall found that the department had
20 developed the COGNOS reports accurately and have done all
21 the business requirements and design that were needed for
22 the intended end user, however, we did have one finding
23 and we had an overall rating of a three which means that
24 we found that the process was defined but that it would
25 not able to detect any deviations due to the process not

1 being sufficiently evaluated or to address the risks.

2 And with that, I'll turn it over to my senior
3 auditor, Derrick Miller, who was the engagement lead, for
4 more details.

5 MR. MILLER: Good morning. Derrick Miller,
6 senior auditor of the Internal Audit Division.

7 This report, Sandra mentioned, did focus on the
8 data reliability of the COGNOS reporting. We determined
9 that the COGNOS application is pulling data accurately as
10 it was designed, but the internal department users were
11 skeptical of the data reliability of the reports, and this
12 led them to spending additional time and effort validating
13 the report output back against the source data in RTS just
14 to make sure that it was accurate. So to address this, we
15 did make two recommendations: number one, the department
16 should develop and provide some training for internal
17 department COGNOS users on the COGNOS applications method
18 of data processing; and number two, the department should
19 perform a detailed review of the structure of the COGNOS
20 reports to better understand the mechanics of those
21 reports.

22 The Information Technology Services Division
23 will be leading the implementation of both of those
24 recommendations. The training program and the report
25 review are expected to be done by the end of fiscal year

1 2018. That is a bit of a longer timeline than most
2 recommendations, but the IT has other priorities with
3 ongoing capital projects and expected workload coming out
4 of this legislative session.

5 MS. MENJIVAR-SUDDEATH: And I'd like to add, IT
6 is still answering questions. As users have questions on
7 the system, IT is proactively answering those questions
8 and making sure that they have the information needed, so
9 it's not that they won't be working on this
10 recommendation, it's just the due date will be a little
11 bit longer and Internal Audit is okay with that.

12 Are there any questions on the report?

13 MR. TREVIÑO: So it's unclear to me, is COGNOS
14 being relied upon by staff? Does staff find COGNOS to be
15 useful or not, based on your findings?

16 MS. MENJIVAR-SUDDEATH: I think they find it to
17 be useful. Part of the problem was when COGNOS was
18 designed and tested, a lot of it was focused on how it was
19 compared to the old system, and it's a very different
20 application than the old system and it's better in many
21 ways, and so there wasn't enough training or really
22 transition enough to understand, okay, this is how the
23 COGNOS application works in DMV and what you can do from
24 it, and so we kept hearing, oh, well, the old system used
25 to do this and the old system used to do that. Well, yes,

1 it's a different system and this has different needs and
2 fits the department better, if that makes sense. Does
3 that answer your question?

4 MR. TREVIÑO: No. Is staff relying on COGNOS,
5 is it useful?

6 MS. MENJIVAR-SUDDEATH: It is useful.

7 MR. TREVIÑO: Or are people not using this and
8 running their own reports on the side to make sure that
9 this is accurate or something?

10 MS. MENJIVAR-SUDDEATH: They are using it, they
11 do find it useful, they are still trying to understand
12 some of the differences in COGNOS the application compared
13 to the old system. I think that's where kind of the
14 skepticism came from is that the old system had certain
15 features the new system have, or there's just different
16 things of pulling the data. So they are finding it
17 useful, it's just they still are learning the system.

18 MR. TREVIÑO: Just a learning curve.

19 MS. MENJIVAR-SUDDEATH: Yes.

20 The next item on the Internal Audit status
21 update is the management/board request which was the IT
22 Division application service organization review. This
23 was an advisory service and it's on page 67 of your board
24 book. This was an advisory service that Information
25 Technology asked us to come and do. We had three main

1 objectives. The objectives were related to looking at
2 resource time allocations, expectations, employee
3 responsibility, sufficiency of time allocation as well.
4 And the application services are a very crucial part of
5 our agency as they are responsible for all the programming
6 and maintenance of our applications for RTS and
7 eLICENSING, and so we wanted to make sure that they had
8 the right skill set, that their time allocations were up
9 to expectations, and that they were getting what they
10 needed from it.

11 And so I'll let Jason Gonzalez, our other
12 senior auditor, discuss the results of the advisory
13 service.

14 MR. GONZALEZ: For the record, I'm Jason
15 Gonzalez, internal auditor.

16 So what we found is that IT has several
17 resources that are being pulled in different directions to
18 handle different projects, and it's a limited number of
19 resources, and so the result of that is you have eight
20 resources that have an average of 354 hours of
21 compensation time. And so what we've recommended was that
22 cross-training is formalized, that you have different
23 resources that can be pulled in different directions on
24 those projects, and that communication just be increased
25 between project managers from EPMO and IT so that if a

1 single project is impacted, then all parties are aware
2 that a resource is being pulled from that project, and so
3 you don't have late reporting or the project has less
4 impact. And so IT has responded saying that their action
5 plans are going to include increased cross-training and
6 knowledge transfer so that if resources are pulled that
7 mitigates the impact on the projects.

8 MS. MENJIVAR-SUDDEATH: Any questions on that
9 report?

10 (No response.)

11 MS. MENJIVAR-SUDDEATH: So the next item on the
12 Internal Audit status update is on external audits. Last
13 week the State Auditor's Office finished our audit on the
14 complaint processing at the Department of Motor Vehicles.

15 It's a handout, it's not in your board book because it
16 was issued after the board book was put together. The SAO
17 had an overall objective to determine whether the
18 department has processes and related controls to help
19 ensure that it reviews, investigates, resolves complaints
20 in a timely manner and in compliance with applicable
21 statutes, rules, policies and procedures and other
22 requirements.

23 The scope of the project of the project was
24 looking at all Enforcement Division complaints that were
25 received or closed between September 1, 2015 to November

1 30, 2016. The report had two chapters, one related to the
2 complaint investigation and the other to the complaint
3 tracking system. Overall, the SAO found that the
4 department had properly summarized and documented the
5 results of our complaint investigation, however,
6 improvements could be made to documenting the complaint
7 process, notifying complainants of the status of their
8 complaints, providing the complaint definition when we
9 provide complaint data to other sources, and then to
10 improve IT controls that restrict access and make sure our
11 data is reliable.

12 Overall, we had eleven recommendations that
13 were issued by the State Auditor's Office. Eight of those
14 were corrected before the report was even issued, one
15 recommendation related to an acting director role was done
16 actually last week, and one recommendation will be done
17 related to the notification of the status of complaints by
18 the end of this month. So the department was very
19 proactive. As soon as we understood what the issues were,
20 we immediately started working on them, so all these
21 issues would be resolved as soon as possible.

22 Is there any questions on the State Auditor's
23 audit?

24 MR. TREVIÑO: Does the state have a standard
25 process for complaints, or does each agency address it

1 themselves for putting all the stuff together?

2 MS. MENJIVAR-SUDDEATH: I'm not 100 percent
3 sure, but I think it's up to each department and each
4 agency on how they collect the complaint information and
5 what they report out of. The State Auditor's used their
6 previous audits to kind of say, hey, we need to put
7 together a complaint definition just to make sure that
8 everyone understands what we're doing.

9 MR. TREVIÑO: Thank you.

10 MS. MENJIVAR-SUDDEATH: Any other questions?

11 (No response.)

12 MS. MENJIVAR-SUDDEATH: With that, that
13 concludes item 5.E. We'll move on to item 5.F which is
14 the recommendation to amend the Fiscal Year 2017 Internal
15 Audit Plan, and that item starts on page 77 of your board
16 book.

17 During this fiscal year the Internal Audit
18 Division became aware of a risk related to our PCI
19 compliance. PCI compliance is related to credit cards.
20 We accept credit cards for certain transactions related to
21 Motor Carrier, Motor Vehicle and some Vehicle Titles and
22 Registration. Because we accept credit cards, we have to
23 attest to the PCI, which is the Payment Card Industry
24 Security Standard Council, that we are following their
25 rules and regulations. And so we want to make sure, one

1 of the main things of the PCI compliance is that we don't
2 electronically store our credit card information, and so
3 what we want to do is make sure that we're not storing any
4 credit card information, and so our obligation is that we
5 add the PCI compliance audit to the audit plan and remove
6 the TxDMV Fund audit.

7 Now, I know there was discussion about how the
8 TxDMV Fund is doing earlier with Ms. Flores. We do plan
9 on conducting that audit as part of the FY 2018, so we're
10 not completely removing it, we still consider it high
11 risk, we just are moving it to the FY '18 plan.

12 Are there any questions?

13 MR. TREVIÑO: Do you feel you have enough
14 resources to complete the audit plan as you present it?

15 MS. MENJIVAR-SUDDEATH: This year we are
16 tracking for the first time to finish our audit plan
17 completely, so for this year, yes. We've had discussions
18 with Ms. Brewster and Mr. Palacios about our resources,
19 and so we'll be providing an update on that soon.

