TEXAS DEPARTMENT OF MOTOR VEHICLES

CONSUMER PROTECTION ADVISORY COMMITTEE

MEETING

OPEN MEETING VIA TELEPHONE CONFERENCE CALL
PURSUANT TO GOVERNOR'S MARCH 16, 2020
TEMPORARY SUSPENSION OF CERTAIN OPEN MEETING PROVISIONS

Thursday,
June 25, 2020
9:01 a.m.

COMMITTEE MEMBERS:

Laird Doran, Presiding Officer
Dorothy Brooks
Richard Cavender
Melissa Colvin (absent)
Tiffen Eshpeter (absent)
James French
Ruben Gonzalez
Cheryl Johnson
Traci McCullah
Ray Olah
Jeanette Rash
Michael Rigby
Carroll (William) Smith
Juan Solis
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MR. DORAN: Good morning. My name is Laird Doran and I am pleased to open this meeting of the Consumer Protection Advisory Committee. For ease of reference, I will refer to this Advisory Committee as CPAC, which is the acronym for this Advisory Committee.

It is now 9:01 a.m. and I am calling the CPAC meeting for June 25, 2020 to order. I want to note for the record that the public notice of this meeting, containing all items on the agenda, was filed with the Office of Secretary of State on June 17, 2020.

This meeting is being held by telephone conference call in accordance with Texas Government Code Chapter 551, as temporarily modified under Governor Greg Abbott’s authority to suspend the statute due to COVID-19. Governor Abbott suspended various provisions of the Texas Open Meetings Act that require government officials and members of the public to be physically present at specified meeting locations.

Under that suspension, the public will not be able to physically attend this meeting in person. Instead, the public may attend this meeting by calling the toll-free number, which is posted in the agenda, which was filed with the Office of the Secretary of State on June 17, 2020. All Advisory Committee members, including
myself, will be participating today remotely via Webex.

At this time, please mute your phone for the entire duration of this meeting. I am asking our Webex meeting host to make sure all participants’ phones are muted, except for Advisory Committee members and those who are presenting. Callers will be removed for any disruption, including background noise.

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

Department staff, committee members, and any commenters should identify themselves clearly before speaking. Speak clearly. Remember that there may be a slight delay, due to the telephone conference call meeting.

So, please wait a little longer than usual before responding to participants. Please do not speak over others. And speakers should ask the presiding officer to proceed and be sure to get recognized prior to speaking.

Because the number of dial-in participants is limited, if you wish to address the Advisory Committee or
speak on an agenda item during today’s meeting, please send an email to gco_general@txdmv.gov. That is gco_general@txdmv.gov.

Please identify in your email the specific item you are interested in commenting on, your name and address and whether you are representing anyone or speaking for yourself. 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.

In accordance with Department administrative rule, comments to the Advisory Committee will be limited to three minutes. Then the call will be muted. Comments should be pertinent to the issue stated in your email. When addressing the Advisory Committee, please state your name and affiliation for the record.

Before we begin today, I would like to remind all presenters and those in attendance of the rules of conduct at the Texas Department of Motor Vehicles public meeting. In the Department’s rules under 43 Texas Administrative Code Section 206.22, the presiding officer is given authority to supervise the conduct of the meeting.

This includes the authority to determine when a speaker is being disruptive of the meeting or is otherwise violating the timing and presentation rules I just
discussed. Disruptive speakers will be muted, given a warning about disruptive behavior, then removed from the meeting for any continued disruption.

Advisory Committee members, please let us know immediately if you are no longer able to participate for any reason. If your phone call drops and you are disconnected, Texas DMV staff will interrupt the meeting to let us know and get you back on the line before we proceed with the agenda.

And now, I would like to move on to Agenda Item 1A: roll call and establishment of a quorum. I would like to have a roll call of the Advisory Committee members.

Let me know if I pronounce your name correctly. Or, I am sorry, please let me know if I pronounce your name incorrectly. When I call your name, please indicate that you are present by stating here, or present. Member Brooks.

MS. BROOKS: Here.

MR. DORAN: Member Cavender.

MR. CAVENDER: Here.

MR. DORAN: Member Colvin.

(No response.)

MR. DORAN: Member Colvin.

(No response.)
MR. DORAN: Member Eshpeter.
(No response.)

MR. DORAN: Member French.

MR. FRENCH: Present.

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Present.

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Present.

MR. DORAN: Member Cheryl Johnson.
(No response.)

MR. DORAN: Member Cheryl Johnson.
(No response.)

MR. DORAN: Member McCullah.
(No response.)

MR. DORAN: Member McCullah.

MR. DORAN: Member Olah.

MR. OLAH: Present.

MR. DORAN: Member Rash.
(No response.)

MR. DORAN: Member Rash.
(No response.)

MR. DORAN: Member Rigby.

MR. RIGBY: Here.

MR. DORAN: Member Smith.

MR. SMITH: Present.
MR. DORAN: Member Solis.
(No response.)
MR. DORAN: Member Solis.
(No response.)
MR. DORAN: Okay. For the record, I am Laird Doran and I am present as well. We have eight present, so we do have a quorum. So, we can proceed.

Members, we are going to take up Agenda Item 2, Discussion, Briefing, and Action Items. Now, moving on to Agenda Item 2A, Refunds by Motor Vehicle Dealers and Motor Carriers Transporting Household Goods. I would like to turn it over to the Office of General Counsel, Associate General Counsel David Richards for a few opening remarks.

MR. RICHARDS: Thank you, Officer Doran. David Richards, Associate General Counsel for the DMV, for the record. Members, good morning. I hope each of you and your families are continuing to do well and staying safe.

I wanted to make a few remarks before we got into Agenda Item 2A. The Agenda Item, of course -- refunds made by motor vehicle dealers and motor carriers transporting household goods. I want to discuss with you why the Sunset Advisory Commission recommended agenda items back before you for your consideration and recommendations.

You will recall that the Sunset Advisory
Commission’s refund recommendation led to legislative amendments to both the Occupations Code and the Transportation Code. Also, as you are aware, the Board of the Texas Department of Motor Vehicles appointed each of you to serve on the CPAC.

In appointing each of you to the CPAC, the Board is seeking the needed expertise from you as stakeholders and other interested parties. No Board members are serving on the CPAC, because to do so might undermine the independent external expertise and recommendations that the Advisory Committee is charged with providing to the full Board.

On June 11, 2020, the Board received a presentation from your presiding officer, Laird Doran, setting forth CPAC’s recommendation on the refund issue. During the Board’s discussion of this Agenda Item, several Board members expressed a desire that the CPAC recommendations be further clarified, and be presented in a more user-friendly, everyday common language.

