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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ON THE RECORD REPORTING
(512) 450-0342
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Bates Nissan, Inc., Complainant v. Nissan North
America, Inc., Respondent

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(Proposal Published January 27, 2017 - 42 Tex. Reg. 300)

Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders
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(Proposal Published January 27, 2017 - 42 Tex. Reg. 301)

11. Chapter 209, Finance Amendments, §209.2, Charges for Dishonored Checks
(Proposal Published March 24, 2017 - 42 Tex. Reg. 1389)

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(Proposal Published March 24, 2017 - 42 Tex. Reg. 1390)

13. Chapter 215, Motor Vehicle Distribution Amendment, §215.155, Buyer's Temporary Tags
(Proposal Published March 24, 2017 - 42 Tex. Reg. 1392)

14. Chapter 217, Vehicle Titles and Registration Amendments, §217.56, Registration Reciprocity
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(Proposal Published March 24, 2017 - 42 Tex. Reg. 1393)

15. Chapter 218, Motor Carriers Amendments, §§218.13, 218.17, 218.56, 218.57, 218.65, and 218.73
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EXECUTIVE SESSION

18. The Board may enter into closed session under 142
    one or more of the following provisions of the
    Texas Open Meetings Act, Government Code,
    Chapter 551:
    • Section 551.071
    • Section 551.074
    • Section 551.076

19. ACTION ITEMS FROM EXECUTIVE SESSION
    none

20. Public Comment
    none

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    167
MR. PALACIOS: Good morning, everybody. It is a great day in Austin, Texas, and we are ready to open up this meeting.

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

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

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

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

MS. CARAWAY: Present.

MR. PALACIOS: Board Member Graham?

MR. GRAHAM: Present.

MR. PALACIOS: Board Member Hardy?

MS. HARDY: Present.

MR. PALACIOS: Board Member Ingram?

MR. INGRAM: Present.

MR. PALACIOS: Board Member Painter?

MR. PAINTER: Present.

MR. PALACIOS: Board Member Treviño?

MR. TREVIÑO: Here.

MR. PALACIOS: Board Member Walker?

MR. WALKER: Here.

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

Let the record also reflect that Board Member Barnwell is absent today, and that's actually going to be the first item of business here to address Board Member Barnwell. Under Transportation Code 1001.027(a)(4), the Board by majority vote is able to excuse absences of Board members from regularly scheduled Board meetings. It is my recommendation that we excuse the absences of Mr. Barnwell.
from the January 5, 2017 Board meeting and from today's Board meeting.

Do I have a motion?

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

MS. CARAWAY:  Second.

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

(A chorus of ayes.)

MR. PALACIOS:  Okay.  Motion carries unanimously.

I'm happy to say that the 85th Legislative Session ended a few days ago and overall I think it was positive for the agency.  Most of our recommendations that we presented to the legislature passed.  There were a few items that we would have liked to have seen go through that did not, but overall, I think it was a good job.  I just want to commend our staff, Whitney Brewster and all of her staff, for all of their efforts and communicating to the legislature, making a case for our recommendations, and I think they just did a great, great job.  I know they spent countless hours down at the Capitol making our case, and their efforts paid off.  Caroline Love specifically did a great job, and she's going to be giving a
presentation a little bit later today. So thank you all very much.

Let's give them a great hand.

(Applause.)

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

MR. PALACIOS: Thank you.

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

(General laughter.)

MR. WALKER: Is that Tony Romo Barbecue?

MR. PALACIOS: I think he plays football,
that's what I've heard -- or did. I'm a Texans fan myself.

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

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

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

Moving right along, I am very excited that we have expanded this agenda item to include the recognition of recent retirees and employees who are reaching a state service milestone. We celebrate these employees as a show of our appreciation for their years of service to the citizens of Texas. I want to welcome the family and friends of our celebrants who have joined us this morning.
We appreciate the support that you have provided our employees, and thank you so much for sharing them with us.

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

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

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

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

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

Congratulations, Andrew.

(Applause.)

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

The tax assessor-collectors regularly praise her for her professionalism, her understanding of DMV policy and procedures, and her willingness to help with all their questions and needs. Idalia also played a vital
role in our statewide county equipment refresh project, making sure all of her county offices were refreshed in the most expedient manner possible.

Congratulations, Idalia.

(Applause.)

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

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

Congratulations, Patrick.

(Applause.)

MS. YANCEY: And Sylvia White. Sylvia is a customer service representative for the Consumer Relations Division. She responds to registration and titling questions in our contact center. She is such a dedicated and selfless employee and she is admired for her strength.
and caring spirit. She can light up your day with her warm personality and smile. We truly appreciate her loyalty and commitment to our mission to serve our customers right the first time.

Congratulations to Sylvia.

(Applause.)

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

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

Thank you.

(Applause.)

MR. PALACIOS: Okay. Let’s move on. It's always nice to recognize the employees that have been with this agency through the years. This agency is an organization, it's a name, but at the end of the day, it's our employees that give this organization life, character and personality, and make it what it is. So we're very
grateful that we have such a great group of people, and
congratulations to all those that have completed many
years of service with the agency.

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

MR. AVITIA: Good morning, Chairman.

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

Please proceed.

MR. AVITIA: Chairman, Board members, Ms.
Brewster, good morning. For the record, my name is Daniel
Avitia. I serve as the director of the Motor Vehicle
Division. Alongside me this morning is Mr. Dave Richards.

Jointly we'll do our best to be your subject matter
experts on this contested case matter.

Agenda item 9, which can be found on page 113
of your board books, is Bates Nissan's protest of Nissan
North America's proposed termination of their franchise.
This matter is being presented this morning for the
Board's consideration to adopt a final order.

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

This specific case had a week-long hearing on
the merits conducted by an administrative law judge of the
State Office of Administrative Hearings. The ALJ
considered the evidence and legal arguments presented
during the hearings on the merits, as well as Nissan's exceptions to the proposal for decision and Bates's replies to Nissan's exceptions to the PFD.

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

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

In summary, the ALJ's PFD states, again, that Nissan did not meet its burden of proof to show that good
causes exists for the termination of its franchise with Bates. The draft order has been provided for the Board's consideration. This draft order is consistent with the ALJ's findings of fact and conclusions of law, and again, the ALJ's recommendation to the Board which was to deny the proposed termination of its franchise with Bates.

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

Members, this concludes my remarks.

MR. PALACIOS: Thank you, Mr. Avitia.

MR. DUNCAN: As Mr. Avitia mentioned, I was just going to lay out the procedure. In a letter to the parties, I noted that the party with the burden of proof goes first and has the opportunity to reserve some time for rebuttal. I believe that Mr. Donley, who is the attorney for Nissan North America, will be using 18 minutes of his 20 in his primary and then two minutes for
rebuttal. Time will be kept by Ms. Nelon of my staff, down here. There will be a warning light just prior to the completion of each party's time. And as Mr. Avitia noted, I have stressed to the parties that they should limit themselves to the record and matters within the record, and they should do that at all times, whether making argument or referring to exhibits or testimony. And with that, I believe it's Mr. Donley's turn.

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

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

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

MR. PALACIOS: Thank you.

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

MR. PALACIOS: Please, sir.

MR. DONLEY: Thank you.

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

The PFD in this case establishes bad law and bad policy. Nissan would ask that you not adopt and believe you should not adopt this PFD under 2001.058 because it doesn't follow the law nor does it follow the
Board rules. It's bad law because it no longer allows a manufacturer to give a dealer credit for all sales that dealer makes, either under the Nissan dealer agreement or under the termination statute 2301.455(1). Nissan is actually here today arguing that it should be allowed to give its dealer credit for all the sales that they make, not just some subset of the sales they make, as found in the PFD.

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

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

It's also bad law and bad policy because it gives Bates Nissan a pass on a tax plan -- I'm going to be
charitable today and call it a tax plan; I'll let the
Board decide what this tax plan really is and what you'll
call it -- but it gives Bates a pass on that tax plan
under which Bates failed to pay taxes on over $2.2 million
in income based on improperly written down used motor
vehicles and the write-down of used motor vehicles which
could never be written down in the first place so that
Bates Nissan could get its taxable income down to
approximately $75,000 on an annual basis.

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

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

And what I would like to start with is the
sales performance of Bates Nissan and how we got here, and
I'd like to start with slide number 2 which is Section 3
of the Nissan dealer agreement. It's vehicle sales
responsibility of dealers, and then you'll see 3(a) there
which is the general obligations of dealer says: The dealer shall actively and effectively promote, through its own advertising and sales promotion activities, the sale at retail of Nissan vehicles to customers located with the dealer's primary market area. And again, that primary market area is the area provided by Nissan to its dealer, Bates in this instance, where Bates is more convenient to the consumers in that area than another dealer is.

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

For the past 40 years or so, members of the Board, that reasonable criteria has been regional sales effectiveness. That's what Nissan has used in Texas and across the entire country, and this dealer agreement language that I just went through with you is the same dealer agreement language for every dealer in Texas and every dealer across the country. It's standard language,
and over this entire period of time for over the past 40 years, Nissan has always been allowed to use regional sales effectiveness under that language of the dealer agreement.