20 MR. TREVIÑO: And that DMV Fund audit will be
21 early in '18. Right?

22 MS. MENJIVAR-SUDDEATH: We plan on kicking off
23 as soon as we finish -- if the PCI audit is approved, both
24 the PCI audit and the continuous monitoring, we plan on
25 finishing by August 31, and so on September 1 we will be

1 kicking off the DMV Fund.

2 MR. TREVIÑO: Thank you.

3 MR. PALACIOS: Okay. Thank you, Sandra, Jason,
4 Derrick.

5 MS. CARAWAY: Chair, I'll make a motion that we
6 approve the amendments to the Fiscal Year 2017 Annual
7 Audit Plan as recommended by staff.

8 MR. TREVIÑO: Second.

9 MR. PALACIOS: There's a motion to accept the
10 amended audit plan by Board Member Caraway, second by
11 Board Member Treviño. All in favor please signify by
12 raising your right hand.

13 (A show of hands.)

14 MR. PALACIOS: The motion passes unanimously.

15 MS. MENJIVAR-SUDDEATH: Thank you.

16 MR. PALACIOS: Thank you.

17 We're going to move on to the legislative and
18 public affairs update briefing by Ms. Caroline Love.

19 MS. LOVE: I have to apologize, I've had like
20 an allergy that has been bothering me for the past few
21 weeks and because of the session it really had a hard time
22 going away.

23 Thank you for having me here this morning. My
24 name is Caroline Love, I am the director of the Government
25 and Strategic Communications Division for the department,

1 and I have a briefing only for you today about what
2 occurred during the 85th Legislative Session, including an
3 update on the recommended items as adopted by this Board
4 back in November.

5 Before I get into all the details, I'll give
6 you a couple of quick snippets of things that happened
7 during the session. So as you know, they started on
8 January 10 and then the final day was this past Monday,
9 Memorial Day, but truly, the legislative session continues
10 through the governor's veto period which is set for June
11 18. Of course, rumor has it that he's going to be taking
12 actions quickly, signing, vetoing or allowing bills to go
13 into law without signature, so we may have a final picture
14 of what everything looks like prior to then, but truly
15 it's not completely over.

16 But also, of general interest, in 2015, 6,276
17 bills were filed, in 2017, 6,631 bills were filed, so
18 there were definitely more bills filed this session than
19 last session. But in 2015, 1,323 bills made it to the
20 governor's desk for action, this session 1,211 bills made
21 it to the governor's desk for action. So that helps you
22 kind of understand the big picture of how things were
23 going this session, it was a very difficult time for a lot
24 of bills to make it through the process. And percentage-
25 wise, 21 percent of the bills that were filed in 2015 made

1 it to the governor's desk, and 18 percent made it this
2 time. So interesting to keep in mind as we go through
3 what passed and what didn't.

4 So the briefing that I have starts on page 89
5 in your board book, and I apologize because I won't go in
6 the exact order that it's in your board book, and I had to
7 submit this prior to the sine die, so I didn't know
8 exactly what might come through in the end, but please
9 stop me if you have any questions.

10 I'll start off by going through the items that
11 were recommended by the Board and those that did not make
12 it through to the end. So there were three bills that
13 this Board specifically recommended that did not pass. One
14 related to updating the state statutes to reflect recent
15 changes made by the federal FAST Act. These updates would
16 have included some size and weight clarifications in state
17 law, but they obviously didn't make it through. The good
18 news is that the bill was on the calendar, we can
19 definitely show that as a state we made an attempt to make
20 these updates, but that the timing just wasn't on our
21 side, there definitely was not any kind of opposition that
22 we heard of regarding this. The potential outcome is that
23 the federal entities could come down and say your state
24 isn't in compliance, however, that's kind of unlikely, we
25 haven't really seen that happen throughout history, but

1 anything is possible. So that's something that we'll
2 definitely be keeping in mind as we head into the 86th
3 Legislative Session.

4 In addition, there was another bill that had
5 general size and weight updates to motor carrier statutes.

6 That bill also did not make it through the final process.

7 It included a provision that said that 10 percent of any
8 permit created by in the end 86th Legislature or later
9 would have 10 percent of that permit fee go to the DMV
10 Fund. The reason we had looked at that before was that
11 current permitting statutes vary in distributions and
12 sometimes the DMV Fund is left out which means that
13 general revenue might get the permit fee, and so there's
14 all sorts of weird distributions that occur under current
15 statute, so we thought this would bring a little more
16 consistency and predictability to the process. But the
17 good news is for the permits that were created this
18 session, they did get a percentage to go to the DMV Fund,
19 and I'll cover those in a little bit so we were covered
20 for those that were created this session.

21 And then the last bill that did not get passed
22 was related to the permanent token trailer registration
23 program, and that was something we had considered to help
24 make Texas more competitive with other states that do
25 offer such a program. There definitely seemed to be a

1 little bit of concern at the county level on that
2 legislation due to the fact that counties currently get an
3 annual road and bridge fee from all those annual token
4 trailer registrations. I believe that the bill author was
5 working with the counties to try to remedy that. The bill
6 was placed on the general calendar but it died before the
7 deadline for it to be considered further.

8 So those were the three bills that did not make
9 it that were part of these recommendations. And in
10 addition, I did want to mention that the Auto Burglary and
11 Theft Prevention Authority had their recommendations that
12 were filed. They had three bills, two in the Senate and
13 one in the House that would have dedicated the full two
14 dollars that's collected on every vehicle insurance policy
15 go to grants that are issued by the Auto Burglary and
16 Theft Prevention Authority. Those bills did receive a
17 hearing, in the House they had a hearing on May 4 and in
18 the Senate on May 1 which was unfortunately too late in
19 the legislative process for them to continue on to be
20 considered by both the full Senate or the full House.

21 However, it did result in a lot of awareness
22 that occurred on those committees and the Texas Tribune
23 wrote an article about how a lot of the legislators on
24 these committees were surprised to know that only half of
25 that two dollars goes for its intended purpose, so

1 hopefully that increased awareness will kind of help on
2 those efforts in the future.

3 So with that, I'll move on to the legislation
4 that did pass and try to end with the good.

5 MR. WALKER: So can I ask you one question real
6 quick?

7 MS. LOVE: Sure.

8 MR. WALKER: With respect to the token trailer
9 tag deal, that had a huge -- I don't know whether we sold
10 it or not, but that had a positive fiscal impact on the
11 State of Texas if we had done that because all these
12 trucking companies are taking these plates and not
13 registering them in Texas because they don't get the
14 advantage of not having to change those token tags out, so
15 why would that not pass?

16 MS. LOVE: What's interesting about that is if
17 you look at the fiscal analysis that was completed by the
18 Legislative Budget Board on that bill -- which is
19 something the Legislative Budget Board does for every bill
20 that might have a fiscal impact on the state -- it did not
21 show a huge increase because they did not feel,
22 apparently, that the methodology for that was as solid, I
23 think, as it might be to confirm that that would be the
24 reality. So what they did feel was the very real impact
25 was that those annual fees that the counties currently

1 receive would not be available. The way the bill was
2 written, they would get it that one year and then the life
3 of the trailer would not result in any more annual fees
4 going to the counties on that.

5 MR. WALKER: They're wrong on that. At a
6 meeting last week in Georgia with the carriers that have
7 15- to 20,000 trailers, they said they don't come to Texas
8 and register because they don't have common tags and they
9 can't chase these tags down. It is a huge impact.

10 MS. LOVE: That's something got consider for
11 future legislative sessions.

12 Any other questions before I get into what
13 passed?

14 (No response.)

15 MS. LOVE: So Senate Bill 2075 by Senator
16 Rodriguez out of the El Paso area, that bill made several
17 updates to the registration code. There were a lot of
18 minor cleanup language items in there but one of the
19 things that was included related to the ability for a
20 vehicle owner to go online and renew their registration
21 and then print their receipt and have that serve as their
22 proof of registration for 30 days. What we're attempting
23 to do there is hopefully reduce some of the lines at
24 county offices towards the end of the month when people
25 are scrambling to make sure they have that updated sticker

1 on their windshield, so this would help if they were to
2 get pulled over to show that they did complete that
3 registration renewal. So that was certainly a big
4 component of that.

5 A couple of other things that were included in
6 that bill include clarification regarding county office
7 closures and when other counties can help out, so that's
8 something that we'll be looking at as well, because
9 currently the statute was very specific to counties being
10 closed for disasters. So this language broadens that if
11 they're closed for any reason for a protracted period of
12 time, the other counties, they can contract with them and
13 help out there.

14 Another component of it, which was also a
15 stand-alone bill that was passed, relates to counties
16 having the authority to make a determination that if a
17 customer did not receive their registration sticker in the
18 mail, either because they renewed by mail or on online,
19 that the county can make the determination to issue a
20 replacement sticker at no cost to the customer. So that
21 was included in that bill.