To that end, the Enforcement staff who -- Director Corrie Thompson and Associate Director Brian Ge. They have addressed the Board’s concerns and have revised the refund recommendation document for the purposes of our discussion this morning. As we discussed in our previous meeting, ultimately the CPAC recommendations will assist
the Board in the formulation of administrative rules which set forth parameters for applying this new refund sanction.

Thank you, Members, for your time and indulgence. I will now turn the meeting back over to the presiding officer, Laird Doran.

MR. DORAN: Thank you, David. Members, the discussion today will be led by the Director of the Enforcement Division, Corrie Thompson. And Brian Ge, managing attorney for the Enforcement Division. I will now turn the meeting over to Mr. Ge.

MR. GE: Thank you, Officer Doran. Hi, everyone. My name is Brian Ge. I am the managing attorney for the Enforcement Division. We had the pleasure of discussing these items about a month ago.

And as David Richards mentioned earlier, the Board had a desire for us to clarify some of our recommendations. And so, I went ahead and prepared materials for you. It should start showing up on page 5.

And so, for each question that we discussed back in May, I have revisited it. I have included a printed block of a proposed recommendation. And underneath almost every item, I have included a small talking point, which explains the Department’s rationale for that recommendation.
If no one has any questions, I am going to start with the one on, how should a refund be defined.

MR. DORAN: Brian -- Laird Doran, for the record. Can you repeat again what page of the materials the explanations are contained on?

MR. GE: Yes, Officer Doran. Each -- starting from page 5, you will see something titled Refund Authority. And then, it is numbered one through four, I believe, with subsections.

And underneath where it says, “proposed recommendation,” you will see an indented paragraph that says “talking points.” And that is where it contains the Department’s rationale.

MR. DORAN: Okay. And this is on -- Sorry. Laird Doran, again. And you said, this is on page 5. Okay.

MR. GE: Yes. It starts on page 5 in the materials that Micah sent yesterday.

MR. DORAN: Okay. And I am looking at it right now. And I am only seeing the questions. I am not seeing any explanations. So, maybe I am -- well, I believe I am looking at an old version. I apologize. Sorry. Please proceed.

MR. GE: No worries.

MR. SMITH: Officer Doran.
MR. DORAN: Yes.

MR. SMITH: Question. Permission to speak.

MR. DORAN: Yes. Please. Mr. Smith, you are recognized.

MR. SMITH: And I have a question for Mr. Ge. And I apologize. I know that I am going to have several questions and you guys have already been through a lot of discussion on this. But not having been there, I probably will ask questions.

But Mr. Ge, in Section 2301.807, which granted the authority that we are talking about today, it begins and says, “if after a proceeding.”

Can you give me kind of an understanding of what a proceeding is that would obviously lead to these refunds we are talking about? What is the proceeding? What is the due process?

MR. GE: Absolutely, Member Smith. So, a proceeding is an enforcement proceeding. So, typically, a complaint gets submitted to the Department. Our investigators go out and investigate the complaint. They will make note of any violations.

Those violations then get sent over to one of the Enforcement attorneys, who will perform their own review to see what the evidence supports in a charge. And then, we will send those charges over to the dealer or
motor carrier, explaining either the violations, and this is the proposed penalty or sanction.

At which point, the Respondent dealer or the motor carrier can go back to the attorney and ask for a hearing before the State Office of Administrative Hearings, or they can informally settle the case with the attorney without a hearing. If it goes to hearing, an administrative law judge will hear the case and issue a proposal for decision.

That will come back to the Department, and it will go before the full Board, the TxDMV. At which point, they will either recommend adoption of it or modify it, as per their authority.

If it is just settled, we will enter into an agreed final order with the Respondent. At which case, it will lay out exactly what they did wrong and steps going forward to remediate the problem.

Does that answer your question?

MR. SMITH: Yes, it does. Thank you, Mr. Ge.

MR. GE: Absolutely. If there are no other questions, I will start with number one. How should a refund be defined?

(No response.)

MR. GE: Hearing none. All right. So, the recommendation that the TxDMV is proposing for how a
refund should be defined as, a refund should be defined as the return of any percentage of funds or other consideration that a consumer paid or contracted to pay to a licensee or registrant, whether those funds are documented as a separate line item, or included in the overall amount paid by the consumer, including overpayments, fees paid for services not rendered and payments made for products not delivered.

A refund is limited to what the consumer paid or contracted to pay the dealer, which would be the licensee for household goods and wares, which would be the registrant. If the consumer has to pay a third party because of harm caused by the dealer or household goods mover, that would not be included in this definition of refund. That would be a separate legal concept called restitution.

And so, the Department’s reasoning behind that recommendation is that when we order a refund, we would only be ordering a dealer or a mover to return money and other items of value that was given to the dealer or the household goods mover. We wouldn’t be ordering a dealer or mover to give back more money than consumer paid to the dealer or mover.

And the Department wouldn’t order a dealer or mover to give money to a consumer for something that the
consumer hasn’t paid the dealer or the mover for. I am here to entertain any questions regarding that.

MR. SMITH: Officer Doran, Member Smith requesting permission to speak.

MR. DORAN: Yes. Member Smith. Please proceed.

MR. SMITH: Again, several questions. First of all, one of the comments -- or the end of the part of the definition that kind of felt weak is when you said whether or not a charge or a fee was itemized or not. If it is not itemized, I would question how you would ascertain what that amount was.

But that being said, a couple of things, and I am sure this group knows this, but from a dealers’ perspective, you know, you guys carry a very large stick and -- that stick being the ability to issue a civil penalty of $10,000 and that is for a number of violations. I believe there are 14 of them.

You also have the ability to go and they revoke or suspend the license, place on probation. So, you guys have a real strong stick that would -- I believe would influence -- have a great influence, certainly on me. A great influence to make you do, quote, the right thing.

In defining the refund -- and I am reading through all of these talking points, and the particular
items that you discussed. And it seems to me that most
all of those are things that you might say after a finding
of fact, and not things to be included in the definitions.

I can give you examples. And I will give you
one, if you might give me that privilege to talk about it.

Usually where you talk about the [inaudible 19:32].

From a dealer’s perspective, it is not that
simple, because there may be times when a customer might
refuse to come back in to get something. There might be a
time when a customer had a different understanding from
what the We Owe says.

Or in the extreme case of a guy that buys a
pickup truck, and you know, and in the deal, we had agreed
to put a service body on it. And then later on, he
decides he really doesn’t want the service body.

He would rather have the money back. Well, if
it is a financed deal, now that money really was advanced
by the finance company. And the money should go back --
if there is a refund, the money should go back there. Or
what if the dealer has already bought the body?

So, things are not quite as black and white as
we always wish they were. And I believe that the DMV
would be limiting itself extremely by putting [inaudible
20:22] particular cases as part of the definition.

I think that the definition should be really
simple. And I would propose that that is what we do rather than having it so defined that you limit yourself. 