Going on to the next slide, I'd like to focus on 3(a) to the dealer agreement which is evaluation of dealer sales performance. It says: Seller -- and again, that's Nissan -- will periodically evaluate dealer's performance of its responsibilities under this Section 3. Evaluations prepared pursuant to this Section 3(a) will be discussed with and provided to dealer, and dealer shall have an opportunity to comment in writing on such evaluations.

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

Now, the top line at the top -- let me explain how this one works -- the top red line is 100 percent RSE. And I'll refer to it as RSE throughout the rest of my discussion. If a dealer is 100 percent RSE, that just means they're average, they're a C student, they're not a star, they're not a superstar, that's not what Nissan
requires. Simply if you're average, you then have met your contractual obligations for sales performance to Nissan.

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

During this same 3-1/2 year period, the other thing that's important to understand, not only was Nissan sending letters, but Nissan personnel were visiting the dealership: Hey, Bates, what can we do to help you; here's some ideas we have; why don't you implement this or
implement that; advertise more to try to get your sales up. What the record would reflect is Bates did none of those things that were recommended, and as you can see, its performance continued to suffer.

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

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

So then why are we here then, what happened, where did the PFD go wrong? The PFD finds that based on this performance, Nissan cannot terminate Bates Nissan. Well, the problem is the PFD finds that regional sales effectiveness is not in the dealer agreement, it's not allowed by the dealer agreement. The language we looked
at just a few moments ago, 3(a) and 3(b), this PFD finds that Nissan can no longer use RSE, even though it had used it for 40 years. Here's where that goes wrong. Prior to this case, Nissan had been involved in nine other cases, federal court, state court, state appellate court, and state agencies, where this very same language was construed by those courts and agencies and each of those decisions, each case came out that RSE was allowed by the very dealer agreement language that's in front of you today. The only decision to find to the contrary is the PFD that's before you today. So in nine other cases, thirteen decisions, this dealer agreement language means one thing, in Texas it's going to mean something else. That makes no sense.

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

The PFD also ignores the long course performance and the history between Nissan and Bates
Nissan. Bates has been a dealer for 43 years. This performance has been judged based on RSE for all those years. Bates never said, It's not in my dealer agreement. Bates never said, You can't do this. Instead Bates said, I understand I'm not performing well, I need to sell more cars, I understand RSE, I'll try to do better.

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

If the Board does nothing else in this case, if you don't do anything else with regard to the PFD, the one thing I believe the Board has to do is to correct that RSE issue and say that RSE is indeed allowed by the dealer agreement, consistent with all these other cases and consistent with Section 3 of the dealer agreement. It's a reasonable criteria, the PFD found it was reasonable and very reasonable, and as a result, you should at least find
that it is allowed by the dealer agreement. We also think
you should allow Nissan or find that there's good cause
for termination as a result of the poor performance, but
at a minimum, you should find that it's in the dealer
agreement.

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

And that's for this reason: the PFD finds that
only sales that are made and subsequently registered in a
dealer's PMA can be counted, those that are sold by a
dealer and registered outside of the PMA can no longer be
counted for performance measures, not only under the
Nissan dealer agreement -- please understand that -- but
also under the state statute 2301.455(1). And by the way,
that's inconsistent with the Atkission PFD.
So if you adopt this PFD, you're now telling Nissan and other manufacturers throughout the State of Texas that you no longer can count every sale that a dealer makes, you can only count those that are made and subsequently registered in that dealer's PMA, AOR, or whatever that manufacturer and dealer may call that geography. There's no way any dealer is going to be happy to have only half of their sales counted, but that's exactly what's going to happen if you adopt this PFD.

Continuing on with the methodologies that the PFD says we should use, I've created this chart and the next one that will show you that there's two methodologies in the PFD that it says should be used. Under the first one, what would happen to dealers like Texas of Grapevine, Gunn and Trophy, when you look at the first two columns, they do very well under RSE, in fact, all of them are more than twice as effective as they have to be to be compliant with their dealer agreement. But under the PFD's methodology, Texas Grapevine, for instance, goes from being number six under RSE at the top of the heap to number 53 based on the PFD, Gunn goes from 7 to 60 down to the bottom, and that's 60 of 63 dealers, members of the Board, and Trophy goes from 8 to 40. And so if you adopt this PFD, not only have you then adopted this new language about a sale being only a sales that's registered in the
PMA, but you've also taken dealers that at this period of
time were performing very well and you're going to be
saying they're performing very poorly. They go from being
at the top of the heap on RSE to the bottom of the heap
based upon what the PFD says.

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

Let me make this even more vivid for you,
members of the Board. The second method in particular, if
you look at just 2012 sales, the information that's in the
record, the PFD would say that 12 of 66 dealers are
compliant. RSE, on the other hand, what Nissan says we
ought to be using and has used for 40 years, 52 of 66
dealers are compliant. So this PFD automatically is going
to say the vast majority of Nissan dealers for this period
were not compliant when Nissan would say, well, we thought
they were doing a pretty darn good job. And if you take
this 2013, '14, '15, '16, '17, you're going to find these
same kind of numbers. All I can use here today is what's
in the record.
If you look at the twelve-month rolling period ending September 2013, you find the same thing, the PFD would say eleven of 66 dealers are compliant -- that's what happens if you adopt this PFD today -- and RSE, the way Nissan would say it should be allowed to do it and it's done it for 40 years, 44 of 66 would be compliant.

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

I'm going to switch gears here just for a moment, I only have a little bit of time left, but I want to talk quickly about the tax plan. This tax plan allowed Bates Nissan to write off over 500 new and used vehicles. No dealer in the country, not one, not one dealer has ever tried to write off a new motor vehicle -- or I shouldn't say write off, write down a new motor vehicle's value, not one. Bates Nissan did. And then they also improperly wrote down used. They did that not because they thought they could write them down, they wrote them
down so they could get to a $75,000 number in taxable income. Wouldn't we all like to do that? Wouldn't we all like to decide how many dollars we're going to pay on income our taxes on? We'd all like to do that. Well, that's what Bates did, and if you adopt this PFD, they get away with it.

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

And so as a result, you've got poor sales performance under RSE, you've got a tax plan that can't stand, you can't just decide you're going to pay taxes on
$75,000 and do whatever you have to to get it there, and you can’t submit false financial statements to a manufacturer. For all those reasons, we believe good cause has been proven to terminate Bates, but again, at the very minimum, to align Texas with all the other cases, all the other judges that have decided the RSE issues, you should at least find that RSE is allowed by the dealer agreement.

Thank you very much.

MR. PALACIOS: Thank you, Mr. Donley. Now we have speaking on behalf of Bates Nissan, Mr. Dave Coffey.

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

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

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

MR. COFFEY: Yes. I apologize, I should have
done that. I am here with my client, Bobby Bates, the dealer principal for Bates Nissan.

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

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

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

At any rate, the IRS accepted our proposal, all taxes have or will be paid, there was no underpayment of taxes. What there was was undervaluation of inventory as
compared to the cost of that inventory, and when you sell
the cars, you have to recapture the differential between
the undervalue -- if you want to call it -- undervaluation
of the inventory and the actual sales price. All of that
was done and it will all be done into the future and the
IRS is perfectly happy with the proposal that our tax
counsel made to the IRS. For the IRS it's a dead issue,
no penalties, no criticism, no nothing on the tax issue.

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

Let's go back to the sales performance. You
heard a lot of highfalutin argument about how this is
going to break the industry, all these bad things are
going to happen because of the way that this judge
construed this contract. This judge, Judge Bennett, is
the best that SOAH has. He's a contract expert and he's
an administrative law expert. He actually teaches
administrative law at the University of Texas. He doesn't
make mistakes, he certainly doesn't make the kind of wide-ranging mistakes that Mr. Donley is claiming were made in this case. All he did was construe paragraph 3 of the contract as creating an obligation only to sell vehicles within your own PMA. The way he came to that conclusion is because that's exactly what Article 3 of the contract says: Your obligation, dealer, is to sell/service your own PMA.

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

Since then, the distributors have decided that the way you increase your market share, you bragging rights, your money is to get your dealers to invade each other's PMA, steal sales from the other dealers, which in turns forces them to steal from other dealers, which in
turn forces everybody in your brand, once you get started
doing that, you're trying to steal sales away from Toyota,
Honda -- I used the wrong term, steal -- take away sales
from Honda and Toyota and eventually end up with Nissan on
the top of the heap instead of Toyota. That's what's
really going on here.

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

And all the judge said was: Nissan, you're
going to have to live with your bargain, you're going to
have to comply with the actual language in paragraph 3 of
the contract. The judge did not propose some new way of
analyzing sales performance like Nissan says he did. They
had half of their briefs full of all this first method and
second method -- in other words, if you adopt this judge's new methods of analyzing sales performance, all these bad things are going to happen. He didn't do any of that. All he said was: Here is the exact language of the dealer agreement, you have to service your own PMA.