22 And then also, Senate Bill 2076 was another
23 larger bill that was considered which related to updates
24 to the Title Act. There were a lot of various components
25 of that bill. One of the significant components to that

1 related to the creation of -- or not creation but
2 additional resources provided to vehicle identification
3 number inspections. Those are currently conducted by
4 local law enforcement, including ABTPA grant recipients,
5 and there are a lot of requests for those types of VIN
6 inspections to help make sure that those vehicles are
7 truly what they are represented as, and so those resources
8 can now be supplemented by the department as long as we
9 have trained individuals. At this current point in time
10 we do not have those resources but we'll work to get those
11 available as well.

12 Another component of that bill related to the
13 certified copy of original title, the CCO. Currently
14 someone can go in and request five of those and they all
15 have the same value as the original title, and that's
16 certainly something that's viewed as a potential area for
17 fraud, so the law now will state that if you are
18 requesting a certified copy of original title, that
19 supersedes any previously issued titles, so there can be
20 only one document that has that. And we are, I believe,
21 the last state to implement that type of law, so we'll be
22 up to par with the rest of the country.

23 There was an amendment that was added to Senate
24 Bill 2076 towards the very end of the session that did
25 require the department to work with the Department of

1 Public Safety to review the various elements of
2 registration titling and inspection of vehicles, and to
3 report to the legislature by December of 2018 any of those
4 elements that could potentially be renovated. The author
5 of that amendment was someone who authored the bill to do
6 away with the state safety inspections altogether, which
7 that bill never made it to the House floor for final
8 consideration, but I would imagine that would be something
9 that that author would be looking to find in that report,
10 something related to those items. So that's something
11 else we'll be working on this interim.

12 And then moving on, we had House Bill 3254 by
13 Representative Phillips. That had a lot of what we call
14 the chameleon carrier enforcement language in there, so
15 for those carriers who have various administrative
16 penalties or sanctions against them, the law will now be
17 stronger for us to identify those if they change their
18 name and we realize that that is the old carrier that we
19 can revoke that registration and also give them
20 opportunities to remedy their past infractions and then
21 they could re-register as well. So that bill passed which
22 is a very good one. It was also a recommendation that was
23 included in the 84th Legislature but never made it
24 through. So that was a good one.

25 Also, we had House Bill 2070 by Representative

1 Smithee that updated the Lemon Law, and that one made it
2 through both chambers without any amendments or issues. So
3 that kind of helps out the consumers and the industry. The
4 way the Lemon Law had been in statute, it was a little
5 confusing, I think, for a lot of people, so that will help
6 make that process smoother there.

7 MR. WALKER: What is changing on the law?

8 MS. LOVE: This is one that I have to admit I
9 have not gotten into the weeds of all the Lemon Law, but
10 there were a lot of confusing parts about having to have
11 the attempts to remedy the issue within a very specific
12 time frame, within the first year versus the second year
13 of the vehicle's ownership. This just put all those
14 remedy attempts within the first two years. A lot of
15 times an owner made the second attempt within days of the
16 first year, and so therefore, their case would have to be
17 dismissed, and so this clarifies that they don't have to.

18 MR. WALKER: So is it a consumer-friendly
19 change?

20 MR. PALACIOS: Yes.

21 MS. LOVE: Also, House Bill 1790 by
22 representative Pickett passed and that related to the
23 process that's followed when a handicap placard is seized.

24 We have an outdated process where letters were sent,
25 oftentimes by the time the owner of the placard got the

1 letter, they had already gone to remedy it, and so it was
2 just a process that didn't really meet up with the current
3 times, and so we have that cleaned up in statute.

4 We also had House Bill 3131 by Representative
5 Armando Martinez. That one clarifies the vehicle
6 demolisher notification process and how a certificate of
7 authority is received and notification is received by the
8 owner. That includes a provision that if all the attempts
9 are made to notify the owner and the owner cannot be
10 located that we'll post that on our website, so that is
11 something that will now happen with this bill.

12 And then, of course, I saved the best for last,
13 Senate Bill 1349 by Senator Watson which allows TxDOT to
14 transfer this property to the Department of Motor
15 Vehicles. One of the changes that occurred in that
16 legislation throughout the process is the addition of if
17 there's any property that is not required by DMV, TxDOT
18 can then negotiate with what are called some of the
19 banking and financing agencies that have property here in
20 town, they are looking for new options and opportunities
21 in the near future to expand, and if we do have the space
22 available here, they can work with TxDOT once we're taking
23 care of, making sure that they have the first opportunity
24 before the property is dismissed completely to have an
25 opportunity to be housed here as well. Of course, a lot

1 of that is future and still remains to be seen.

2 MR. DUNCAN: And I would just add those four
3 agencies include OCCC, so for the first time we would be
4 collocated with OCCC in case any of you members have any
5 business with them and you want to stop by.

6 MR. TREVIÑO: What does OCCC stand for?

7 MR. WALKER: I was going to ask the same
8 question.

9 MS. LOVE: Office of the Consumer Credit
10 Commissioner.

11 MR. WALKER: Office of Consumer what?

12 MR. DUNCAN: Consumer Credit Commissioner.
13 They regulate lending contracts, including in the
14 automotive industry.

15 MS. LOVE: So with that, unless there's any
16 questions on the recommendations, I'll move on to other
17 legislation that passed that will have an impact on the
18 agency, a more significant impact, I should say.

19 MS. BREWSTER: Mr. Chairman, if I may?

20 MR. PALACIOS: Yes.

21 MS. BREWSTER: On SB 1349, that's already been
22 signed by the governor.

23 MS. LOVE: That's correct.

24 MR. PALACIOS: That's great news. We have a
25 home.

1 MS. LOVE: So in terms of other legislation
2 that was not a recommended item by this Board, House Bill
3 561 by Representative Murphy, he's out of the Houston
4 area, it allows for a new license plate be created up to a
5 \$25 fee -- this will require a rulemaking process so this
6 is something you'll see in the future -- for package
7 delivery vehicles. And these vehicles, I think a lot of
8 us have probably witnessed around the holidays the UPS
9 trucks and the FedEx trucks going through neighborhoods
10 and idling while they're running packages to doors and
11 taking up streets and things like that. There's obviously
12 a lot of complaints that are received by those companies
13 about these big trucks idling in their neighborhoods,
14 creating safety issues, things like that.

15 This bill allows for those companies to get
16 these plates for what they would consider package service
17 delivery vehicles that could be maybe electric vehicles or
18 golf utility carts, those types of vehicles, something
19 that's smaller, more efficient, and then they would park
20 those bigger vehicles at maybe an entrance to a community
21 and then use these smaller vehicles to make those around
22 the neighborhood deliveries. So that is in effect.

23 MR. WALKER: So it's just a new category of
24 vehicles registration?

25 MS. LOVE: You know, it's interesting, we were

1 talking about that yesterday, but it does not necessarily
2 define the vehicle but it does, so we are looking at that
3 and we'll be coming forward to the Board in the near term
4 with information about what exactly the legislation does
5 and what we'll be required to do.

6 MR. WALKER: So we really don't even know what
7 the bill did in essence?

8 MS. LOVE: It does. It states that there are
9 package service delivery vehicles that can get these
10 plates. I own a package delivery service, we own 100
11 trucks in Houston that operate a package delivery service.
12 So what does this bill do to me?

13 MS. LOVE: I do want Jeremiah to come up here.

14 MR. KUNTZ: For the record, Jeremiah Kuntz,
15 director of Vehicle Titles and Registration Division.

16 What this bill will allow is motor carriers, so
17 you have to be a credentialed motor carrier --

18 MR. WALKER: I am.

19 MR. KUNTZ: You are, correct -- to use golf
20 carts, ATVs, neighborhood electric vehicles to run
21 packages within subdivisions, those kinds of things. What
22 will happen for the department is we will --

23 MR. WALKER: You can use the road. The
24 difference is right now you can't use the road, is my
25 understanding, to use a golf cart.

1 MR. KUNTZ: There are certain restrictions that
2 apply to each of the different classifications of
3 vehicles. Those vary depending on vehicle, so golf carts
4 have restrictions, ATVs have restrictions, neighborhood
5 electric vehicles have different restrictions, so what
6 this does is it consolidates all of those and says if you
7 are using one of these license plates that says Package
8 Delivery Vehicle on it, then you can use the roadways
9 within subdivisions for the purposes of delivering
10 packages. So it basically takes all of those different
11 classes of vehicles and allows them to all operate in the
12 same way so long as they are delivering packages.

13 MR. WALKER: So just as a curiosity and as a
14 guy that does this, where's the practicality of it? I
15 mean, if I'm going to go and bring 25 packages to your
16 neighborhood, how am I going to get my golf cart there to
17 go unload it? I mean, I don't understand the
18 practicality.