You know, a refund is pretty simple. If you look it up in the dictionary, it is the return or repayment of money, period. And I don’t know why we don’t define it as such.

Because then, you are going to have an investigation and the proceeding that you just [inaudible 20:55]. And I believe that you would find yourself not so tied down by a particular [inaudible 21:06] that we might have, but by looking at the overall path [phonetic 21:07]. So, that having been said, if it comes to a point to making recommendations or a motion for a definition, I would like to do that.

M.R. GE: Officer Doran, this is Brian Ge. May I be recognized?


M.R. GE: Mr. Smith, so originally, we had thought of a rather broad definition of refund. And after the Board heard that recommendation, along with the other recommendations, they really wanted additional clarity. They didn’t want situations where a dealer could be held to a very open-ended definition. And so, we have narrowed it down to the situations where we would think we would order a refund.
And to address your other point, where there is a lot of -- like with your example with the We Owe. So, we are not going to just order a refund without looking into it. So, first you have the investigator going out. He is going to -- he or she will be going out and looking through supporting documentation, making notes of what the cost of things were of what part of that transaction -- what the cost of it was. And then, that is going to go to the attorney.

And the attorney is going to examine all of the facts. He is going to talk to the dealer. He is going to talk to the consumer, and they will figure out something equitable.

But we are not just going to go in black and white and say, hey. This says here that you owe this part, and you didn’t install it, so we are going to order a refund. Nothing is ever that simple.

And we would hope that we have enough trust with the dealer community where dealers believe that we are not arbitrary like that. Does that address your question, Mr. Smith?

MR. SMITH: Well, I don’t know that I was -- mine was just impression. I guess if I had fashioned the question, it might be why -- I mean, these examples might be somewhat of a guideline if the facts -- I mean, every
one of them call for a fact-finding investigation, as you said, you know, but a lot of them have what ifs that would be in them that I really want to [indiscernible 23:58].

So if that -- are you suggesting that these would be incorporated as a part of the definition, or is this just things that -- examples of what you think you might do?

MR. GE: These are just examples of things that we might do, like the definition for refund. It is just number one. Number two, three, four, and all the subpart of four, those are separate.

So, we are defining refund in that one, like two and a half paragraphs under number one, and that is it. That is the definition of refund that we’re proposing.

Everything else is just tweaking it a little bit. And the scenarios that we had in four are just things to get people talking about common scenarios that may come up.

MR. SMITH: Okay. Then one question on your proposed recommendation. When you say, is a separate line item, or included in an overall amount. I am seeing that as what, I am going to sell you a car for $25,000. And there is something in there that we disagree about.

How would it break out? Then it seems to me that that’s, again, something that might be a part of an
overall fact-finding but not a part of a definition.

MR. GE: This is Brian Ge. I mean, what you say makes sense. It really does. But the Board asked for a certain degree of clarity, and that is what we came up with. If you have suggestions to modify the language, we are certainly open to that.

MS. THOMPSON: Officer Doran? Corrie Thompson.

If I may speak.

MR. DORAN: Yes, Ms. Thompson. Please proceed.

MS. THOMPSON: Member Smith, as Mr. Ge mentioned, the information contained herein the information materials for the CPAC was to help inform the members who do not have dealer backgrounds about -- or household good mover backgrounds about the types of scenarios that we might possibly encounter during the pendency of an enforcement action.

And so, not all of this language is going into the rule. And when we do come up with that proposed rule language that we hope to bring before the Board at the August meeting, that if that gets approved for proposal, to be published in the Texas Register, that those rules will be just like any other rules.

They will be open for public comment. People will be able to have that period of time to speak on why they think things should or should not be in the rule, or
if the Department is missing anything at that time period. And so, we can talk about those things here, too. But as Brian is saying, the changes that were made, since the last time we met to discuss reasons with the group, was to help provide greater clarity that the Board sought during the last meeting.

    MR. SOLIS: Officer Doran.

    MR. SMITH: I apologize, because I know that you guys talked about this a lot. But another question that I have asked. You know, when we talk about this refund, why is it limited to a dealer or household goods, period?

    If the statute says person violated, shouldn’t that be any licensee, not just the dealer? I mean, why are we being -- we. I am a dealer. Why are we being singled out and pointed to?

    MS. THOMPSON: Officer Doran? This is Corrie Thompson. If I may speak?

    MR. DORAN: Yes. Ms. Thompson, please proceed.

    MS. THOMPSON: Member Smith, this is simply put together based on the authority that Sunset granted us. And so, the provisions that were added were in 2301, and in, I believe, 643, when it speaks to household goods movers. And so, those are the only entities that we are allowed to attach the refund sanction authority to. And
that is based on where it was placed in statute.

MR. SOLIS: Officer Doran, if I may speak.

MR. DORAN: Yes. Can you please identify yourself, though, prior to speaking?

MR. SOLIS: Yes. This is Johnny Solis.

MR. DORAN: I am sorry. Could you repeat that?

MR. SOLIS: Solis.


MR. SOLIS: Thank you. I think that if we look at this -- I am a dealer as well. And I think the clarity of the item and the refund is very good, because this way, we know the specifics of it.

However, back into what Member Smith was referring to as part of a whole, as a dealer, if we use a number, $20,000 and it includes the tires, does that -- how would we determine the price that was actually to be refunded, if we are trying to get full clarity? So, it is kind of like, in my view, two different things here.

One, we are trying to be specific, yet the other one puts it into as a whole.

MR. GE: Officer Doran. This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Brian, please proceed.

MR. GE: Member Solis, and Member Smith. So,
these are fact questions that will be developed over the course of the investigation, and the negotiations between the DMV attorney and the dealer.

The dealer, we are not just going to come out and take a number. The dealer is going to have opportunity to provide what -- like, if we identify one item, say a tire.

I mean, the dealer is going to be able to present their evidence on what that tire is worth, and the consumer will, as well. And this is all assuming that the dealer and the consumer doesn’t just work it out beforehand. This is only if it gets to this stage.

And even if it gets to this stage, everyone is going to have a say in it. We are not just going to be mandating certain amounts for things. This isn’t that type of sanction.

MR. FRENCH: Sir. This is James French. May I be recognized?

MR. DORAN: Member French. You are recognized.

MR. FRENCH: Thank you. From a household goods perspective, there are certain areas included in our tariff and in the rules of the Texas DMV, such as claims for loss and damage -- very clearly defined as to what has to happen, and when it has to happen, including a mediation between the carrier and the consumer. Is that
going to be included, or should it be excluded from any refund situation? And furthermore, [inaudible 31:27] especially, when, for a mover, we are required to quote prices, either guaranteed not to exceed or at a guaranteed price.

And when it is a guaranteed price or a not to exceed, it is treated more as a lump sum kind of activity. You know, then you could have a huge discrepancy between what the examiner feels or what the attorneys of Texas DMV feel.