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

So it's not like this judge came up with some starry-eyed new way of looking at things that's going to destroy the whole industry and everything that Nissan tries to do in its magnanimity, they're simply going to have to follow their contract or they're going to have to change their contract to comport with the new reality that they are impressing upon dealers now. That's all that this PFD stands for.
Not tax cheating, no underpayment of taxes, and Bobby Bates ran his dealership exactly the way his family had always run it for 40 years because they were still running it under the old business plan of taking care of your PMA. They did not get with the new program quickly enough and so they were candidates for termination.

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

The point is this case has been litigated, what you have heard this morning from NNA is not elements of 2001.058, you've heard a rehash of the entire case already been considered by the judge, already knocked down in a letter in response to NNA's exceptions, and we would simply urge you to do what your staff is recommending that you do because this decision is right, it is just, it is
unassailable. Anyone who attaches their credibility to NNA's attempt to overturn this PFD is simply going to end up looking foolish on appeal. So we would urge you to do what your staff is urging you to do, and that is to adopt this PFD and this final order and put this three-year nightmare to rest for the Bates family.

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

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

That's all I have.

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

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

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

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

MR. DUNCAN: None of this is from statute.

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

MR. COFFEY: You've cut right to the chase of
this whole case, and that is PMA and RSE. A PMA is a primary market area, it is a selection or collection of census tracts that a distributor assigns to a dealer as his area of responsibility, that's the PMA. And this gets back to what I was saying, the way this industry used to run -- and properly so, in my opinion -- is that dealers were encouraged and contracts were written so that dealers had to take care of their own PMA and not go out and grab the easy sales from the extremities, let's say, of somebody else's PMA. Take care of your own people in your primary market area.

All of that changed, and at some point they came up, USAI, this think tank in Detroit -- or California came up with a methodology for encouraging dealers to invade other dealers' PMAs and it's called RSE, or retail sales index or retail sales. So the idea is that you give credit to dealers for sales made outside their PMA and those sales can go towards the RSE number that the manufacturer assigns to you based on its determination of what your expectation for your PMA should be. All of this is pseudoscience, it's junk science, and anybody who really understands these concepts will tell you the same, it's junk science. But it does do one thing, it encourages dealers to not concentrate on their own PMA anymore but to concentrate on their neighbor's PMA, and it
incentivizes to go out and quit taking care of your own PMA and to take care of your other neighboring dealer's PMA. It's all bad practice for the industry in a lot of people's opinions, including mine.

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

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

MR. WALKER: So, David, the factory, I guess,
gets the information of registrations of where the car is
registered at. That's where they get the address, whether
it's in the PMA or whether it's in RSE?

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

But you're right, the distributor keeps track
of where these registrations occur: do they occur inside
the PMA where the dealership is located and the car is
sold, or do they get registered somewhere else. The
factories call the registration somewhere else as outsell
from the dealer's perspective, the factories call sales
registered within the PMA from another dealer as insell
into that dealer's PMA. They keep careful track of all
this stuff. They know when a dealer is not taking care of
his PMA and they know when a dealer is invading somebody
else's PMA, and to create an RSE scheme which encourages
the dealers to do the latter instead of the former --
which is what the contract says he should be doing --
that's just a big scam on the industry.
MR. WALKER: So I think I'm getting a good understanding of what's going on here. So the manufacturer can come up and say this is your RSE -- let's just use Houston, for example -- and it's inside the 610 Loop in Houston, that's your area of where you should be selling cars and that's where we're going to recognize your sales for our sales performance. But if I go an bought an ad on all the TV channels in Houston which is all the way -- it goes halfway to Austin is where that TV channel would be advertising, if I bought all that advertising and I went out here and all of a sudden everybody from Hempstead and from Katy and from Pearland all came to my dealership and bought cars because we had a big blowout 4th of July sale, then Nissan is not giving credit for those sales?

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

MR. WALKER: That's my point.

MR. COFFEY: That is a good point. Basically, they're contradicting their own contract, they're saying that we'll not be able to give credit for these sales in the future. That's not true. All they have to do is change the contract any which way they want it, or change
the rules by which the construe their contract. They can
do anything they want to with their contract.

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

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

So as far as sales regarding sales in the
market -- which is the statutory term, we have to look at
the PMA as the market -- that's where the judge said, Look
at these two ways of determining how Bates did under in re
sales in the market with the market being the PMA. And he
gave you the statistics; it's pages 14 through 16 of his
PFD, he gave you the exact stats that you need to make this determination in your own mind, and Bates did as well as anybody, he was at least average and better than average in a lot of cases under those two metrics. That's why the judge said, Nissan, if you're going to terminate this dealer for failing to -- for breaching paragraph 3 of your dealer agreement, you're going to have to terminate about half of your dealers, including the neighboring dealers to Killeen which were Temple and Waco, I believe it was. Bates was doing better than both of them.

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

And what we never could understand is in December of 2013, when the notice of termination went out, Bates had already achieved 125 percent RSE, which means that he was 25 percent better than average, and Nissan still wanted to terminate him. I mean, what more can the
guy do to please the manufacturer than change everything about his dealership and go from a dealership that takes care of the customers to one that moves the iron at any cost? The stats show that they did this, they went to 125 percent of RSE. How in the world can Nissan continue to want to terminate him?

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

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

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

MR. COFFEY: I'm a lawyer.

(General laughter.)

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

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

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

MR. WALKER: Thank you.

MR. PALACIOS: Mr. Graham.

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

MR. COFFEY: You know who to blame.

MR. GRAHAM: I do see in Nissan's proposal, although it wasn't this way this morning but it was included in a binder that I was provided last night, that they do define your primary market area in coverage specifically. Do they define your RSE in coverage area specifically? I mean, looking at this document right here that shows what your primary market area is, do you have a
MR. COFFEY: We do not generate documents like that. I think probably Nissan had USAI, this think tank that works for most of the manufacturers, probably had the USAI generate those maps. But I think the core of your question is do the manufacturers, such as NNA, define a dealer's PMA for him, and yes, they do. And in fact, in many cases -- I don't think in NNA's case -- but in many cases part of your contract is something called a PMA addendum or structure list where they basically say here are the census tracts that belong within your PMA, these are the census tracts that you're responsible for servicing.

MR. GRAHAM: Right. And that's clear on the PMA, we see that, we can see that. The reason I'm asking this question -- I'm not going to beat this horse too long because I think that Board Member Walker has already asked a lot of the key questions to clarify, but I've read through the dealer agreement and I keep seeing PMA, PMA in the dealer agreement, I really don't think I ever saw RSE in there. And so I just see a lot of definitions of PMA, I don't see any definitions of RSE, and in Nissan's own presentation I see PMA, I don't see RSE, and I was asking if that document existed or if it's ever been clearly defined, if you are to meet sales based on RSE, has it
ever been defined. And maybe it's everything other than
PMA, I guess that would be what they would say.

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

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

MR. GRAHAM: Okay. Just kind of wanted to
clarify that.

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

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

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

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

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

MR. GRAHAM: I guess let me interrupt you and
ask are you aware of whether there's any other dealers that use this, do you have firsthand knowledge?

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

MR. GRAHAM: Thank you.

One other question at this time regarding the financial statements, which is the second key aspect to NNA's case for termination. In essence, I believe what we have is that you were reporting twelve-month pre-tax numbers to NNA and then not giving them the thirteenth month or post-tax numbers, which is just after tax considerations. And the question I'm going to ask you is was that clear, is that defined? I mean, are you required to provide them a thirteenth month?
MR. COFFEY: That is the key to this whole tax false filing gambit that NNA tried. No, in direct answer to your question. It was really garbled in the record as to just exactly whether dealers were required to provide thirteen-month statements to Nissan. I went after Mr. Steiner on deposition on that issue. He's a 30-year man with NNA, if anybody is supposed to know, he'd be the guy who'd know, and he said, No, we don't want thirteen-month statements because they are tax documents and all they do is skew the numbers that we want out of the twelve-month financial statements. So for 40 years the Bates, they had never been told that you're supposed to file those, they had never filed them, and Mr. Steiner confirmed on deposition that NNA doesn't require them to be filed.

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

MR. GRAHAM: Okay. Got it.

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

No other questions at this time.

MR. PALACIOS: Thank you, Board Member Graham.
Are there any other questions for Mr. Coffey?

I have one question. The issue of lower cost or market, do you know the methodology that was used by our client to write down vehicles?

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

MR. PALACIOS: Thank you.

Any other questions?

MS. HARDY: I've got one. Just clarification. So for 3-1/2 years, and the RSI/RSE is an industry methodology to measure dealer performance for the most part.

MR. COFFEY: RSI is.

MS. HARDY: RSI. So for 3-1/2 years, Nissan
used that methodology to measure all dealer performance. Right?

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

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

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

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

MR. DONLEY: Monthly.

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

MR. COFFEY: I'd like to comment on that, because we heard from Mr. Donley that Bates has somehow waived his right to complain about the use of RSE because
he knew about it and if he wanted to complain about it, he should have done it years ago. The fact is the record has a lot of testimony from my client to the effect that, hey, they only started using RSE four or five years ago, they never explained to me how it worked or what it meant or any of that stuff, but when the factory says we're going to judge you this way, you simply accept it and do it. He didn't waive anything is my point.