19 MR. PALACIOS: Put it in the back of the truck?
20 It doesn't make sense.

21 MR. KUNTZ: So my understanding -- and again,
22 this is something that FedEx/UPS have perfected, done
23 whatever they've done --

24 MR. WALKER: So this is basically FedEx and UPS
25 want to do?

1 MR. KUNTZ: They were the ones that brought the
2 bill forward. UPS specifically was seeking this
3 legislation.

4 MR. TREVIÑO: Was there any discussion of
5 autonomous vehicles?

6 MR. KUNTZ: Not during this. This does not
7 cover motor vehicles, this is alternative vehicles, so
8 these are neighborhood electric vehicles, golf carts,
9 ATVs, this is not for full-size motor vehicles. Full size
10 motor vehicles already have authority to use any roadway
11 or street. This provides those vehicle classifications
12 that may only be able to be used off road to be able to be
13 used on the roadway for this specific purpose.

14 MR. WALKER: That will be interesting to see
15 how it goes forward.

16 MS. LOVE: Another bill that passed is House
17 Bill 1247 by Representative Pickett. That one provides
18 for third party vendors to provide information to vehicle
19 storage facilities that are in possession of an impounded
20 vehicle and trying to get that information to the owner.
21 So that's something that we'll be clarifying. In the past
22 the counties have been seeking further clarification on
23 whether or not they can accept information from these
24 third party providers; this legislation allows for that.
25 So we'll be working to get that information out to

1 counties so they can have that kind of security now.

2 One of the bills that I did not include in the
3 list but I'll mention here was House Bill 1793 by
4 Representative Pickett which does not require for motor
5 carriers not domiciled in Texas to get a state safety
6 inspection, but they are still required to have that
7 federal safety inspection. So that will be something that
8 we'll be working to make sure the systems can identify to
9 allow those vehicles that do not have the state safety
10 inspection to move forward with registration.

11 I included on the list House Bill 1693 by
12 Representative Dean, but actually its companion Senate
13 Bill 1062 is what made it through the process, and that
14 bill included a lot of updates to the odometer disclosure
15 statement requirements. There were some changes made at
16 the federal level due to ongoing rulemaking and recent
17 rulemaking, so as opposed to listing all those details in
18 state statute, there's not references to the appropriate
19 federal code on that one. And then there's also a
20 component of that bill that allows for electronic
21 signatures to be accepted on titles, so that's something
22 else that we will be working to implement.

23 MR. PAINTER: Which one made it through?

24 MS. LOVE: Senate Bill 1062, and that was by
25 Senator Perry out of the Lubbock area.

1 And then House Bill 1959 by Representative
2 Senfronia Thompson, that bill requires the department to
3 study with an institute of higher education, and that
4 could be someone such as the Texas Transportation
5 Institute or the Center for Transportation Research with
6 UT, maybe. It requires the department to partner with
7 that kind of entity to look at the opportunities for
8 alternative technologies, such as electric -- I'm sorry --
9 technological advances in registrations and license plates
10 and things like that to be considered for commercial motor
11 carriers. It also authorizes the department to enter into
12 a pilot to implement these types of technologies if
13 studies determine that a pilot would be successful. And
14 the due date for these would be 2022, so we have some time
15 to look into these efforts and get something done there.

16 MS. BREWSTER: Mr. Chairman, it also says that
17 if we are to enter into that pilot, it will not be at a
18 cost to the agency.

19 MS. LOVE: That's correct. The language says
20 that if the pilot is entered into, that the participants
21 will bear the cost of any costs associated with it.

22 And as I mentioned, House 2663 was the stand-
23 alone bill that allows counties to make that determination
24 for when a no-fee replacement sticker can be issued if it
25 was lost in the mail.

1 House Bill 4102, I'm going to discuss this one
2 with the very next one on the list, Senate Bill 1251,
3 because Senate Bill 1251 was added as an amendment to
4 House Bill 4102. So this legislation allows for people
5 when they're renewing their registration to have the
6 opportunity to contribute to both a fund that would help
7 DPS with the processing of rape kits and also for a fund
8 to end homelessness.

9 MR. WALKER: End what?

10 MS. LOVE: To end homelessness. So those would
11 be two additional opportunities, in addition to the
12 veterans fund and the parks fund and the Donate Life,
13 things like that that currently exist.

14 MR. TREVIÑO: How many are listed currently?

15 MS. LOVE: I think this would make it six.
16 Once again, we'll get Jeremiah up here.

17 MR. KUNTZ: For the record, Jeremiah Kuntz,
18 director of the Vehicle Titles and Registration Division.

19 Currently we have four opportunities to donate,
20 Donate Life, organ donor, parks and veterans. And two of
21 those are on the front of the registration, that would be
22 parks and veterans, the others are -- all four of them are
23 also included on our online systems, so if you renew
24 online -- oh, I'm sorry -- and Special Olympics.

25 MR. WALKER: Do we track data on that that says

1 how much money is actually donated to those?

2 MR. KUNTZ: Yes, we do.

3 MR. WALKER: So where do we see that number?

4 MR. KUNTZ: We have those reports, we can get
5 those for the Board.

6 MR. WALKER: I'd like to see it.

7 MR. KUNTZ: We've provided those during the
8 legislative session to the bill authors, but we have seen
9 when a new donation block is added that the existing ones
10 usually take a hit in that year. Because of the
11 additional opportunities to donate, it dilutes the
12 donations to the other entities.

13 MR. WALKER: So like if you were just to take a
14 wild guess swath, what would be the amount of money
15 overall that we get into that particular area?

16 MR. KUNTZ: I can get that before the end of
17 the Board meeting; if you'll allow me to go get the data,
18 I can bring it back to you. I'd hate to guess on that.

19 MR. TREVIÑO: I think staff should just give it
20 to us the next time.

21 MR. WALKER: Yes, I agree. Next time is fine.

22 MS. LOVE: So in addition, Senate Bill 1524
23 passed. That was definitely a significant piece of
24 legislation as it allows for super heavy containers that
25 are going intermodal, oceangoing containers to be

1 transported within 30 miles of a port. The requirements
2 of the bill also state that these containers, which could
3 be up to 100,000 pounds, would need to have a sixth axle,
4 and the bill is very specific and the statute will be very
5 specific on the distribution of weight for those axles.
6 So that is something else that passed, it's a \$6,000
7 permit fee that's associated with that. Of that fee the
8 percentage breakdown is, I believe, about 90 percent to
9 the State Highway Fund, along with -- I'm sorry -- 85
10 percent to the State Highway Fund, 5 percent other
11 counties in which the permitted load travels, 5 percent to
12 the municipalities within that travel zone, and then
13 there's also 4 percent of the fee going to the DMV Fund
14 for the cost to issue the permit.

15 MR. WALKER: So what's not clear when I read
16 that bill is the \$6,000 permit that is going to be issued,
17 is that per truck or is that per container?

18 MS. LOVE: I believe it's per truck.

19 MR. WALKER: Jimmy is shaking his head over
20 there. So here's the problem I see is I own 200 trucks
21 and so now I'm going to go do this particular work and so
22 now truck one has the ability to haul -- and I have six
23 axles that I'm going to move these heaving containers,
24 what's going to happen when truck one who has the \$6,000
25 permit is out of town in Dallas today because he's making

1 a delivery for Raymond or somebody, and so how do I move
2 that container if that truck that's permitted is not here?

3 The permit can't be switched from truck to truck, it is
4 truck-specific?

5 MR. INGRAM: Jimmy is on his way.

6 MR. WALKER: So it's going to be truck-
7 specific?

8 MR. ARCHER: Yes, sir, it's truck-specific and
9 it requires a sticker, so each truck will have to have a
10 sticker on the windshield and a copy of the permit in the
11 vehicle.

12 MR. PALACIOS: Would you please identify
13 yourself?

14 MR. ARCHER: Jimmy Archer, director of Motor
15 Carrier Division.

16 MR. WALKER: That will be tough because our
17 trucks --

18 MR. TREVIÑO: Jimmy, it's not interchangeable
19 with the equipment that's similar, six-axle?

20 MR. ARCHER: No, sir. And the routes are going
21 to be relegated to 30 miles from the port.

22 MR. WALKER: The problem is if the volume --
23 what am I supposed to do with that truck tomorrow in the
24 trucking industry if I need to go haul for Exxon to Dallas
25 with that truck and now I've got ABC calls in and wants a

1 load from the port moved, I can't take the permit and
2 switch it to another truck, and \$6,000 is a huge, huge
3 amount of money to put on that permit. I mean, I don't
4 see how the deal works, because we buy permits every day
5 from you guys for all of our trucks and most of them are
6 load-specific which means it's 56 bucks for this load or
7 85, whatever it is, and now you go to \$6,000 and now
8 you're \$6,000 is specific to a truck, it's going to be
9 tough. And the bill says truck-specific?

10 MR. ARCHER: Yes, sir.

11 MS. LOVE: There was another bill that was not
12 included here because it was rather benign, I suppose you
13 could say, but then it got amended late in the session, as
14 normally happens, House Bill 2193, I believe it was, by
15 Representative Paddie. It was a bill that allowed for
16 adjustments to vehicles that have natural gas components
17 and to have a weight tolerance of about 2,000 pounds, and
18 then late in the session it was amended to include another
19 permit that only applies to the Texarkana area, a very
20 short under five-mile portion of a state highway up there,
21 for another heavy load vehicle. It would be required to
22 have six axles as well. I can't remember the weight limit
23 on that, I think it was about 97,000 pounds for that, and
24 it is a \$4,000 permit. It does include a 5 percent
25 portion to the DMV Fund for each permit issued. I believe

1 because it is so specific about the roadway and everything
2 else that we would issue approximately 20 of these permits
3 annually, so that's another one that passed that is a new
4 permit.