I don’t know. Without some limits to where this is going, I would certainly have a hard time saying yes, I think we ought to do this. Thank you, sir.

MR. GE: This is Brian Ge. Officer Doran, may I be recognized?

MR. DORAN: Please proceed, Brian. Thank you.

MR. GE: So, Member French, as far as household good movers is concerned, the Department is really only concerned with one situation. And that is when a mover takes possession of a consumer’s goods, and then refuses to unload it unless the consumer pays more than what was in the tariff, or what they agreed to.

So, it is really a fairly limited situation, when it comes to household good movers. We are not going to start reexamining the deal between the mover and the
consumer. We are not trying to help the consumer renegotiate anything for both either the movers or our dealers. We are not trying to renegotiate anything for anyone.

It is just if there is a violation of a rule or statute, part of our sanction. Instead of saying hey, you are going to owe us this civil penalty and we may or may not revoke your registration or license, we are going to say, hey, maybe you want to give a refund to this consumer for this item. And that is in lieu of other penalties. So, that is typically how we imagine this refund authority will be used. I hope that addresses your concern.

MR. FRENCH: This is Member French. May I be addressed?

MR. DORAN: Yes. Member French, please proceed.

MR. FRENCH: I understand what you are saying. I hope I understand what you are saying about the limited scope, as far as household good carriers are concerned. Any rule or definition needs to be written that way. It is certainly not that way now.

In the particular situation that you said you were really concerned about, I think what you will find is that when a mover loads some stuff, changes the price
after it is loaded, and then refuses to deliver, it’s not coming from the registered or licensed carrier or mover. It is coming from what I call rogue movers that, in most cases, aren’t even based in Texas. They are on the internet.

And you know, when you see a deal that looks too good to be true, it usually is. So, I don’t know how you are going to enforce anything on these rogues as they come up. Thank you.

MR. SMITH: Member Smith. I request permission to speak.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: I have a question, and possibly a response. First of all, what is the scope of the number of complaints the Department handles with regard to the -- what that would lead to a dealer refund, or to a motor carrier refund. I mean, is this -- how common is this?

MS. THOMPSON: Household good mover complaints? Corrie Thompson. I am sorry. Officer Doran, if I may be recognized?

MR. DORAN: Yes. Ms. Thompson. You are recognized.

MS. THOMPSON: My apologies. So, with regard to household good mover cases, if -- Luis Perez, our assistant chief investigator is on the line. He can jump
in and correct me at any time.

But, to the best of my knowledge, we receive approximately 300 household good mover specific complaints in a fiscal year, many of which could potentially be subject to this new refund sanction authority. It would probably be far fewer than that, as a lot of those may pertain to advertising, or things of that nature.

With regard to motor vehicle cases, we handle about 7,000 cases per year. The most -- the majority of those violations being failure to timely transfer title, which comes along with some of the things that Brian is going to talk to, in the examples, when we get into that discussion -- that could potentially subject a dealer to the refund section.

MR. SMITH: Okay. Of the 300 or so motor carrier, are those all licensed carrier complaints?

MR. PEREZ: This is Luis Perez. Can I be recognized?

MR. DORAN: Well, there was a question posed by Member Smith, and I believe it was directed to either Mr. Ge or Ms. Thompson. So, just to keep the record clear, I would ask staff if they could address that question. And then, we could move on immediately to you, Member Solis.

MS. THOMPSON: It was Luis Perez that spoke. He is Department staff.
MR. DORAN: Okay.

MS. THOMPSON: This is Corrie Thompson.

MR. DORAN: Okay. Great. All right. Sorry.

MS. THOMPSON: No problem.

MR. DORAN: Ms. Thompson. Mr. Perez, you can proceed as well.

MR. PEREZ: Yes. Thank you. Luis Perez, assistant investigator with the -- Assistant Chief Investigator with the Enforcement Division. The question, I am sorry. Can you repeat the question?

MR. SMITH: It was made -- this is Member Smith. The comment was made that there were approximately 300 complaints with regard to motor vehicle carriers. And my question was, are those 300 complaints all regarding licensed carriers?

MR. PEREZ: Luis Perez again. No, sir. They are not all in regards to licensed carriers. We do receive complaints in regards to some unlicensed moving companies. So, it is a good mix.

MR. SMITH: Okay. So, you half and half or something like that. Is that --

MR. PEREZ: Yes. I would say that the majority of the complaints are coming in regards from consumers, I would say three-fourths are coming in on registered moving companies, and then, the other quarter is coming in on
unregistered moving companies.

MR. SMITH: So, what do you do about an unregistered? When, I think, the Code, the 2301.807 says that you -- if you determine a person. Do you have any jurisdiction over those non-licensed carriers to order a refund?

MS. THOMPSON: Corrie Thompson. If I may, Presiding Officer Doran?

MR. DORAN: Yes. Ms. Thompson, you are recognized.

MS. THOMPSON: The motor carriers are in a different statute. So, we are looking at Transportation Code 643 under a different authority when we are talking about the household good movers.

MR. SMITH: Thank you. Again, Member Smith. One last question. When the Board -- I don’t have, and maybe, if I do, I don’t know where it is, the original definition that was presented to the Board. So, I don’t know that whole story.

But in that definition, did the DMV present to the Board -- the staff present to the Board a definition that the Board didn’t like? And what was that definition? And exactly what was their direction?

MS. RASH: This is Member Rash. I would like to be recognized.
MR. DORAN: Yes. Member Rash, I am not sure if that question by Member Smith though was directed to staff, who was also participating at the Board meeting that might want to respond with perhaps maybe some elaboration as to what transpired at the Board presentation.

MS. THOMPSON: Corrie Thompson, Officer Doran.


MS. THOMPSON: So, for everybody’s education here, for those who were not able to attend the last Board meeting that was held, I gave the primer on why we were present before the Board. Being that Sunset through our bill, last session, gave us additional sanction authority to add refunds as a sanction against household good movers, and against motor vehicle dealers.

And this is situations as laid out in statute. And that Officer Doran read off all of the points of agreement that the group discussed during the last meeting. I do not have the specific definition in front of me, but I heard Mr. Ge chime in a second ago, and he might have that specific language.

MR. GE: Hi. This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Mr. Ge, please proceed.
MR. GE: So, the original definition for refund that was proffered to the Board was, a refund should be defined as any monies paid or contracted to be paid to a dealer, including overpayments, fees paid for services not rendered, and any other payments made for products not delivered.

And so, since then, we have added some additional language stating the situations where TxDMV would not order a refund. And I believe that addressed the clarity issues that the Board had with regard to how a refund should be defined.

MR. SMITH: Member Smith again request --

MR. DORAN: Sure. Member Smith, I just wanted to add, also, before we get to your question, since I was the one who presented.