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

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

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

MR. COFFEY: It has been.

MS. HARDY: Since 2013, is that it?

MR. COFFEY: Yes, that's correct.

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

MR. PALACIOS: Thank you, Board Member Hardy.
Any other questions for Mr. Coffey?

(No response.)

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

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

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

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

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

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

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

There is no evidence that any other dealer anywhere in this country has ever attempted to write down a new motor vehicle other than Bates Nissan. You can't do it, members of the Board, it's unlawful. That's why dealers don't do it. If they could do it, it would be a tax advantage to dealers and they would do it. But not a dealer in the entire country has done that.
With regard to how long Nissan has been using RSE, I want to go back to that. Now, again, the cases that I've provided to you, they say that Nissan at the point in time of these cases had been using RSE for about 30 years. Some of these cases are over ten years old, I believe, some of them are just last year. When I do the math, that's about 40 years based on these cases that we've now cited to the Board that Nissan has been using regional sales effectiveness.

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

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

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

MR. PALACIOS: Thank you, Mr. Donley.

Do we have any questions for Mr. Donley?

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

MR. DONLEY: Thank you very much.

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

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

You're exactly right, not one of these nine cases arises in Texas, so then why is Nissan relying upon them? Because that dealer agreement language can only mean one thing. The Texas statute 2301.455 does not
impact what the dealer agreement itself means. Instead, one of the statutory factors is whether or not Bates Nissan is in compliance with its dealer agreement. So if the dealer agreement allows RSE to measure performance and Bates Nissan is not compliant with RSE, it's not in compliance with its dealer agreement. That's a statutory factor.

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

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

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

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

MR. DONLEY: Correct.

MR. GRAHAM: Which was the twelfth month document.

MR. DONLEY: Not only the twelve-month, but once they did it the first time -- so based on the time parameters in this case, 2009 to 2013, that was the time period we looked at in this case, not before and not after, that's where we were -- once Bates Nissan started taking the improper write-downs of these used and new motor vehicles, that inflated the profits on the next
financial statements submitted to Nissan when it came to that December when they had to start catching up with profits. And so once they started catching up with what they had written down the year before, it inflated the profits and then that started rolling into the next January, February, March, April and May, and so now it rolls into every subsequent month financial statement as well as the year-end financial statement because they have overstated profits to Nissan based on the improper write-downs and understated profits to the IRS.

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

MR. DONLEY: But they weren't the same from year to year. If I could show you a chart on that, I think I might be able to help. This was a chart that was actually created during the course of the trial that shows exactly what happened, and so when you're looking at 2010 you can see there were recovered profits, that was vehicles that had been written off in '09, profits recovered in 2010 of $121,000, you can see going down three more lines, taxable income reported $74,988, wanted to get that $75,000 number. And to get there ultimately you see at the bottom three lines there had to be
additional inventory write-downs of $277,477. That was to get that tax goal of about $75,000 in taxable income.

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

And so then we go to 2011 to continue to through with this plan -- and again, I'll be charitable -- Bates in 2011 to get to $68,000 in taxable income, that's the fourth line down, it had to write down 29 new -- and we can't find one dealer in the country that does that, you can't do it -- and they had to write down 78 used for write-downs of $442,000. That got them to $68,000 in
2012, and what's happening, now when you go from 2011 to 2012, you've got to recover that profit that you just improperly wrote down the year before, and so now when you get to 2012, you see the write-offs go very high because they've got to not only take care of the profit made in that year but also the profits from the prior year that were improperly written down, and so now you're writing down 54 new, 99 used for a total of $813,000.

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

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

And I will agree with the Board, it is
appropriate to have a taxable income goal of $75,000 if you can take lawful deductions to get there, but you can't in the first instance decide I simply want to pay taxes on $75,000 and I'm going to do whatever I have to to get there, which is what Bates Nissan did.

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

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

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

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

MR. WALKER: Okay. So stop right there.

MR. DONLEY: Yes, sir.

MR. WALKER: So willfully violated the law.

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

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

MR. DONLEY: Not that I'm aware of, I wouldn't know one way or the other.
MR. WALKER: What criminal law has he violated?

If you're going to make that statement, tell me what criminal law he's violated.

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

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

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

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

MR. DONLEY: It's certainly one of the issues here. We've got sales performance which we believe stands separate, and that alone is good cause for termination, but certainly this tax plan would also be good cause for termination, and certainly the two together should be, and then that rolls into the financial statements that had false information that was submitted to Nissan. So
certainly, you look at one of them, we believe, to get there, but certainly in the aggregate we believe you get there.

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

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

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

MR. DONLEY: I'm glad you asked that question because it's not quite as it was stated. So for 3-1/2 years, Nissan gave Bates Nissan the opportunity to get to 100 percent RSE. We've seen that, provided the notice every six months, in addition to other information, kept extending the opportunity to become compliant with the dealer agreement. Finally, getting towards the end of that 3-1/2 years, Nissan finally sent a letter out, and let me, if I may, get out that slide that raises that issue. Finally, in the sixth cure period, this sixth NOD
extension, on April 10, 2013, Nissan finally said, This is your last opportunity, there will be no more extensions, this is your last chance, we've given you 3-1/2 years, this is your last opportunity.

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

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

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

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

MR. DONLEY: Absolutely not. Often you see that a manufacturer will only give a dealer six months, they might give them nine, they might give them twelve, but rarely do you see a manufacturer go outside of a twelve-month period in terms of giving a dealer an opportunity to correct their performance. If a dealer is starting to do better, they might get longer, if the manufacturer wants to continue to work with the dealer, they might get longer, but the norm would be six months to twelve months, somewhere in that range, not the 3-1/2 year period you see that Nissan provided to Bates.
MR. GRAHAM: So as I look at the financial data that you provided, I'm kind of struck by you just made the comment that during that time frame they didn't sell cars, they didn't perform. and the reality is they sold cars, they were very profitable, they just didn't perform and sell as many as Nissan wanted them to sell. Would that be an accurate statement?

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

MR. GRAHAM: Thank you.

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

MR. DONLEY: Yes, sir.

MR. PALACIOS: You've referred to Bates use of
the lower of cost or market accounting as --

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

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

MR. DONLEY: Absolutely.

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

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

MR. PALACIOS: Right.

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

MR. PALACIOS: So let me ask you on new, you're stating that it's illegal and improper to write down new inventory. I don't know if I necessarily agree with that
statement. If a dealer has inventory that, let's say, has aged, one year, two years old -- which sometimes happens -- would it be improper to write that inventory down?

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

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

MR. DONLEY: If you meet certain exceptions.

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

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

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

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

MR. PALACIOS: Because your statement was no new inventory should be written down which, again, I sit on a twenty group and I know several dealers that do this.
Maybe Nissan doesn't but I can tell you General Motors dealers do write down new car inventory if it's aged.

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

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

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

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

MR. DONLEY: I dispute auction values. In fact, I think if you look at the record, you would see that -- and I don't remember all the ways so if I misstate one of these, please forgive me, but I think there was testimony that maybe sometimes it was auction value, maybe sometimes wholesale, maybe sometime clean used, other things I just made it up. There's all kinds of things in the record about how he did it, and ultimately that's what
caused his expert, Mr. Davis from Memphis, Tennessee, to testify: Based on everything I've seen, I have no reason to believe that Bates did anything other than make these values up in its head. And that's almost a quote. I'm the one that asked that question and received that answer. So they weren't using lower of cost or market or anything that another car dealer would recognize.

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

MR. DONLEY: No.

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

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

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

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

MR. PALACIOS: Okay. Thank you.

MR. DONLEY: Thank you.

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

(No response.)

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

MR. PALACIOS: Thank you, Mr. Donley.

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

MR. WALKER: I make a motion that we accept the SOAH decision as it is because I don't see there's any evidence that's been brought to us today that changes the technique or that there's no evidence -- we can't go back and find new evidence that it was wrong with respect to
interpret the applicable law. I think the applicable law has been applied correctly. I think that the administrative decision, there's no technical errors in that, and in that light, I don't think that the Board has the ability to overturn SOAH's ruling at this point in time.

MR. INGRAM: I'll second.

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

(A show of hands.)

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

All those opposed.

(A show of hands.)

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

MR. AVITIA: Board members, thank you.

MR. PALACIOS: We'll move forward now, moving along to the next item on our agenda, over to briefing and action items, we'll start with Finance and Audit, TxDMV Fund update by Ms. Flores and Ms. Bankhead.
Let's take a five-minute recess.

(Whereupon, a brief recess was taken.)

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

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

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

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

You can see we've collected $16.9 million related to that processing and handling fee. In total in the fund itself we've received $93.2 million, in addition, we had the one time transfer, for a total of $116.2
million in the fund. Expenditures, at the same time, totaled $71.5 million for operating expenses, and once you add in the fringe benefits, credit card convenience fees and our Texas.gov fees for the online processing and handling transactions, that comes to a total of $83.7 million.