5 MR. WALKER: And that's specific to a lumber
6 mill?

7 MR. ARCHER: It's a paper manufacturer, Domtar
8 Paper Manufacturing up in Arkansas.

9 MR. WALKER: Didn't they come a couple of years
10 ago and try to do the same deal?

11 MR. ARCHER: I believe so.

12 MS. LOVE: Senate Bill 1001 by Senator Larry
13 Taylor, that increases personal trailers -- as we recall,
14 after the single sticker implementation there were a lot
15 of complaints from boat trailer owners, personal trailer
16 owners that they had to get their trailers inspected prior
17 to registration, they never had that done before. Vehicle
18 inspection stations were confused, they didn't know how to
19 inspect these trailers. So Senate Bill 1001 increased
20 that state law requirement that trailer inspections rated
21 for 4,500 pounds gross vehicle weight rating or less to
22 not have an inspection. That has now been increased to
23 7,500 gross vehicle weight rating or less. Those trailers
24 under that do not require a state safety inspection
25 anymore.

1 MS. CARAWAY: When will that take effect?

2 MS. LOVE: That does have an effective date of
3 September 1, and we had a meeting internally yesterday and
4 we're talking about what requirements are needed to get
5 that implemented by then, so we'll be working with the
6 Department of Public Safety on implementing that as well.

7 MR. WALKER: So I have a curiosity question on
8 that. My boat trailer, I don't have the foggiest idea if
9 it's rated for 75- or 45- and I don't think it says on the
10 title one it, so how do you know if you need an
11 inspection?

12 MR. INGRAM: It's the weight of the trailer,
13 isn't it?

14 MS. LOVE: It's the gross vehicle weight.

15 MR. WALKER: You said gross vehicle weight.
16 Right?

17 MS. LOVE: Correct.

18 MR. WALKER: So that what it carries.

19 MR. INGRAM: It should be on the sticker that's
20 on the tongue.

21 MR. WALKER: I don't have a sticker on the
22 tongue.

23 MR. GRAHAM: When you get your documentation on
24 the trailer when you register it, that information is
25 listed. You should be able to look at that and identify

1 it. When you register your vehicle and they send it back
2 to you, you're supposed to put it in your glove box and
3 retain it. It's listed on there.

4 MS. LOVE: To help out people like you, there
5 was an amendment.

6 MR. GRAHAM: We have an amendment.

7 MR. WALKER: Gary, so close your ears. I own a
8 boat and a boat trailer, I've never gone and got my boat
9 trailer inspected ever. And so I'm kind of confused.
10 Nobody is questioning that.

11 (General talking and laughter.)

12 MR. WALKER: I've never had an inspection
13 sticker done on it.

14 MS. LOVE: On the final version of the bill,
15 there was an amendment included on the House side that was
16 accepted by the Senate that said that when you receive
17 your registration renewal notice that it shall indicate
18 whether or not an inspection is required on that trailer,
19 and so that was another part of our discussion yesterday
20 is how we can make sure we clearly indicate on that
21 renewal notice whether or not an inspection is required
22 for a specific trailer. We'll keep you informed on
23 progress.

24 MS. CARAWAY: That means you have to read your
25 notice now.

1 MR. WALKER: But you're going to give me my
2 renewal even if I don't get it inspected?

3 MS. CARAWAY: As long as your notice tells you
4 you don't need it.

5 MR. WALKER: Nobody has ever told me my boat
6 trailer needs to be inspected.

7 Have you got a boat, Raymond?

8 MR. PALACIOS: I have ATVs I trailer, I've
9 never had it done.

10 MR. WALKER: I haven't either, so I just don't
11 even know.

12 MS. BREWSTER: Mr. Chairman, this was one of
13 the things that came to light, the unintended item that
14 came to light during the single sticker process because
15 prior to there were a number of folks that did not realize
16 that they had to have those inspected, but it became very
17 evident that they couldn't register them until they were
18 inspected. So the whole purpose of this bill was to deal
19 with that very issue, folks that didn't think that they
20 had to have an inspection on their trailer.

21 MR. WALKER: So let me throw another kink into
22 it. What about all my farm trailers that I use on my farm
23 that are rated that I haul hay for and I buy a sticker for
24 them, do they have to be inspected?

25 MR. KUNTZ: For the record, Jeremiah Kuntz,

1 director of Vehicle Titles and Registration Division.

2 For farm trailers there are certain exemptions
3 from the inspection requirements for farm trailers. I do
4 not have exactly the weight break that's on those, but I
5 know that for certain farm trailers there is an exemption
6 from the state inspection.

7 MR. WALKER: So I'm safe, I don't have to worry
8 about getting a ticket on all my hay-hauling equipment
9 that I've got. How do I find these exceptions? Am I okay
10 on my hay-hauling trailers, goosenecks?

11 MR. KUNTZ: You should be, but we will verify
12 exactly where those breakpoints are. I know farm trailers
13 under 34,000 pounds are the only ones that qualify for
14 farm plates, so any trailer that's over 34,000 pounds
15 would not qualify for farm plates, so that's where I need
16 to make sure that that's the same breakpoint for the
17 inspection exemption for the safety inspection.

18 MR. WALKER: They're all under 34- but I mean,
19 we have equipment trailers.

20 MR. PALACIOS: Thank you, Mr. Kuntz.

21 Please proceed, Ms. Love.

22 MS. LOVE: Then Senate Bill 2205 passed that
23 allows for the research, testing and on-road
24 experimentation, I suppose you could say, for automated
25 vehicles, but this bill was very clear to make sure that

1 there was no regulatory structure at the state or local
2 levels, so that was something we can keep an eye out for.

3 And then lastly, I did want to mention that
4 there were eleven bills that passed that created in total
5 44 new license plates. Forty-two of those are related to
6 military license plates such as for those who may have
7 served on a submarine, served at the Tomb of the Unknown
8 Soldier, various recognitions like that. And then the two
9 bills that fell outside of that, one related to a Blessed
10 are the Peacemakers specialty license plate, and a Back
11 the Blue license plate that would support law enforcement
12 efforts. Both of those bills would require the \$8,000
13 deposit before they can be issued.

14 So were kind of the big things I wanted to
15 cover. Are there any other questions?

16 MR. PALACIOS: I want to acknowledge again the
17 entire staff, particularly Ms. Love. I know she was
18 pretty much camped out at the State House throughout the
19 legislative session, working tirelessly, tracking down
20 legislators, senators, representatives, aides, their
21 staff, and as everybody knows, it's not just a matter of
22 recommending good legislation to our representatives, it
23 requires forming relationships, building rapport, and I
24 believe that in large part is why the agency was
25 successful in having many of its recommendations adopted

1 by the legislature. So again, kudos to Caroline, Whitney
2 and the entire staff for all of your efforts.

3 MS. LOVE: Thank you.

4 (Applause.)

5 MR. PALACIOS: With that, we are going to take
6 a break and then after the break we're going to go into
7 executive session, we're going to go a little bit out of
8 order here, so we'll take a five-minute break and then go
9 into executive session.

10 We're going into closed session. It is now
11 11:34 a.m. on June 1, 2017. We'll go into closed session
12 under Texas Government Code Sections 551.071, 551.074 and
13 551.076. For those of you in the audience, I anticipate
14 being in executive session for approximately 60 minutes,
15 and we will reconvene in open session after that.

16 With that, we're recessed from the public
17 meeting and we're going into executive session.

18 (Whereupon, at 11:34 a.m., the meeting was
19 recessed, to reconvene this same day, Thursday, June 1,
20 2017, following conclusion of the executive session.)

21 MR. PALACIOS: It is approximately 12:51 p.m.
22 on June 1, 2017, and the Board of the Texas Department of
23 Motor Vehicles is now in open session. We want to note
24 that no action was taken in the closed session. I'd also
25 like to reflect for the record that Board Member Hardy has

1 left, so we're all present with the exception of Board
2 Member Hardy who has left.

3 We're going to move on to our specialty plate
4 design recommendations that will be presented by Jeremiah
5 Kuntz.

6 MR. KUNTZ: For the record, Jeremiah Kuntz,
7 director of Vehicle Titles and Registration Division.

8 Before you for your consideration are three
9 license plates. We have two license plates that are being
10 brought forward by My Plates and one that is being brought
11 forward by the Department of Agriculture. The one being
12 brought forward by the Department of Agriculture is the
13 Eastern Star which is the top license plate on the board.

14 The next license plate is a redesign of the University of
15 Texas Longhorn Tower, we have both the old license plate
16 and the new license plate design. And then the last
17 license plate for your consideration is the Porsche Club
18 of America.