My recollection was, we presented the definition that this committee had unanimously agreed to, as well as a number of different scenarios that were what we would think of as suggestive examples for where the Department’s authority could be triggered, but that these were merely examples as to where the Department, you know, might act.

And Member Gillman and Member Graham chimed in and had you know, specific questions, not that dissimilar from some of the things you have asked today, Member
Smith, in terms of, well, if you altered the facts of the situation and considered you know, X, Y, or Z, you know, that would be an inappropriate situation to grant a refund in. And without getting bogged down in sort of addressing each and every hypothetical factual twist that could come out of these examples, the decision was made during the meeting, the Board meeting, that CPAC would take the concerns of the Board back, and would get with staff and that staff would take another look at that issue.

So, that is my recollection of what went on at the Board meeting. So, with that, Member Smith, please proceed with your question.

MR. SMITH: And I think these examples -- Member Smith. I think these examples are certainly helpful, you know, given that the facts were exactly as the example professes them to be. But I -- so, I am now understanding they are not to be made a part of the definition. They are just for discussion purposes. Is that correct?

MR. DORAN: Member Smith, I will defer to staff. But that was my understanding, and that is how I represented it to the Board.

MR. GE: This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Mr. Ge, please proceed.
MR. GE: Member Smith, you are absolutely correct. These examples, starting with number four, they are just examples. It is for us to talk through.

They are illustrative of how we might use our refund authority. It is not going to be incorporated into a rule. In fact, even the recommendations, the language of the recommendations, even if they seem kind of legal-y for lack of a better term, that will not be the wording of the rule, either.

These are just recommendations that we are making to the Board, and then rule language is separate. And then, there will be opportunity for the public to comment on the actual rule language. So, these are just recommendations for the Board. And how it is worded is not going to be how the rule is worded.

(Simultaneous discussion.)

MR. DORAN: Okay. I think there were two coming at me at the same time, there. But Member Smith, you were following up on your line of questioning. And then, we will move on to the other members.

MR. SMITH: Sure.

MR. DORAN: Please proceed.

MR. SMITH: In the interest of then moving forward, I would like to make a motion. And that motion would be that we define refund as quote, a refund is
defined as the return or repayment of money, period.  

Under Section 2301.807, a refund is limited to the amount  
paid by the consumer, and without inclusion of any  
additional consideration of damages or harm, period.  

And my argument for that is, it takes  
essentially a dictionary definition of refund, but then  
points out exactly what the Sunset Commission staff said,  
that it should be limited to the amount paid. And then,  
all these examples are great to be able to answer  
questions.  

But I believe that we keep it simple. It gives  
the DMV, the Department, the ability to do what they do  
best with investigation and fact-finding, and applying the  
appropriate action and direction and refund if needed.  
So, that is a motion. And there you go.  

MR. DORAN: Okay. Member Smith. Thank you for  
the motion. As the Presiding Officer, I need to ensure  
that we have exhausted all discussion before we take up  
the motion. And with at least two other members that  
wanted to speak on this topic, we can’t move forward with  
the motion at this time.  

So, we will table it for the time being. But  
we will come back to this motion.  

And with that, I would recognize, I believe  
there were two members that had wanted to be recognized to
speak on this topic. I think, Member Cavender was one. And I believe it may have been Member Johnson.

MR. CAVENDER: Thank you, Officer Doran. This is Member Cavender.

MR. DORAN: Okay. Member Cavender, please proceed.

MR. CAVENDER: Yes. I am in concurrence with Member Smith on the motion. But at this time, I do want to just respectfully draw our attention back to a talking point that I think is very important, in the how should refund be defined at number 1 on refund authorities.

The talking point says, the Department should not order a dealer or household goods mover to give more money back to the consumer than the consumer paid to the dealer. The Department should not order a dealer or household goods mover to give money to a consumer for something the consumer has not paid the dealer or household goods mover for.

Basically, as Member Smith mentions, no additional damages should be considered, nor additional harm. It should be limited to the amount paid and a very simple Webster’s Dictionary definition of refund, I believe, is the way to make this just as clear as possible.

MR. GE: This is Brian Ge. May I be recognized
for a moment.

MR. DORAN: Yes. Please, Mr. Ge. Proceed.

MR. GE: So, Member Smith and Member Cavender, I am fine with your definition. I would suggest one modification to where Member Smith said money. I would replace money with consideration.

Because it is not just money that could be paid to a dealer. I mean, if you think about trade ins. Technically, you are giving the car as consideration. It might be treated as a sum of money, but you are not actually paying money to the dealer. But you are paying something to the dealer.

So, I would make that suggestion. But otherwise, I mean, the Committee is free to define refund however they want. Thank you.

MR. RIGBY: Michael Rigby. May I be recognized?

MR. DORAN: Member Rigby. You are recognized.

MR. RIGBY: Thank you. So, I had a question.

I guess I am getting more confused as we discuss this. But my first question would be, Brian, you said the proposed recommendation is not actually proposed language for the rule. I am wondering if there is some proposed language.

The second question I have is, you make a
distinction between refund and restitution, which I think I understand. You gave the example of the warranty, where the dealer -- the customer paid for the warranty, but the dealer didn’t file the paperwork. Customer, you know, has problems with the car. So, he pays $200 but has $2,000 worth of repairs.

That is called restitution for the repairs and refund for the amount paid. But my question is, what is the remedy for the consumer for the amount of the repairs? How do they get restitution? Is that through some civil suit against the dealer, or how do they get compensated for that? Thank you.

MR. GE: This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Mr. Ge, you are recognized.

MR. GE: So, Member Rigby, as you alluded to, there are limits to the Department’s authority. So, one order to refund, or to sanction licensees in general.

So, in the example that you gave, if the consumer suffered more damages than the Department has the authority to give relief for, yes. They would have to pursue other civil remedies, including suing in small claims court, or even District Court.

MR. RIGBY: Thank you. I have a follow-up question. This is Michael Rigby.
MR. DORAN: Member Rigby, you are recognized.

MR. RIGBY: So, if you could help me understand. Like I said, I was getting confused about what the concern of the Board is, about our original definition.

It sounded like our original definition was too broad, and the Board was asking us to narrow it, or clarify it. But I am not quite sure at this point, given the conversation, what we are being asked to do. Thank you.

MR. GE: This is Brian Ge, again. May I be recognized?

MR. DORAN: Yes. Mr. Ge, please proceed.

MR. GE: So, the Board just really wanted us to clarify when a refund would not be ordered. So, that would be situations of restitution, or not -- like, I think, originally in our meetings, we discussed if the consumer paid $30,000 to a dealer. And you know, like that warranty example came up, and he suffered $25,000 worth of harm or damages or repair costs.

Originally, it was contemplated hey, maybe we could refund $25,000 of that $30,000. Now, the clarification is, if the cost of that warranty was $200, and you get $2,000 worth of repairs, you are going to be refunded that $200, assuming the dealer didn’t actually
forward that $200 off to the service contract company.