As of the end of April, we have a fund balance of $32.5 million.

With respect to the processing and handling fee, we are receiving, as we expected to receive, we believe we're going to hit at the end of the year of about $38 million for that particular fee. I can tell you that expenditures are matching what we've seen in the last five years as an agency, so there's nothing unexpected.

However, this is the first year that we actually have our own fund and we can manage the fund, so we keep a very close eye on all of the deposits and the cash going out the door because we are having to live within our means, but I believe that we will have a net cash balance in a positive number and I believe it will be probably close to this $30 million at the end of August.

And I'm available for any questions.

MR. PALACIOS: Board Member Walker.

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

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

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

MR. WALKER: So RTS is in that also?

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

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

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

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

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

MS. FLORES: So that $5 million is made up of several things. As Ms. Bankhead indicated, there is a portion for DCS. Our DCS budget is about $9 million for the year, and we get an equal, pretty consistent bill from DCS, so $9 million into 12 months is roughly $800-, $700,000 a month, so that's going to be a portion of it. Another portion is what we are paying Deloitte for the
deliverables. That's the piece that we don't have the
month of April. I know what we've paid them in total for
the year which is about $9 million, but how much of that
was in April, I can't tell you at this time.

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

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

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

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

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

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

MR. PALACIOS: Please do.

MS. FLORES: So we've covered the TxDMV Fund.
I will just go directly into the My Plates contract and just give you an update there. My Plates is almost to the point where they've met their $15 million obligation to the State of Texas. Through April they've collected $13-specifically against that obligation. In total they have deposited almost $26 million to general revenue. We believe that they're going to hit that obligation probably by the first part of the fall of this year.

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


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

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

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

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

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

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

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

MR. INGRAM: You won't be able to get it
inspected until that's off. So there's a lot of cars with
check engine lights that could be something as simple as
that, it's just a process to get it off.
MS. FLORES: That really concludes the information on revenues for the quarterly report. I'll let Ms. Bankhead take it from here and talk about expenditures.

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

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

MS. BREWSTER: Mr. Chairman, if I may?
MR. PALACIOS: Yes.

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

MR. TREVIÑO: Thank you.

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

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

Moving on to capital budget. The majority of our capital budget consists of expenditures for automation and most of that is related to RTS and the eLICENSING, the completion of the eLICENSING system. Any balances in automation are available for carryforward to fiscal year '18. We have specific appropriation authority this biennium that allows us to move those monies forward. We
also received authority to move those monies into the new
biennium for the upcoming biennium as part of the 85th
Legislature.

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

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

The budget staff, as we spoke about at previous
meetings, they're going to be reviewing budget balances in
June to identify any other funds that we may be able to use for one-time purchases prior to the end of the year, but note that any balances that we have, with the exception of GR, will lapse to the DMV Fund and this will increase our fund balance to be able to support department appropriations. So the only money that's probably going to get lapsed and moved somewhere else will be the money for the salaries for the hiring freeze.

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

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

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

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

**MS. CARAWAY:** Two million or twelve?

**MS. FLORES:** It's two, it's approximately $2 million. We have approximately 60 vacancies at this time, 60-62, I believe, and we were directed at January 31
whatever we had vacant, cost out that cost expenditure through August 31. In the meantime, we also had some people leave the agency, so that number has grown and we're estimating approximately $2 million lapse, with benefits -- that's the other thing, the benefits also are tied to that number.

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

MS. FLORES: Correct.

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

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

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

MS. FLORES: Yes, sir.
MR. WALKER: Okay, that's good.

MS. FLORES: At least $10–.

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

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

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

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

MS. FLORES: At this time, no, sir. The appropriations have been preliminarily approved, it happened on Saturday, this past Saturday. Our appropriations are set at $332.9 million. If in the course of a given year our revenues are not enough and fund balance -- let me clarify, our revenue deposits and
fund balance are not sufficient to cover our appropriations out of that fund, it would impact the agency, we would have to scale back. Just like any private business, if you don't have the money coming in or don't have reserves, then you would have to scale back.

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

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

MR. WALKER: Thank you.

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

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

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

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

During the appropriations process, we asked for $12 million for automation. Legislative Budget Board went out with a recommendation where they cut our base -- and that's kind of unheard of -- but they cut our base almost $5.7 million. Going into January, we asked for $1.6
million of that back; we got $800,000. So didn't have 100 percent success but it was still pretty good. They did not approve any of the restoration of the reductions made to Automobile Burglary Theft and Prevention, nor did they approve the exceptional item for the additional grants.

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

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

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

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

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

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

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

MS. FLORES: We get a discount.

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

(General laughter.)

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

We also, as part of the appropriations process,
got a couple of new riders that are going to be attached to our bill pattern. The very first one, which is something that we're already doing, is that the agency will be required to submit an annual report on the DMV fund, revenue collections, expenditures and fund balances. There was a lot of interest in the DMV Fund during some of the committee hearings and especially in regards to our fund balance. So fund balances are the right of the legislature to reallocate and use as they see fit, so it's really important for us to kind of keep an eye on the amount on that fund balance.

The other thing that we were successful in receiving was a UB authority, unexpended balance authority, to move unspent dollars associated with the move for Bull Creek. As you know, and you kind of can see some of the construction efforts going on here, TxDOT is doing some repairs and renovations. They're working in the parking lots this summer, they're redoing Building 6 to accommodate our Motor Carrier staff, and that particular physical move was appropriated special dollars, about a million four, to move. So knowing that we weren't going to do it by August 31, we did request and receive the authority to move forward those dollars into September. So we believe that that move will actually occur January 2018.
Member Walker, you asked about what our targets are for '18-'19. This kind of shows you where the revenue collections have been by year. We started at $3.13 in '12-'13, we estimate that our total collections will jump to $3.86 billion.

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

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

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

And with that, I'll turn it over to the operating side of the agency.
MS. BANKHEAD: The expenditure portion of this budget begins on page 34 of your materials. The preliminary fiscal year '18 budget is $165.2 million. As with '17 as far as expenditures were concerned, our budget for '18 also tracks the same way. Most of that is allocated to registration and titling activities.

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

MR. WALKER: Where are they appropriated?

MS. BANKHEAD: The 13 FTEs?

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

MS. FLORES: It's all split out.

MR. WALKER: So we've delegated those throughout all the different regions.
MS. FLORES: Yes, sir.

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

MS. BANKHEAD: Under program administration.

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

MS. FLORES: Yes, sir.

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

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

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

MS. BANKHEAD: This is by agency activities, not so much by operating budget categories, so capital would include our capital projects such as automation, such as the data center, that kind of thing. So when you look at program administration there on the bottom, that 19 percent, that's where we include Motor Carrier, that's where they're included, and then registration and plates, that's where VTR is. Central administration would include
finance, that kind of thing, and Information Technology includes not only IT but also EPMO, Enterprise Project Management. So that's kind of how things kind of shake out as far as our agency activities are concerned.

MR. WALKER: Thank you, Renita.

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

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

MR. TREVIÑO: Thank you.

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

The next slide is capital budget. The largest portion of our capital budget of $30 million is other
technology projects, and those other technology projects, the two big ones are data center consolidation and the county technology support. Under automation initiatives, we're planning on funding that with estimated balances from '17 from projects. The amount that we have in this preliminary document is still a preliminary number. We will be working through this number for the next month and in August we will give you a better number of what that will be because there will be some approvals that will be necessary for that UB process to take place.

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

Finally, the final thing that we're going to include in the final budget in August will be a list of the budgeted fiscal year '18 contracts, those that you have to approve and those ones that you have to have notification. So once we get that included plus our final UB amount, plus there were a few little tweaks and they didn't impact the amount, but kind of the classification of expenditures through the end of the session, we will
incorporate all of that and present it back to you at the August Board meeting.

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

(Applause.)

MS. FLORES: And that concludes our presentation.

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

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

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

MS. FLORES: Real quick. On facilities, as you know, we moved in March the Corpus Christi Regional Service Center. We are currently in the process of beginning routine weekly meetings on the San Antonio move. The anticipated move date there is August, before August 31 because that's when our money runs out for the move -- money doesn't run out.

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

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

MS. FLORES: Actually, the developer Milestone indicated that they were receiving their city permits in August, so technically, they can start work, however, we have a lease, or TxDOT has a lease for us to remain there until February 2018. So there might be some conflict between the developer doing some of his work and us.
residing in the area, however, Mr. Duncan has indicated that they need to be a good neighbor, and if not, we will take it up with the developer.

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

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

MR. DUNCAN: David Duncan, general counsel.

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

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

MR. DUNCAN: They are required to do a baseline traffic study and then a mitigation proposal. That's part
of their development plan. I know the neighborhood association is watching that very closely, especially with the addition of retail, retail is a big deal in the neighborhood, and so I know that that's part of what they're talking about. And they are talking about widening Bull Creek and that's part of the plan, and also they were not real specific about it but having some kind of exit, not running a street through but having some kind of exit from the neighborhood, from that development directly to 45th, which means currently there are houses all the way down 45th on the other side of that development so they'd have to buy some of these houses, make a road there or make an entrance there.