19 MR. INGRAM: Mr. Chairman, I move that we
20 approve the plates as designed.

21 MR. TREVIÑO: Second.

22 MR. PAINTER: Second.

23 MR. PALACIOS: Motion by Board Member Ingram to
24 accept the plates, second and third by Members Treviño and
25 Painter. All those in favor please signify by raising

1 your right hand.

2 (A show of hands.)

3 MR. PALACIOS: Board Members Caraway, Ingram,
4 Graham, Painter, Walker and Treviño all vote in the
5 affirmative, with one dissenter.

6 Thank you very much, Mr. Kuntz.

7 Now let's move on to item number 10, rules and
8 adoptions. We are going to ask Mr. Duncan to give us a
9 presentation on Chapter 2016, Management.

10 MR. DUNCAN: Good afternoon, members. David
11 Duncan, general counsel.

12 The two rules that are before you for adoption
13 are essentially cleanup rules that relate to general rules
14 of the Board, and these are rules for what we've done is
15 we've reflected statutory changes actually from the last
16 legislative session. The change that we're making relates
17 to concealed handgun carry licenses and we're updating
18 language in our rules to reflect the changes that were
19 made in the last session. We did a sweeping group of
20 changes in other sections of the Code last year that you
21 approved and have been adopted. These sections are
22 changing some sections of the rules that were open when we
23 did those other changes, so we had to wait until those
24 were done and come back and address these.

25 We received no comments on these and we would

1 urge that you adopt them as written.

2 MR. PALACIOS: Thank you. I'll entertain a
3 motion to accept the rule as presented by Mr. Duncan.

4 MR. TREVIÑO: I move that the Board approve the
5 adoption of amendments to Chapter 206 -- should I read
6 them all together because it's agenda item 10. Correct?

7 MR. PALACIOS: Yes.

8 MR. TREVIÑO: I move that the Board approve the
9 adoption of amendments to Chapter 206 and 221 as
10 recommended by staff.

11 MR. INGRAM: Second.

12 MR. PALACIOS: Motion by Board Member Treviño,
13 second by Board Member Ingram. All in favor please
14 signify by raising your right hand.

15 (A show of hands.)

16 MR. PALACIOS: The motion passes unanimously.

17 Let's move on now to Chapter 209.

18 MS. FLORES: For the record, Linda Flores,
19 chief financial officer.

20 Before you are adoptions of rules under TAC
21 Chapter 209, Finance, 209.2, Charges for dishonored
22 checks. The amendments allow a reimbursement mechanism
23 for the DMV for any charges passed on to the agency by
24 financial institutions in the event of an electronic
25 payment that's rejected for lack of sufficient funds. The

1 proposed amendments were published March 24 and closed on
2 April 24. No comments were received.

3 If the Board approves, we anticipate the
4 publication of the adoption in the June 23 issue of the
5 Texas Register, an effective date of July 2, and
6 implementation immediately thereafter.

7 With that, I close.

8 MR. PALACIOS: Are there any questions for Ms.
9 Flores?

10 MR. INGRAM: Mr. Chairman, I move that we
11 approve the amendments to 209.2.

12 MR. PAINTER: Second.

13 MR. PALACIOS: Motion by Board Member Ingram to
14 accept 209, second by Board Member Painter. All in favor
15 please signify by raising your right hand.

16 (A show of hands.)

17 MR. PALACIOS: Motion passes unanimously.
18 Thank you, Ms. Flores.

19 Let's go now to Chapter 215, Motor Vehicle
20 Distribution.

21 MR. HARBESON: Good afternoon. My name is Bill
22 Harbeson. I'm the director of the Enforcement Division,
23 and together with me is Daniel Avitia.

24 Before you is a request to adopt an amendment
25 to 215.140. After being published, we received one

1 comment from the TIADA which said that they were in
2 concurrence with this amendment. All this amendment does
3 is places the same requirements on multiple dealers at a
4 location that would be on a single dealer. That is, if e
5 have four dealers, they all have to have the same signage
6 requirements, the same furniture requirements, they also
7 must all meet the same hours. This is essentially in
8 response to situations where we have multiple dealers and
9 they're merely fronts for illegal activity, so this is
10 needed from an enforcement standpoint.

11 If you have no questions, I would ask that you
12 vote to adopt it.

13 MR. WALKER: Were you being facetious when you
14 said furniture requirements?

15 MR. HARBESON: Yes, sir.

16 MR. WALKER: You were being facetious?

17 MR. HARBESON: No, I was not being facetious.
18 I'm sorry, Mr. Walker.

19 MR. WALKER: You were talking about the
20 furniture a dealer has?

21 MR. HARBESON: Yes, by statute. It just says
22 that they have to have a desk and two chairs.

23 MR. INGRAM: It doesn't have to be fancy
24 furniture.

25 MR. HARBESON: Mr. Walker, we have tried to

1 amend that statute?

2 MR. WALKER: Two desks and four chairs?

3 MR. HARBESON: It says the agency must
4 establish the furniture requirements for the agency, and
5 Board Member Ingram's committee got that down to one desk
6 and two chairs. At one time there was a lot more.

7 MR. INGRAM: It was a lot more.

8 MR. PAINTER: You're talking about the minimum
9 requirement.

10 MR. HARBESON: Yes, sir. And this is merely to
11 establish that we have a legitimate dealer at the
12 location. We can show you pictures of like eight desks
13 all next to each other and there's eight licensees at that
14 location, and they're never there, they just use it to get
15 the license.

16 MR. INGRAM: I move that we adopt the
17 amendments to Chapter 215.140.

18 MR. PAINTER: Second.

19 MR. PALACIOS: Motion by Board Member Ingram,
20 second by Board Member Painter. All in favor please
21 signify by raising you right hand.

22 (A show of hands.)

23 MR. PALACIOS: Motion passes unanimously.

24 Thank you, Mr. Harbeson.

25 Now we'll move on to Chapter 215, Motor Vehicle

1 Distraction, Chapter 215.155, Buyer's temporary tags.

2 MR. KUNTZ: Jeremiah Kuntz, director of Vehicle
3 Titles and Registration Division.

4 Before you are the final adoption for the Rule
5 215.155 relating to buyer's temporary tags. These rules
6 were meant to codify the current practice of the
7 department related to the buyer's temporary tags and the
8 fee. The fee is \$5, it's been charged for years. We are
9 putting it into rule and clarifying that if the fee is
10 paid for a vehicle that is not going to be titled in
11 state, the buyer's tag fees can be paid directly to the
12 department. Because there's not a title application going
13 to a county, we would allow for those fees to be collected
14 from the department through our electronic systems.

15 We did publish the rules on March 24, the
16 comment period closed on April 24, we did receive one
17 comment in favor of the rules from TIADA.

18 MR. TREVIÑO: Mr. Chairman, I move that the
19 Board approve the adoption of amendments to Section
20 215.155 as recommended by staff.

21 MR. INGRAM: SECOND.

22 MR. PALACIOS: We have a motion by Board Member
23 Treviño, a second by Board Member Ingram to accept the
24 amendments. All in favor please signify by raising your
25 right hand.

1 (A show of hands.)

2 MR. PALACIOS: Motion passes unanimously.

3 Thank you, Mr. Kuntz.

4 Now we'll move on to Chapter 217, Vehicle
5 Titles and Registration. Jimmy Archer.

6 MR. ARCHER: Mr. Chairman and members of the
7 Board, I'm Jimmy Archer, director of the Motor Carrier
8 Division.

9 The next item is on page 584 of your board
10 book. For the Board's consideration, I'm requesting the
11 Board adopt these amendments to the Texas Administrative
12 Code, Chapter 217, to be published in the Texas Register,
13 relating to registration reciprocity agreements.

14 The proposed amendments adopt by reference any
15 amendments to the International Registration Plan that
16 became effective on January 1, 2017, and adopts by
17 reference the January 1, 2016 International Registration
18 Plan Audit Procedures Manual and corrects language that is
19 consistent that is consistent with the IRP plan to lists
20 the source of the department's authority to cancel or
21 revoke registration under Section 217.56.

22 No comments were received when the rule was
23 published, and I ask the Board to adopt.

24 MR. WALKER: I move that the Board approve
25 adoption of amendments to Chapter 217.56 as recommended by

1 staff.

2 MR. TREVIÑO: Second.

3 MR. PALACIOS: We have a motion by Board Member
4 Walker, and a second by Board Member Treviño to adopt the
5 amendments. All in favor please signify by raising your
6 right hand.

7 (A show of hands.)

8 MR. PALACIOS: Motion passes unanimously.

9 Thank you very much, Mr. Archer.

10 Moving right along, Chapter 218, Motor
11 Carriers. Mr. Archer and Mr. Harbeson.

12 MR. ARCHER: The next item begins at 603 of
13 your board books. I'm asking the Board to adopt these
14 amendments to Texas Administrative Code, Chapter 218, to
15 be published in the Texas Register relating to motor
16 carrier registration.