So, we are just narrowing down what we are actually talking about. We are not -- we are specifically excluding any kind of restitution or other considerations of harm or anything more than what the consumer gave to the dealer or the mover.

MR. RIGBY: Michael Rigby. Could I follow up?

MR. DORAN: Yes. Member Rigby. You are recognized.

MR. RIGBY: And can you tell me what in the original definition left that uncertain? What was it about the original definition that caused that concern that somehow the definition might include restitution and not be limited to refunds? Thank you.

MR. GE: This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Mr. Ge, please proceed.

MR. GE: So, it wasn’t the definition that gave the Board members pause. It was reading through the whole document and then, commenting on it, kind of like this Committee is doing right now.

We are asking about number 1, but we are talking about everything in numbers 2, 3, and 4 as well. So, it is obviously, 2, 3 and 4 have some impact or some -- it will affect your thinking on number 1.
But -- so that was what kind of triggered the wanting additional clarification. It is looking at everything else, and then thinking back to the first question. So, we have tried to narrow the first item down, of refund. And so, to address the Board’s concerns.

And then, for purposes of any rulemaking, number 4 can be stricken altogether. You don’t have to think about that. That is not going to be included in any way, shape, or form, in the final rule. That is just for us to talk through, to give everyone who isn’t a dealer or a mover some example of when the refund situation would come up.

But I mean, it is a nullity. You can vote on it, but it is not going to actually result in anything. And I am just being perfectly blunt.

MS. THOMPSON: Corrie Thompson. Officer Doran, may I be recognized?

MR. DORAN: Yes. Ms. Thompson, please proceed.

MS. THOMPSON: I do think that it is important about what Brian really said. Because we had no problem initially breezing through the definition with the Board. It was where the hang-up came was when we got the examples. And so, I don’t want to say, our bad, for including them in the discussion with the Board. Because you know, we want to come forward and be transparent about
the things that were discussed, that the members were in agreement on.

And everyone was in agreement on the examples that we discussed, but for example, Member Gillman brought up something that we have now added, that if the consumer has any hand in why something didn’t pass on as quickly as it should, they were a part of the problem. We are thinking about including those things in the definition now, whereas we would not have before.

Because that is something that just happens during the investigative process. That is why we have investigators. That is why we have attorneys.

And so, I think it will be more helpful for the group to talk through the definition after we go through and look at the examples. As Brian said, looking at those examples, and what they really mean will help inform how that plays back into the definition.

Because when he said, we shouldn’t say money, we should say consideration, that is going to come out when we talk about the examples for money the consumer has to pay to obtain a temp tag. Money that the consumer has to pay to continue paying off the vehicle that they already traded in.

That is not necessarily what you traditionally think of money that you pay to the dealer when you
purchase your new vehicle. But it is consideration that
was part of that transaction for the sale of that vehicle.

And so, we are trying to figure out how to wiggle all of
those different scenarios into the definition language.

And we are doing that, because it is about
consumer protection. And it is about trying to make the
consumer whole in this transaction, based on the
Transportation Code 501.0234 duty that a dealer has upon
the sale of vehicles to the consumer public.

And so, I think to get us moving, and to get
some momentum on what the definition really should be, and
if we should make changes, it would benefit us to go
through the examples, if nobody has a problem with that.

MR. SMITH: Member Smith. Officer Doran,

permission to speak?

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: Thanks to Corrie. I will amend my
motion at such time as it is appropriate for you to take
it up to use consideration rather than money. So,
whenever you think it appropriate, I will parallel Mr.
Ge’s agreement.

MR. DORAN: Thank you, Member Smith. This is
Presiding Officer Doran. It is my recommendation that we
go ahead and take up each of these examples in our
materials.
And then, Member Smith, we will revisit your motion, and the language that you laid out for the Committee. With that, I would like to turn it back over to Mr. Ge and Ms. Thompson to continue with their presentation.

MR. GE: All right. This is Brian Ge. So, if we are getting started with the examples, let’s start with the very first one.

The scenario is, the consumer has to purchase one or more 30-day permits because the dealer did not transfer title before the buyer tag expired. In that scenario, the Department is proposing the following recommendations.

The Department may order a refund where a consumer has to purchase one or more 30-day permits because the dealer failed to transfer title before the buyer tag expired, and where nothing outside of the control of the dealer prevented the transfer, like the consumer’s actions, or a natural disaster. And you might have noticed that the tail end of that language seemed oddly specific.

And the reason for that was, during discussion with the Board, several Board members brought up a very valid point, hey. Sometimes it is not the dealers’ fault that they weren’t able to transfer title on time.
Sometimes the consumer did something or wouldn’t come in to get their tags, or somehow contributed to a delay. From my perspective as an attorney, I would say yes, obviously, that makes sense. And the attorney would have addressed that before ordering a refund.

But we thought it wise to include it in the definition to make it perfectly obvious to everyone that yes, you will get your due process. And we will take into consideration all the factors before ordering a dealer to refund the cost of any 30-day permits.

And then, further to tie it back to the definition of a refund, the thought is that unless a consumer is buying a salvage or a non-repairable vehicle, implicit in the purchase price of that vehicle is the expectation of the consumer that they are getting a vehicle that can be legally operated on the road. That is in typical situations, not right now in COVID, after a temporary tag expires, the consumer can no longer operate their car on the road without getting a 30-day permit.

And so, it is our thinking and belief that the costs of the 30-day permit is within the bounds of how we define refund. If there are any questions, I am happy to field them.

MR. DORAN: This is Presiding Officer Doran. Just to build on what you were saying, Mr. Ge, my
recollection from the Board meeting was one of the specific examples that Member Gillman brought up, which I believe you addressed here today, with your language, is a situation where, let’s say a couple is getting divorced and perhaps the title and registration was being mailed to the buyers’ home.

But because of marital discord, or people no longer living under the same roof -- so through no fault of the dealer, that particular owner individual was unable to get their license plate and their registration. And it was explained during the Board meeting that -- I believe Ms. Thompson explained this, that those would be exactly the types of the facts and factors that the Agency would take into consideration prior to assessing a refund against the dealer.

MS. THOMPSON: Officer Doran, if I may?

MR. DORAN: Yes. Please.

MS. THOMPSON: That is correct. That was what I explained. And yes, that is the same. And that is true with any sanction that the Department initially sets out to impose upon a licensee or registrant under the Department’s authority. Yes.

That is part of the investigative process. We gather facts from both sides and we determine that if the allegation that we initially set out to charge the
licensee with sticks, based on that evidence that is received during the administrative case process.

And if it doesn’t, we remove allegations or we reduce any sanctions if there was some mitigating evidence, but there was still a violation. Yes. That is all part of the administrative process.

MR. DORAN: Thank you.