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

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

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

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

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

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

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

The next item is the Fiscal Year 2018 Internal Audit Plan. This is, again, to identify the high risk areas for next year and what audit will be working on for next year. We are in field work on this and we plan on
releasing that and preparing that for the August Board
meeting.

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

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

We overall found that the department had
developed the COGNOS reports accurately and have done all
the business requirements and design that were needed for
the intended end user, however, we did have one finding
and we had an overall rating of a three which means that
we found that the process was defined but that it would
not able to detect any deviations due to the process not
being sufficiently evaluated or to address the risks.

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

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

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

The Information Technology Services Division will be leading the implementation of both of those recommendations. The training program and the report review are expected to be done by the end of fiscal year.
2018. That is a bit of a longer timeline than most recommendations, but the IT has other priorities with ongoing capital projects and expected workload coming out of this legislative session.

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

Are there any questions on the report?

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

MS. MENJIVAR-SUDEATH: I think they find it to be useful. Part of the problem was when COGNOS was designed and tested, a lot of it was focused on how it was compared to the old system, and it's a very different application than the old system and it's better in many ways, and so there wasn't enough training or really transition enough to understand, okay, this is how the COGNOS application works in DMV and what you can do from it, and so we kept hearing, oh, well, the old system used to do this and the old system used to do that. Well, yes,
it's a different system and this has different needs and fits the department better, if that makes sense. Does that answer your question?

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

    MS. MENJIVAR-SUDDEATH: It is useful.

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

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

    MR. TREVIÑO: Just a learning curve.

    MS. MENJIVAR-SUDDEATH: Yes.

The next item on the Internal Audit status update is the management/board request which was the IT Division application service organization review. This was an advisory service and it's on page 67 of your board book. This was an advisory service that Information Technology asked us to come and do. We had three main
objectives. The objectives were related to looking at resource time allocations, expectations, employee responsibility, sufficiency of time allocation as well. And the application services are a very crucial part of our agency as they are responsible for all the programming and maintenance of our applications for RTS and eLICENSING, and so we wanted to make sure that they had the right skill set, that their time allocations were up to expectations, and that they were getting what they needed from it.

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

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

So what we found is that IT has several resources that are being pulled in different directions to handle different projects, and it's a limited number of resources, and so the result of that is you have eight resources that have an average of 354 hours of compensation time. And so what we've recommended was that cross-training is formalized, that you have different resources that can be pulled in different directions on those projects, and that communication just be increased between project managers from EPMO and IT so that if a
single project is impacted, then all parties are aware that a resource is being pulled from that project, and so you don't have late reporting or the project has less impact. And so IT has responded saying that their action plans are going to include increased cross-training and knowledge transfer so that if resources are pulled that mitigates the impact on the projects.

MS. MENJIVAR-SUDDDEATH: Any questions on that report?

(No response.)

MS. MENJIVAR-SUDDDEATH: So the next item on the Internal Audit status update is on external audits. Last week the State Auditor's Office finished our audit on the complaint processing at the Department of Motor Vehicles. It's a handout, it's not in your board book because it was issued after the board book was put together. The SAO had an overall objective to determine whether the department has processes and related controls to help ensure that it reviews, investigates, resolves complaints in a timely manner and in compliance with applicable statutes, rules, policies and procedures and other requirements.

The scope of the project of the project was looking at all Enforcement Division complaints that were received or closed between September 1, 2015 to November
30, 2016. The report had two chapters, one related to the complaint investigation and the other to the complaint tracking system. Overall, the SAO found that the department had properly summarized and documented the results of our complaint investigation, however, improvements could be made to documenting the complaint process, notifying complainants of the status of their complaints, providing the complaint definition when we provide complaint data to other sources, and then to improve IT controls that restrict access and make sure our data is reliable.

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

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

MR. TREVIÑO: Does the state have a standard process for complaints, or does each agency address it
themselves for putting all the stuff together?

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

MR. TREVIÑO: Thank you.

MS. MENJIVAR-SUDEATH: Any other questions?

(No response.)

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

During this fiscal year the Internal Audit Division became aware of a risk related to our PCI compliance. PCI compliance is related to credit cards. We accept credit cards for certain transactions related to Motor Carrier, Motor Vehicle and some Vehicle Titles and Registration. Because we accept credit cards, we have to attest to the PCI, which is the Payment Card Industry Security Standard Council, that we are following their rules and regulations. And so we want to make sure, one
of the main things of the PCI compliance is that we don't electronically store our credit card information, and so what we want to do is make sure that we're not storing any credit card information, and so our obligation is that we add the PCI compliance audit to the audit plan and remove the TxDMV Fund audit.

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

Are there any questions?

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

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

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

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

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kicking off the DMV Fund.

MR. TREVIÑO: Thank you.

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

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

MR. TREVIÑO: Second.

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

(A show of hands.)

MR. PALACIOS: The motion passes unanimously.

MS. MENJIVAR-SUDEATH: Thank you.

MR. PALACIOS: Thank you.

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

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

Thank you for having me here this morning. My name is Caroline Love, I am the director of the Government and Strategic Communications Division for the department,
and I have a briefing only for you today about what occurred during the 85th Legislative Session, including an update on the recommended items as adopted by this Board back in November.

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

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

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

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

I'll start off by going through the items that were recommended by the Board and those that did not make it through to the end. So there were three bills that this Board specifically recommended that did not pass. One related to updating the state statutes to reflect recent changes made by the federal FAST Act. These updates would have included some size and weight clarifications in state law, but they obviously didn't make it through. The good news is that the bill was on the calendar, we can definitely show that as a state we made an attempt to make these updates, but that the timing just wasn't on our side, there definitely was not any kind of opposition that we heard of regarding this. The potential outcome is that the federal entities could come down and say your state isn't in compliance, however, that's kind of unlikely, we haven't really seen that happen throughout history, but
anything is possible. So that's something that we'll definitely be keeping in mind as we head into the 86th Legislative Session.

In addition, there was another bill that had general size and weight updates to motor carrier statutes. That bill also did not make it through the final process. It included a provision that said that 10 percent of any permit created by in the end 86th Legislature or later would have 10 percent of that permit fee go to the DMV Fund. The reason we had looked at that before was that current permitting statutes vary in distributions and sometimes the DMV Fund is left out which means that general revenue might get the permit fee, and so there's all sorts of weird distributions that occur under current statute, so we thought this would bring a little more consistency and predictability to the process. But the good news is for the permits that were created this session, they did get a percentage to go to the DMV Fund, and I'll cover those in a little bit so we were covered for those that were created this session.

And then the last bill that did not get passed was related to the permanent token trailer registration program, and that was something we had considered to help make Texas more competitive with other states that do offer such a program. There definitely seemed to be a
little bit of concern at the county level on that legislation due to the fact that counties currently get an annual road and bridge fee from all those annual token trailer registrations. I believe that the bill author was working with the counties to try to remedy that. The bill was placed on the general calendar but it died before the deadline for it to be considered further.

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

However, it did result in a lot of awareness that occurred on those committees and the Texas Tribune wrote an article about how a lot of the legislators on these committees were surprised to know that only half of that two dollars goes for its intended purpose, so
hopefully that increased awareness will kind of help on those efforts in the future.

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

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

    MS. LOVE: Sure.

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

    MS. LOVE: What's interesting about that is if you look at the fiscal analysis that was completed by the Legislative Budget Board on that bill -- which is something the Legislative Budget Board does for every bill that might have a fiscal impact on the state -- it did not show a huge increase because they did not feel, apparently, that the methodology for that was as solid, I think, as it might be to confirm that that would be the reality. So what they did feel was the very real impact was that those annual fees that the counties currently
receive would not be available. The way the bill was written, they would get it that one year and then the life of the trailer would not result in any more annual fees going to the counties on that.

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

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

Any other questions before I get into what passed?

(No response.)

MS. LOVE: So Senate Bill 2075 by Senator Rodriguez out of the El Paso area, that bill made several updates to the registration code. There were a lot of minor cleanup language items in there but one of the things that was included related to the ability for a vehicle owner to go online and renew their registration and then print their receipt and have that serve as their proof of registration for 30 days. What we're attempting to do there is hopefully reduce some of the lines at county offices towards the end of the month when people are scrambling to make sure they have that updated sticker.
on their windshield, so this would help if they were to
get pulled over to show that they did complete that
registration renewal. So that was certainly a big
component of that.

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

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

And then also, Senate Bill 2076 was another
larger bill that was considered which related to updates
to the Title Act. There were a lot of various components
of that bill. One of the significant components to that
related to the creation of -- or not creation but additional resources provided to vehicle identification number inspections. Those are currently conducted by local law enforcement, including ABTPA grant recipients, and there are a lot of requests for those types of VIN inspections to help make sure that those vehicles are truly what they are represented as, and so those resources can now be supplemented by the department as long as we have trained individuals. At this current point in time we do not have those resources but we'll work to get those available as well.