17 These amendments were presented to you at the
18 January 5 Board meeting. As you may recall, most of the
19 proposed amendments are a result of over 16 meetings by
20 your staff who are members of the Motor Carrier
21 Credentialing Working Group. The working group included
22 department personnel from the Motor Carrier Division,
23 Enforcement Division, Office of General Counsel, and
24 Information Technology Division. The goal of the MCCA
25 working group was to expand web-enabling capabilities of

1 MCCS and facilitate enhancements through an orderly
2 reasoned process.

3 The purposes were to improve the credentialing
4 process to protect the consumers who use the services of
5 motor carriers and automate our motor carrier
6 credentialing system. We made several enhancements. It's
7 right on track to be rolled out. We need these rules to
8 get the full realization of that. Most of these
9 amendments require more information from carriers so we're
10 sure that we can prevent chameleon carriers from
11 registering over and over and over again with different
12 names as to protect the traveling public.

13 And there is one amendment that requires a
14 party who appeals a final decision to pay the cost of
15 preparation of the record the department is required to
16 file with the appeals court unless the department grants a
17 waiver which is equitable to the party who is challenging
18 a ruling to pay for that record.

19 Unless there are any questions, I would ask you
20 to adopt these rules. And there were no comments.

21 MR. WALKER: I so move that the Board approve
22 the adoption of the amendments where we repeal Section
23 218.74 and to install the new Section 218.75, Cost of
24 preparing agency records.

25 MR. TREVIÑO: Second.

1 MR. PALACIOS: Motion to adopt the amendments
2 by Board Member Walker, second by Board Member Treviño.
3 All in favor?

4 MR. WALKER: Adopt and repeal.

5 MR. ARCHER: There is a repeal and an adoption.

6 MR. INGRAM: do you have the actual wording?
7 We're going to add that we're going to amend 218.13, .17,
8 .15, .56, .57, .65 and .73.

9 MR. WALKER: Is that under this item?

10 MR. INGRAM: Yes.

11 MR. WALKER: I don't have that. I don't have
12 those on here.

13 MR. PALACIOS: Would you like to amend your
14 motion?

15 MR. WALKER: Yes, let me amend my motion. I
16 move that the Board approve the adoption of the amendments
17 to repeal and the new section of Chapter 218 as
18 recommended by staff.

19 MR. PAINTER: Second.

20 MR. PALACIOS: Okay. We have a motion by Board
21 Member Walker, a second by Board Member Painter.

22 MR. WALKER: Hold on. They keep handing me
23 papers to read.

24 MR. DUNCAN: That's good.

25 MR. PALACIOS: We have a motion on the table

1 and a second. All in favor signify by raising your right
2 hand.

3 (A show of hands.)

4 MR. PALACIOS: Motion passes unanimously.
5 Thank you very much.

6 Moving along, Oversize and Overweight Vehicles
7 and Loads.

8 MR. ARCHER: The next item because at page 649
9 of your board books. I'm requesting the Board to adopt
10 these amendments to the Texas Administrative Code, Chapter
11 219, to be published in the Texas Register dealing with
12 Oversize and Overweight Vehicles and Loads. The proposed
13 rule were presented to you at the March 2 Board meeting.

14 This is basically cleanup language which will
15 improve the terminology, correct errors and modify the
16 language for consistency with other rules and the
17 Transportation Code.

18 I would ask for you to adopt these rules. No
19 comments were received on these rules.

20 MR. GRAHAM: I move that the Board approve the
21 adoption of amendments to repeal and new Section Chapter
22 219 as recommended by staff.

23 MR. PAINTER: Second.

24 MR. PALACIOS: We have a motion by Board Member
25 Graham, second by Board Member Painter to adopt the

1 amendments. All in favor please signify by raising your
2 right hand.

3 (A show of hands.)

4 MR. PALACIOS: Motion passes unanimously.

5 Thank you very much, Mr. Archer.

6 We are going to move on now to rule proposals,
7 Title 43 of the Texas Administrative Code. Mr. Harbeson.

8 MR. HARBESON: Yes, sir. This is agenda item
9 17 found at page 678 of your board books. And this is a
10 proposal to publish for consideration and public comment,
11 so the action today would authorize the agency to publish
12 this rule amendment for comment.

13 This is an amendment to 218.61 of the rules
14 that govern claims after a household goods move, and what
15 the current rules do is they provide a requirement that
16 the carrier send an acknowledgment that a claim has been
17 filed. The current rule provides two exceptions, that is
18 one, if you've settled a claim there's no reason to send
19 an acknowledgment, and the second exception is if there
20 has been a commencement of discussions about the claim.
21 And that's what we are asking to amend because the
22 language as it exists now is so hard to interpret what
23 actually constitutes the initiation of discussions about
24 the claim, that could be a telephone call, an email. So
25 we're asking to eliminate that exception so that it

1 currently reads that if you've settled the claim you don't
2 have to send the acknowledgment, but otherwise you would
3 have to send the acknowledgment.

4 MR. WALKER: So does this not coincide with 49
5 CFR because 49 CFR addresses all this under the Federal
6 Code motor carrier regulations.

7 MR. HARBESON: I'm not sure what the answer is
8 to that. I could look that up for you.

9 MR. WALKER: Years ago, Texas accepted that we
10 accept the federal standards under all the rules and
11 regulations, so Texas uses the federal standards. That's
12 why in all of our contracts we apply 49 CFR for the
13 handling of claims.

14 MR. HARBESON: This is in the section regarding
15 with household goods claims.

16 MR. WALKER: It's all the same. The difference
17 is that Texas -- this may be only specific to a Texas
18 household goods mover that applies in Texas only, but
19 Texas at one time accepted the federal standards for all
20 motor carrier transportation.

21 MR. DUNCAN: David Duncan, general counsel.
22 For liability on claims, we do. This is the
23 notification and settlement process, this is how people
24 start the claims. We'll research that. In fact, we'll
25 research it before we even publish for proposal to make

1 sure we're not proposing something that's going to
2 conflict with federal. That's a very good point.

3 MR. HARBESON: So the question would be by
4 eliminating this, are we running afoul of the federal.

5 MR. WALKER: Well, we accepted the federal
6 standards a long time, and so 49 CFR applies to the
7 federal standards. But there may be carriers in Texas who
8 just pick in Houston and go to Dallas which is an
9 intrastate carrier that is still regulated by Texas
10 independently of the federal laws maybe.

11 MR. HARBESON: Yes, sir.

12 MR. WALKER: And that may be where this comes
13 in.

14 MR. DUNCAN: Ms. Aucoin just clarified. She
15 looked at the coverage where the federal standard requires
16 that you be consistent and this is not one of those. It's
17 uniform carrier liability and there are certain categories
18 where you have to be consistent and this is not one.

19 MR. WALKER: Okay. It's just at one time we
20 accepted all federal laws as being standard in Texas.

21 MR. HARBESON: And we, of course, went through
22 that when we were doing the household goods move rules.
23 We had some proposals that were not consistent with the
24 federal requirements. So this, again, would be dealing
25 with a move and what acknowledgment -- the requirement now

1 is that an acknowledgment goes out except in two
2 situations. This would eliminate if there had been an
3 initiation of discussions, and again, that is hard for us
4 to work with because that could be a telephone call, a
5 note -- an unanswered telephone call would be the
6 initiation of the conversation about the claim.

7 MR. WALKER: So what you're trying to say is
8 that in this amendment notification could be that, hey,
9 you lost my sofa. That's notification?

10 MR. HARBESON: Written notification comes from
11 the claimant. Written acknowledgment then has to come
12 back from the carrier except if they've settled the claim,
13 and currently what we're trying to amend is if there's
14 been an initiation of discussions. So this would mean
15 only in the event of a settlement would there not be a
16 requirement by the carrier to send an acknowledgment of
17 the claim.

18 MR. WALKER: So you're saying if you settled
19 it, he doesn't need to acknowledge that there is a claim.

20 MR. HARBESON: That will remain in the rule.

21 MR. WALKER: What's going to remain the rule?

22 MR. HARBESON: That you do not have to send a
23 written acknowledgment of receipt of the claim, the
24 carrier doesn't.

25 MR. WALKER: What are we changing in the law?

1 MR. HARBESON: There's currently an exception
2 that says you don't have to send the acknowledgment if
3 you've started discussions or initiated -- I mean, I can
4 provide you the exact language: the household goods
5 carrier has initiated communication with regarding the
6 claim with the claimant. And that's the part of the rule
7 that is difficult on all parties to understand. So I
8 called them or I called and left a message or I emailed.
9 The rule as it will be after the amendment will make it
10 clear that the only way you're going to not have that
11 requirement to send a written acknowledgment is if you've
12 settled the claim.

13 MR. WALKER: I got it.

14 MR. GRAHAM: I move that the Board approve the
15 proposed amendments to Section 218.61 for publication in
16 the Texas Register for public comment.