MR. GE: This is Brian Ge. May I be recognized?

MR. DORAN: Yes. Mr. Ge, please proceed.

MR. GE: It doesn’t seem like we have too many comments or questions regarding this particular example. I believe we are still going with the format of making the motion and adopting it, if no one has any objection. So, if no one has any questions with regard to the 30-day permits, I think a motion would be in order if anyone wants to make one.

MS. THOMPSON: Corrie Thompson.

MR. DORAN: Ms. Thompson, you are recognized.

MR. DORAN: Thank you, Officer Doran. I just wanted to say something really quick, so that the group was clear. I think the process that Brian is recommending does make the most sense.

Because again, we are talking about, do you agree with this situation. Should the Department be
allowed -- and remember, we are thinking about the outward
limits of the Department’s authority. So, the people who
really need this sanction imposed. Should the Department
have the ability to do this in this scenario.

I think it is wise to go through, take member
votes on the scenarios, if everyone is okay with that.
Because again -- and we can go back and look at the
definition and see how our agreement or disagreement with
any of the scenarios posed affects how we decide to define
refund.

MR. DORAN: This is Presiding Officer Doran,
question for Ms. Thompson and Mr. Ge. So, essentially,
what we are doing is based on the fact that we have new
members. And the direction that we have been given by the
Board to take these back and have additional discussion,
we are in essence going to revote on these individual
scenarios through different motions that we would offer
for each one of those scenarios.

Saying that, yes, this is a scenario in which
we believe the DMV should have authority, if the
circumstances justified it, to have the authority to issue
a refund in this type of situation. But again, this is
not going. This is not actual language that is going into
the rule itself.

This is just a recommendation to the Board,
saying the Committee has agreed that in these types of situations, the Department should have -- this would be the type of situation where the Department could be able to exercise their refund authority. Is that correct?

MS. THOMPSON: Officer Doran, Corrie Thompson?

MR. DORAN: Yes. Please proceed.

MS. THOMPSON: Yes. You are correct. And so, the way that this would work at a Board meeting would be, again, reading out the recommendations potentially that CPAC members agreed to. The scenarios. The new definition. But then separately, as a different agenda item, separate and apart from talking about what the group discussed, then we have rule language that we are able to present in connection with that, as the goal.

MR. DORAN: Okay. Presiding Officer Doran again. And so what staff is looking for, from the Committee, is a motion then that asks for, in the event of a customer failing to receive their 30-day permit, as part of the transaction, that the Agency have the authority to order a refund in that circumstance, considering all relevant facts, of course.

MS. THOMPSON: This is Corrie Thompson. Officer Doran, that is correct.

MR. DORAN: Okay. Thank you.

MR. OLAH: Officer Doran, Member Olah asks to
be recognized.

MR. DORAN: Okay. Member Olah, you are recognized.

MR. OLAH: I would like to make a motion along the lines of what you just described.

MR. DORAN: Okay. Happy to entertain a motion. I did note that Member Smith was trying to get in there with a question or a comment as well.

So, if we could, prior to taking up your recommended motion, if we give him an opportunity to be recognized and make his question or comment known to the group. Then we will come right back to your motion, Member Olah.

MR. OLAH: Fair enough.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: Thank you, Officer Doran. I have concern over what we are doing here, because I think that first of all, are all the facts laid out in your description? Probably not.

Any one of us could come up with those twists and turns. I mean, I think it is great to say, if the facts were exactly this and no more, this is what we would do. But I think you have got to be awful careful saying, you know, if you need a 30-day permit.

I think, how many different scenarios can we
possibly come up with. And it is an infinity. Because I know that at 45 years as a dealer, every time I think I have heard it all, I find out that I haven’t. Because we have twists and turns.

So, are these things that you are trying to come up with answers to the Board questions? And I believe that at the end of the day, rather than to memorialize it, that somehow we have to have confidence and trust in the investigators of the Department that when they get to the bottom of it, they are going to make the right decision, not a decision driven by some motion made by CPAC.

I just think it is very problematic as we go down these rabbit trails, that they are followed. They have a motion, that this is what we would do. I hope that, again, the confidence in the DMV would override having to define. Because for every one situation you got, there is a hundred more.

I am just -- I am going to vote against the motion. I mean, I agree with what he just said, and the fact, and what we would do if given this set of facts. But a motion to memorialize that, I believe, is the wrong way to go.

MR. GE: This is Brian Ge. May I be recognized?
MR. DORAN: Yes. Mr. Ge, you are recognized.

MR. GE: Thank you, Mr. Smith for your confidence in the DMV. It is appreciated, actually. In terms of the examples given, I wrote the examples and I meant them exactly as they are worded.

I tried to be as precise as possible. So, exactly as how is laid out in this scenario is only what we are considering. We are not talking about any of the twists and turns. It is just, this is the one hypothetical with no twists. And this is how the Department would be able to respond. And that is the situation for all of these scenarios.

There is no deeper layer. There is no extra meaning. It is just exactly what is on the paper.

MS. THOMPSON: Officer Doran, Corrie Thompson.

MR. DORAN: Yes. Ms. Thompson, you are recognized.

MS. THOMPSON: And again, we are only talking about sanction authority available to the Department. Example: we have the authority to revoke a license in a number of scenarios. Does that revocation sanction get included to every single case that we sent out to a dealer? No, it does not. That is within the Department’s discretion, the attorney’s discretion.

After [inaudible 1:13:49] attached to the case,
as to what is appropriate to start out the initial
charging point of the document, that the dealer gets
noticed on. And even that starting point can morph
throughout the administrative process.

So we -- again, these are examples to talk
about the outward limits of the authority, so that the
Department knows basically how the Advisory Committee
feels about this authority, and how it should be used by
the Department. And so, it is basically just a parameter
for guidance, for us going forward.

Is there going to be mention in the rule
language about 30-day permits paid for when the dealer
doesn’t transfer title. No. That is not appropriate for
rule language.

We would have the longest rules in the world if
we did that for every specific scenario that could
possibly crop up. As you have mentioned, there could be
hundreds of ways that things could happen. And so, that
is why we are limiting it as guidance for the Department.

MR. FRENCH: Officer Doran, this is Jim French.

MR. DORAN: Member French, you are recognized.

MR. FRENCH: I think we are chasing down a
wrong path, in that we could talk about these scenarios
and these examples and, yes, maybe they’d be used as
guidance. But two years from now, this conversation will
be forgotten when an examiner, you know, goes out on a

I think the important thing we need to be
looking at is, what is the proposed rule. And you know,
how -- whatever the rule says, and how it would be
applied.

MR. GE: This is Brian Ge. If I may be
recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: So, to address Member French’s
concern, it wouldn’t be appropriate to introduce any rule
language right now, in front of the Committee. There will
be a time where the Committee and all members of the
public can address or provide comments to any proposed
rule language.