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

There was an amendment that was added to Senate Bill 2076 towards the very end of the session that did require the department two work with the Department of
Public Safety to review the various elements of registration titling and inspection of vehicles, and to report to the legislature by December of 2018 any of those elements that could potentially be renovated. The author of that amendment was someone who authored the bill to do away with the state safety inspections altogether, which that bill never made it to the House floor for final consideration, but I would imagine that would be something that that author would be looking to find in that report, something related to those items. So that's something else we'll be working on this interim.

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

Also, we had House Bill 2070 by Representative
Smithee that updated the Lemon Law, and that one made it through both chambers without any amendments or issues. So that kind of helps out the consumers and the industry. The way the Lemon Law had been in statute, it was a little confusing, I think, for a lot of people, so that will help make that process smoother there.

MR. WALKER: What is changing on the law?

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

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

MR. PALACIOS: Yes.

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

We have an outdated process where letters were sent, oftentimes by the time the owner of the placard got the
letter, they had already gone to remedy it, and so it was just a process that didn't really meet up with the current times, and so we have that cleaned up in statute.

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

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

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

MR. TREVIÑO: What does OCCC stand for?
MR. WALKER: I was going to ask the same question.

MS. LOVE: Office of the Consumer Credit Commissioner.

MR. WALKER: Office of Consumer what?
MR. DUNCAN: Consumer Credit Commissioner.

They regulate lending contracts, including in the automotive industry.

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

MS. BREWSTER: Mr. Chairman, if I may?
MR. PALACIOS: Yes.

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

MS. LOVE: That's correct.

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

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

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

MS. LOVE: You know, it's interesting, we were
talking about that yesterday, but it does not necessarily define the vehicle but it does, so we are looking at that and we'll be coming forward to the Board in the near term with information about what exactly the legislation does and what we'll be required to do.

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

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

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

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

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

MR. WALKER: I am.

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

MR. WALKER: You can use the road. The difference is right now you can't use the road, is my understanding, to use a golf cart.
MR. KUNTZ: There are certain restrictions that apply to each of the different classifications of vehicles. Those vary depending on vehicle, so golf carts have restrictions, ATVs have restrictions, neighborhood electric vehicles have different restrictions, so what this does is it consolidates all of those and says if you are using one of these license plates that says Package Delivery Vehicle on it, then you can use the roadways within subdivisions for the purposes of delivering packages. So it basically takes all of those different classes of vehicles and allows them to all operate in the same way so long as they are delivering packages.

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

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

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

MR. WALKER: So this is basically FedEx and UPS want to do?
MR. KUNTZ: They were the ones that brought the bill forward. UPS specifically was seeking this legislation.

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

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

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

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

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

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

MR. PAINTER: Which one made it through?

MS. LOVE: Senate Bill 1062, and that was by Senator Perry out of the Lubbock area.
And then House Bill 1959 by Representative Senfronia Thompson, that bill requires the department to study with an institute of higher education, and that could be someone such as the Texas Transportation Institute or the Center for Transportation Research with UT, maybe. It requires the department to partner with that kind of entity to look at the opportunities for alternative technologies, such as electric -- I'm sorry -- technological advances in registrations and license plates and things like that to be considered for commercial motor carriers. It also authorizes the department to enter into a pilot to implement these types of technologies if studies determine that a pilot would be successful. And the due date for these would be 2022, so we have some time to look into these efforts and get something done there.

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

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

And as I mentioned, House 2663 was the stand-alone bill that allows counties to make that determination for when a no-fee replacement sticker can be issued if it was lost in the mail.
House Bill 4102, I'm going to discuss this one with the very next one on the list, Senate Bill 1251, because Senate Bill 1251 was added as an amendment to House Bill 4102. So this legislation allows for people when they're renewing their registration to have the opportunity to contribute to both a fund that would help DPS with the processing of rape kits and also for a fund to end homelessness.

MR. WALKER: End what?

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

MR. TREVIÑO: How many are listed currently?

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

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

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

MR. WALKER: Do we track data on that that says
how much money is actually donated to those?

MR. KUNTZ: Yes, we do.

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

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

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

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

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

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

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

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

MS. LOVE: So in addition, Senate Bill 1524 passed. That was definitely a significant piece of legislation as it allows for super heavy containers that are going intermodal, oceangoing containers to be
transported within 30 miles of a port. The requirements of the bill also state that these containers, which could be up to 100,000 pounds, would need to have a sixth axle, and the bill is very specific and the statute will be very specific on the distribution of weight for those axles. So that is something else that passed, it's a $6,000 permit fee that's associated with that. Of that fee the percentage breakdown is, I believe, about 90 percent to the State Highway Fund, along with -- I'm sorry -- 85 percent to the State Highway Fund, 5 percent other counties in which the permitted load travels, 5 percent to the municipalities within that travel zone, and then there's also 4 percent of the fee going to the DMV Fund for the cost to issue the permit.

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

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

MR. WALKER: Jimmy is shaking his head over there. So here's the problem I see is I own 200 trucks and so now I'm going to go do this particular work and so now truck one has the ability to haul -- and I have six axles that I'm going to move these heaving containers, what's going to happen when truck one who has the $6,000 permit is out of town in Dallas today because he's making
a delivery for Raymond or somebody, and so how do I move
that container if that truck that's permitted is not here?
The permit can't be switched from truck to truck, it is
truck-specific?

MR. INGRAM: Jimmy is on his way.

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

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

MR. PALACIOS: Would you please identify
yourself?

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

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

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

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

MR. WALKER: The problem is if the volume --
what am I supposed to do with that truck tomorrow in the
trucking industry if I need to go haul for Exxon to Dallas
with that truck and now I've got ABC calls in and wants a
load from the port moved, I can't take the permit and
switch it to another truck, and $6,000 is a huge, huge
amount of money to put on that permit. I mean, I don't
see how the deal works, because we buy permits every day
from you guys for all of our trucks and most of them are
load-specific which means it's 56 bucks for this load or
85, whatever it is, and now you go to $6,000 and now
you're $6,000 is specific to a truck, it's going to be
tough. And the bill says truck-specific?

    MR. ARCHER: Yes, sir.

    MS. LOVE: There was another bill that was not
included here because it was rather benign, I suppose you
could say, but then it got amended late in the session, as
normally happens, House Bill 2193, I believe it was, by
Representative Paddie. It was a bill that allowed for
adjustments to vehicles that have natural gas components
and to have a weight tolerance of about 2,000 pounds, and
then late in the session it was amended to include another
permit that only applies to the Texarkana area, a very
short under five-mile portion of a state highway up there,
for another heavy load vehicle. It would be required to
have six axles as well. I can't remember the weight limit
on that, I think it was about 97,000 pounds for that, and
it is a $4,000 permit. It does include a 5 percent
portion to the DMV Fund for each permit issued. I believe
because it is so specific about the roadway and everything else that we would issue approximately 20 of these permits annually, so that's another one that passed that is a new permit.

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

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

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

MR. ARCHER: I believe so.

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

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

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

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

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

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

MS. LOVE: Correct.

MR. WALKER: So that what it carries.

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

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

MR. GRAHAM: When you get your documentation on the trailer when you register it, that information is listed. You should be able to look at that and identify
it. When you register your vehicle and they send it back to you, you're supposed to put it in your glove box and retain it. It's listed on there.

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

MR. GRAHAM: We have an amendment.

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

(General talking and laughter.)

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

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

MS. CARAWAY: That means you have to read your notice now.
MR. WALKER: But you're going to give me my renewal even if I don't get it inspected?

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

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

Have you got a boat, Raymond?

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

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

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

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

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

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

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

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

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

MR. PALACIOS: Thank you, Mr. Kuntz.

Please proceed, Ms. Love.

MS. LOVE: Then Senate Bill 2205 passed that allows for the research, testing and on-road experimentation, I suppose you could say, for automated vehicles, but this bill was very clear to make sure that
there was no regulatory structure at the state or local levels, so that was something we can keep an eye out for.

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

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

MR. PALACIOS: I want to acknowledge again the entire staff, particularly Ms. Love. I know she was pretty much camped out at the State House throughout the legislative session, working tirelessly, tracking down legislators, senators, representatives, aides, their staff, and as everybody knows, it's not just a matter of recommending good legislation to our representatives, it requires forming relationships, building rapport, and I believe that in large part is why the agency was successful in having many of its recommendations adopted.
by the legislature. So again, kudos to Caroline, Whitney and the entire staff for all of your efforts.

MS. LOVE: Thank you.

(Applause.)

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

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

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

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

MR. PALACIOS: It is approximately 12:51 p.m. on June 1, 2017, and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken in the closed session. I'd also like to reflect for the record that Board Member Hardy has
left, so we're all present with the exception of Board
Member Hardy who has left.

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

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

Before you for your consideration are three
license plates. We have two license plates that are being
brought forward by My Plates and one that is being brought
forward by the Department of Agriculture. The one being
brought forward by the Department of Agriculture is the
Eastern Star which is the top license plate on the board.
The next license plate is a redesign of the University of
Texas Longhorn Tower, we have both the old license plate
and the new license plate design. And then the last
license plate for your consideration is the Porsche Club
of America.