17 MR. TREVIÑO: Second.

18 MR. PALACIOS: We have a motion by Board Member
19 Graham, second by Board Member Treviño to adopt the
20 proposal. All in favor please signify by raising your
21 right hand.

22 MR. INGRAM: This is to publish?

23 MR. WALKER: Publish for comment.

24 MR. PALACIOS: All in favor?

25 (A show of hands.)

1 MR. PALACIOS: Motion passes.

2 Thank you, Mr. Harbeson.

3 MR. HARBESON: That's it. Thank you, sir.

4 MR. PALACIOS: We are going to move on now to
5 item number 7, Projects and Operations. We'll hear from
6 Judy Sandberg.

7 MS. SANDBERG: Good afternoon. For the record,
8 Judy Sandberg, director of the Enterprise Project
9 Management Office. My role today is give you an update on
10 the enterprise projects, I will not be seeking any
11 decisions. My report begins on page 98 of your briefing
12 book.

13 Very briefly, since I last reported to you, we
14 have had the opportunity to complete and close with the
15 governance team's approval four projects, including the
16 county equipment refresh project, the LACE replacement
17 project, now known as eLICENSING, the physical security
18 project, as well as the Single Sticker Phase 2 project.

19 The portfolio overall is healthy. The three
20 remaining projects in flight are all green. They include
21 AMSIT which is on target to complete by August 31, the
22 WebDealer project which is on target to complete by April
23 2018, and the RTS refactoring project with an end date of
24 December 2019.

25 In the interest of time, I will not go into

1 specific details but perhaps ask if you have any questions
2 on any of these projects.

3 MR. WALKER: I'd just comment that we can't
4 start any new projects, can we, this year because of the
5 governor's hiring freeze. Is that correct? We don't have
6 any new upcoming projects? We're working ourselves out of
7 projects, which is a good thing.

8 MS. BREWSTER: First part, the hiring freeze
9 does not prohibit us from moving forward with projects.
10 That's the first piece. The second is any funding that we
11 receive for new projects certainly that would be for
12 '18-19, however, that would not prohibit the agency from
13 making preparations and coming up with the overall
14 resource plan, doing much of the planning piece of it in
15 preparation for '18-19. So one of the things that the
16 agency is doing right now is evaluating the projects and
17 we'll be bringing those forward for '18-19 to the
18 governance team for consideration, and then ultimately
19 before the Board for any items that would need approval by
20 the Board.

21 MS. SANDBERG: If I may add, on page 106 of
22 your briefing books, I've provided a timeline of planning
23 for the new portfolio of projects which would begin
24 September 1.

25 MR. WALKER: What page is that on?

1 MS. SANDBERG: It's on page 106, and it
2 indicates a timeline of the planning that is going on to
3 establish the portfolio that Ms. Brewster was referencing.

4 We are already doing that, in combination with reviewing
5 ht results of the legislative session which Ms. Love
6 reported to you, on the workload for the RTS application
7 and then looking at a list of potential projects and those
8 would be the agency initiatives that Ms. Bankhead referred
9 to earlier that are on page 42 of your briefing book.

10 Those are the types of initiatives that the governance
11 team will be considering this summer to identify which of
12 those should proceed forward as projects and which ones
13 would be managed by the Enterprise Project Management
14 Office.

15 To let you know, the projects that we have
16 closed, one of those was managed by a contract project
17 manager who has been released and is no longer with the
18 agency. The other one was the LACE replacement project,
19 there is a vacancy for that project manager position. The
20 county equipment refresh project, that project manager is
21 moving on and is playing a supporting role on the
22 agency's Sunset review. All staff are very busy, all the
23 project managers are also assisting with developing the
24 background information on the agency initiatives to bring
25 them forward to the governance team at the June meeting

1 for their consideration.

2 So we are not only closing projects, we
3 continue to work on the ones that are in flight to bring
4 them to closure and then we're already preparing the
5 portfolio for the new biennium.

6 MR. WALKER: So on a lot of these projects --
7 and I don't know which one anymore -- we had contractors
8 working on some of these projects. Have we terminated
9 those people?

10 MS. SANDBERG: To depends on, in some cases
11 when a project has completed and there are contractors
12 whose services are no longer needed, those have been
13 released. There are others who have a skill set that are
14 needed on other projects, and so we look at the resource
15 capacity, we also look at the project budget and determine
16 which of those could potentially be assigned to a
17 different project. Some of those also assist with
18 operations work in the Information Technology Division in
19 supporting the results of the projects, the new
20 applications.

21 But generally, in the EPMO we look very
22 closely -- when we bring on a contractor to work on a
23 project, we look at have they fulfilled the assignment, is
24 it time to release them, or is there another related need
25 that they are qualified to fulfill.

1 MR. WALKER: How many contractors do we have
2 working for us right now?

3 MS. SANDBERG: I don't know the total number
4 for the agency. I can tell you in EPMO proper we have one
5 contract project manager working on projects, we have
6 approximately seven contractors working on WebDealer, and
7 then, of course, we still have Deloitte as a vendor.

8 MR. WALKER: Don't count Deloitte, but outside
9 of that, how many contractors do we have in the agency

10 MS. SANDBERG: I can only speak to contractors
11 working on projects, and that is basically the number who
12 are working on projects. There are other contractors who
13 are working on other things.

14 MR. TREVIÑO: Ms. Sandberg, are there any
15 concerns with any existing projects that we should be made
16 aware of at this point?

17 MS. SANDBERG: All three projects are on
18 schedule. We have shaded, I think for all three of them I
19 think you'll notice that they are shaded yellow in the
20 risk category. We routinely monitor the risk. The
21 greatest risk continues to be resources, and making sure
22 that we plan for resources. I believe there's been
23 improved communication between IT and EPMO in the last few
24 months and coordination, especially as a result of the
25 internal audit that was mentioned earlier, and making sure

1 that we plan for those resource requirements. But at this
2 point in time we believe we will finish all three projects
3 on time and within budget through careful risk management.

4 MR. TREVIÑO: Great. Thank you.

5 MS. SANDBERG: You're welcome.

6 MR. INGRAM: Member Walker, we also while some
7 of these bigger projects are winding down, there's still a
8 lot of that is percolating in the back like Web Lien,
9 eRenewals, and then also just trying to get everything
10 done from the legislature. So quite a bit is percolating
11 and is coming forward.

12 MS. BREWSTER: Excuse me, Mr. Chairman. Fraud
13 dashboards, enhancements to eLICENSING, we've received
14 funding for that as well. So there are a number of things
15 to keep our EP MO and IT teams busy for quite some time.
16 And as Member Ingram stated, there are a number of items
17 resulting from the legislative session that will require
18 extensive programming to RTS that could rise to the level
19 of an EP MO related project.

20 MS. SANDBERG: Member Walker, in response to
21 your question about contractors, staff just handed me a
22 note that there are a total of 19 contractors working for
23 the agency, and that would include the ones working for
24 projects.

25 MR. WALKER: The reason I asked the question is

1 before your time, before Whitney's time we had some
2 situations where we had contractors who were in our
3 offices who were not actually working on projects but we
4 did not let them go, and it was a waste of the State's
5 money and we need to always be cognizant that when we're
6 finished with contractors that we let them go because we
7 don't need to keep putting that money -- I mean, we had a
8 guy sitting in a corner office counting the offices that
9 we had in the building. That was his job.

10 MR. INGRAM: That was the old DMV.

11 MR. WALKER: It was before Whitney was here,
12 but I'm just telling you we had a concern and when we
13 started checking we found that we had people that were on
14 the payroll that were not actually needed here. And as we
15 finished projects that they were brought in for that they
16 be terminated and sent back till the next projects.

17 MS. BREWSTER: And we agree.

18 MS. SANDBERG: Any other questions?

19 MR. WALKER: I'm just looking out for our tax
20 dollars.

21 MR. PALACIOS: Much appreciated, Board Member
22 Walker.

23 Any questions for Ms. Sandberg?

24 (No response.)

25 MR. PALACIOS: Thank you very much for your

1 presentation.

2 MS. SANDBERG: Thank you.

3 MR. PALACIOS: It appears to me that only have
4 one item left on our agenda, public comment, and I don't
5 have any yellow cards or we don't have any public comment.

6 MR. GRAHAM: Motion to adjourn.

7 MR. INGRAM: Member Graham had a motion to
8 adjourn.

9 MR. WALKER: Second.

10 MR. PALACIOS: I have a motion to adjourn by
11 Board Member Graham, second by Board Member Walker. All
12 in favor signify by raising your right hand.

13 (A show of hands.)

14 MR. PALACIOS: No dissenters on this one.
15 Meeting adjourned.

16 (Whereupon, at 1:26 p.m., the meeting was
17 adjourned.)

C E R T I F I C A T E

MEETING OF: TxDMV Board

LOCATION: Austin, Texas

DATE: June 1, 2017

I do hereby certify that the foregoing pages, numbers 1 through 168, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Evelyn Carter before the Texas Department of Motor Vehicles.

/s/ Nancy H. King 6/19/2017
(Transcriber) (Date)

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