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

MR. TREVIÑO: Second.

MR. PAINTER: Second.

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

(A show of hands.)

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

Thank you very much, Mr. Kuntz.

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

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

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

We received no comments on these and we would
urge that you adopt them as written.

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

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

MR. PALACIOS: Yes.

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

MR. INGRAM: Second.

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

(A show of hands.)

MR. PALACIOS: The motion passes unanimously.

Let's move on now to Chapter 209.

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

Before you are adoptions of rules under TAC Chapter 209, Finance, 209.2, Charges for dishonored checks. The amendments allow a reimbursement mechanism for the DMV for any charges passed on to the agency by financial institutions in the event of an electronic payment that's rejected for lack of sufficient funds. The
proposed amendments were published March 24 and closed on April 24. No comments were received.

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

With that, I close.

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

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

MR. PAINTER: Second.

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you, Ms. Flores.

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

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

Before you is a request to adopt an amendment to 215.140. After being published, we received one
comment from the TIADA which said that they were in concurrence with this amendment. All this amendment does is places the same requirements on multiple dealers at a location that would be on a single dealer. That is, if we have four dealers, they all have to have the same signage requirements, the same furniture requirements, they also must all meet the same hours. This is essentially in response to situations where we have multiple dealers and they're merely fronts for illegal activity, so this is needed from an enforcement standpoint.

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

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

MR. HARBESON: Yes, sir.

MR. WALKER: You were being facetious?

MR. HARBESON: No, I was not being facetious.

I'm sorry, Mr. Walker.

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

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

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

MR. HARBESON: Mr. Walker, we have tried to
amend that statute?

MR. WALKER: Two desks and four chairs?

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

MR. INGRAM: It was a lot more.

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

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

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

MR. PAINTER: Second.

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you, Mr. Harbeson.

Now we'll move on to Chapter 215, Motor Vehicle
Distraction, Chapter 215.155, Buyer's temporary tags.

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

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

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

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

MR. INGRAM: SECOND.

MR. PALACIOS: We have a motion by Board Member Treviño, a second by Board Member Ingram to accept the amendments. All in favor please signify by raising your right hand.
(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you, Mr. Kuntz.

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

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

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

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

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

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

MR. TREVIÑO: Second.

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

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, Mr. Archer.

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

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

These amendments were presented to you at the January 5 Board meeting. As you may recall, most of the proposed amendments are a result of over 16 meetings by your staff who are members of the Motor Carrier Credentialing Working Group. The working group included department personnel from the Motor Carrier Division, Enforcement Division, Office of General Counsel, and Information Technology Division. The goal of the MCCS working group was to expand web-enabling capabilities of
MCCS and facilitate enhancements through an orderly reasoned process.

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

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

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

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

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

MR. WALKER: Adopt and repeal.

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

MR. INGRAM: do you have the actual wording?

We're going to add that we're going to amend 218.13, .17, .15, .56, .57, .65 and .73.

MR. WALKER: Is that under this item?

MR. INGRAM: Yes.

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

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

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

MR. PAINTER: Second.

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

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

MR. DUNCAN: That's good.

MR. PALACIOS: We have a motion on the table
and a second. All in favor signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much.

Moving along, Oversize and Overweight Vehicles and Loads.

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

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

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

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

MR. PAINTER: Second.

MR. PALACIOS: We have a motion by Board Member Graham, second by Board Member Painter to adopt the
amendments. All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, Mr. Archer.

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

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

This is an amendment to 218.61 of the rules that govern claims after a household goods move, and what the current rules do is they provide a requirement that the carrier send an acknowledgment that a claim has been filed. The current rule provides two exceptions, that is one, if you've settled a claim there's no reason to send an acknowledgment, and the second exception is if there has been a commencement of discussions about the claim. And that's what we are asking to amend because the language as it exists now is so hard to interpret what actually constitutes the initiation of discussions about the claim, that could be a telephone call, an email. So we're asking to eliminate that exception so that it
currently reads that if you've settled the claim you don't
have to send the acknowledgment, but otherwise you would
have to send the acknowledgment.

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

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

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

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

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

MR. DUNCAN: David Duncan, general counsel.

For liability on claims, we do. This is the
notification and settlement process, this is how people
start the claims. We'll research that. In fact, we'll
research it before we even publish for proposal to make
sure we're not proposing something that's going to
conflict with federal. That's a very good point.

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

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

MR. HARBESON: Yes, sir.

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

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

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

MR. HARBESON: And we, of course, went through
that when we were doing the household goods move rules.
We had some proposals that were not consistent with the
federal requirements. So this, again, would be dealing
with a move and what acknowledgment -- the requirement now
is that an acknowledgment goes out except in two situations. This would eliminate if there had been an initiation of discussions, and again, that is hard for us to work with because that could be a telephone call, a note -- an unanswered telephone call would be the initiation of the conversation about the claim.

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

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

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

MR. HARBESON: That will remain in the rule.

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

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

MR. WALKER: What are we changing in the law?
MR. HARBESON: There's currently an exception that says you don't have to send the acknowledgment if you've started discussions or initiated -- I mean, I can provide you the exact language: the household goods carrier has initiated communication with regarding the claim with the claimant. And that's the part of the rule that is difficult on all parties to understand. So I called them or I called and left a message or I emailed. The rule as it will be after the amendment will make it clear that the only way you're going to not have that requirement to send a written acknowledgment is if you've settled the claim.

MR. WALKER: I got it.

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

MR. TREVIÑO: Second.

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

MR. INGRAM: This is to publish?

MR. WALKER: Publish for comment.

MR. PALACIOS: All in favor?

(A show of hands.)
MR. PALACIOS: Motion passes.

Thank you, Mr. Harbeson.

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

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

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

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

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

In the interest of time, I will not go into
specific details but perhaps ask if you have any questions on any of these projects.

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

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

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

MR. WALKER: What page is that on?
MS. SANDBERG: It's on page 106, and it indicates a timeline of the planning that is going on to establish the portfolio that Ms. Brewster was referencing. We are already doing that, in combination with reviewing the results of the legislative session which Ms. Love reported to you, on the workload for the RTS application and then looking at a list of potential projects and those would be the agency initiatives that Ms. Bankhead referred to earlier that are on page 42 of your briefing book. Those are the types of initiatives that the governance team will be considering this summer to identify which of those should proceed forward as projects and which ones would be managed by the Enterprise Project Management Office.

To let you know, the projects that we have closed, one of those was managed by a contract project manager who has been released and is no longer with the agency. The other one was the LACE replacement project, there is a vacancy for that project manager position. The county equipment refresh project, that project manager is moving on and is playing a supporting role on the agency's Sunset review. All staff are very busy, all the project managers are also assisting with developing the background information on the agency initiatives to bring them forward to the governance team at the June meeting
So we are not only closing projects, we continue to work on the ones that are in flight to bring them to closure and then we're already preparing the portfolio for the new biennium.

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

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

But generally, in the EPMO we look very closely -- when we bring on a contractor to work on a project, we look at have they fulfilled the assignment, is it time to release them, or is there another related need that they are qualified to fulfill.
MR. WALKER: How many contractors do we have working for us right now?

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

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

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

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

MS. SANDBERG: All three projects are on schedule. We have shaded, I think for all three of them I think you'll notice that they are shaded yellow in the risk category. We routinely monitor the risk. The greatest risk continues to be resources, and making sure that we plan for resources. I believe there's been improved communication between IT and EPMO in the last few months and coordination, especially as a result of the internal audit that was mentioned earlier, and making sure
that we plan for those resource requirements. But at this point in time we believe we will finish all three projects on time and within budget through careful risk management.

MR. TREVIÑO: Great. Thank you.

MS. SANDBERG: You're welcome.

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

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

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

MR. WALKER: The reason I asked the question is
before your time, before Whitney's time we had some situations where we had contractors who were in our offices who were not actually working on projects but we did not let them go, and it was a waste of the State's money and we need to always be cognizant that when we're finished with contractors that we let them go because we don't need to keep putting that money -- I mean, we had a guy sitting in a corner office counting the offices that we had in the building. That was his job.

MR. INGRAM: That was the old DMV.

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

MS. BREWSTER: And we agree.

MS. SANDBERG: Any other questions?

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

MR. PALACIOS: Much appreciated, Board Member Walker.

Any questions for Ms. Sandberg?

(No response.)

MR. PALACIOS: Thank you very much for your
presentation.

MS. SANDBERG: Thank you.

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

MR. GRAHAM: Motion to adjourn.

MR. INGRAM: Member Graham had a motion to adjourn.

MR. WALKER: Second.

MR. PALACIOS: I have a motion to adjourn by Board Member Graham, second by Board Member Walker. All in favor signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: No dissenters on this one.

Meeting adjourned.

(Whereupon, at 1:26 p.m., the meeting was adjourned.)
CERTIFICATE

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)

On the Record Reporting
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