It will also be proposed to the Board at the
Board meeting, at which point the Board can ask us to
publish those rules in the Texas Register, and that is
when the comments would come in. It is not the
Committee’s -- it is not within the Committee’s purview to
be voting on rules, if that makes sense.

MR. DORAN: This is Presiding Officer Doran.
It sounds like what we are taking up today and examining
is going to help inform the Department’s rulemaking, as
they sit down to draft the rules. Is that accurate?
MR. GE: Yes.

MR. DORAN: Okay. Presiding Officer Doran again. I haven’t really chimed in to express my opinion on this. But I will just say this.

As a lawyer that has represented manufacturers, distributors, and dealer’s interests for almost 20 years, there is one thing that all three of those stakeholders can agree on, and that is regulatory certainty. And so, having the ability to advise a client that comes to you, whether they are a dealer, or a distributor, or a manufacturer, to say, I can’t tell you exactly what is going to happen. But what I can tell you is that this is the type of situation in which the motor vehicle -- the DMV has the authority to issue a refund.

That has value, as a practitioner, to be able to provide that advice and counsel to your client, no matter who they are. To help them in their compliance efforts.

And so, you know, my take on what we have discussed today is that these are illustrative or illustrative examples by which practitioners and licensees and the public, frankly, would be able to look to, as examples in which the DMV has the authority or has the discretion, but may not exercise it, based upon the facts of that particular situation, to have within their toolbox
of remedies, which Member Smith mentioned earlier. There is license revocation, suspension, and I think fines, even.

But this would be another tool in that toolbox. But the advantage of this tool is that while the revocation is a stick upon which the licensee gets hit with, this is the one tool in the toolbox that actually helps, hopefully, make the customer whole without them having to go through the process of going to court, and having a full-blown legal trial to seek redress against that dealer.

So, that is just my take on it. So, I am going to, of course, listen very carefully to the motion that is made. But my personal thoughts and opinions on this are that these examples are helpful to the public and to industry stakeholders to know where the guardrails are, and where the Agency’s authority might be triggered, where they could end up issuing a refund in certain circumstances.

MR. SMITH: Member Smith. Officer Doran, request permission to speak.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: I think -- I don’t believe that I know a single manufacturer or dealer that would allow a complaint over a 30-day tag or a safety inspection could
ever rise to the level of being before the DMV. But that
having been said, I think we are talking about things that
may be more way out in left field.

   Early on, when we talked about these, Mr. Ge
said these examples were for discussion. So, I guess I
need maybe a little more explanation, why now we think
that we should have a motion to accept these.

   Again, I think they are so narrow and so fact-
specific and so instance-specific that it forms not a
broad guardrail which the DMV should have. But it so
focuses on a particular issue, that it doesn’t answer the
big question.

   I think again, the big question is how do we
define a refund. And then from there have confidence and
trust in our Department.

   MS. RASH: Officer Doran, this is Member Rash.
   If I might speak.

   MR. DORAN: Member Rash, you are recognized.

   MS. RASH: Having been regulated and been on an
advisory board for 15 years, the guardrails that Officer
Doran is talking about is important. But I agree that you
don’t want to be very specific.

   And you do want to give the Department the
ability to work with the licensee, whichever one that
might be. Because it is -- like Officer Doran said,
having lived this myself, it is much easier to work with the Department and make the consumer whole, and be done with it.

And that is really the goal that benefits everybody involved, all the stakeholders. So, after taking out the third-party issue that we originally discussed at the beginning, and such things as attorneys’ fees, I feel real comfortable with where we are today, with the general rule for refund.

MR. GONZALEZ: Chairman Doran, permission to speak?

MR. DORAN: Yes. Can you identify yourself for the record, and I will recognize you.

MR. GONZALEZ: Yes, sir. I am sorry. Member Gonzalez.

MR. DORAN: Member Gonzalez, you are recognized.

MR. GONZALEZ: Thank you, sir. I have been listening to the conversation. And in my past experience, I would agree that a refund is due where a dealer -- if it is proven the dealer had possession of a title at the time of the sale.

If he fails to transfer title within the 20- to 45-day opportunity to transfer title that is part of the statute, if he fails to do this, then I would agree that a
refund should be authorized for the 30-day permit. However, many dealers in this day and time, once they get a vehicle physically in their lot, they don’t want to lose a sale.

And unfortunately, they go ahead and commit themselves to a retail consumer and create a contract of sale, hoping that they are going to be receiving the title from the lienholder or hopefully, that the auction where they bought the vehicle has been true to them, and there is no complications to the vehicle.

In the two examples that I have cited for the lienholder, many lienholders don’t provide title immediately to the dealer. So, that puts the dealer in a bind. Many auctions may say that they are selling a vehicle that is not salvage, has no brands on it.

Come to find out that the dealer has the vehicle, and subsequently gets a title that has a brand on it. And they were misled, and purchased the vehicle. And they want it to be corrected and they already been committed to the consumer.

So, I would be concerned, or I would be in favor of making sure that if the dealer has possession of the title, and they committed to sell this, and they fail to transfer title in 20 to 45 days. Yes. A refund should be due. And that would be my observation for this
situation. Thank you.

MR. DORAN: Members, is there further discussion on this particular example?

MR. CAVENDER: Mr. Doran, Member Cavender to speak, please.

MR. DORAN: Member Cavender, you are recognized.

MR. CAVENDER: Yes. I think that as these talking points are laid out, that is exactly what they should be. I don’t think we really should move ourselves into making a motion to approve, and as Member Smith said, to memorialize these.

I think it would be dangerous because they are limited in their scope. I just think there is too much that could change in the readings, in the details of these. I agree that we should go through these talking points and insist, and hear input from the Committee. But I would not approve moving into motions for approval on them as presented.

MR. DORAN: This is Presiding Officer Doran. Question for staff. If, in lieu of motions, is there any other way to memorialize that there are situations that the Department would consider imposing their authority.

In other words, even if we didn’t come forward with these motions today on these scenarios, are there
avenues available to the Agency, such as pointing out comments to be adopted during the rulemaking process, or some way to build a -- I don’t want to say legislative history, but a regulatory history into the interpretation of those rules such as, you know, dealer guides and training materials that the Department would issue in the future, based upon this new authority that it has?

MS. THOMPSON: Officer Doran, this is Corrie Thompson.

MR. DORAN: Ms. Thompson, you are recognized.

MS. THOMPSON: I will leave the ultimate comment on that to the Office of General Counsel to speak to. But I think that you didn’t mean to say legislative intent, but I would liken it to the same thing. So, we have a court reporter who is taking down a transcript of the meeting being held today.

Just like you can search legislative intent when you are reading a statute that has been codified and you are looking for guidance as to why that statute is in place, and to what legislators meant, you would go and search the legislative intent. You would look up the legislative history of the discussion points that were brought up when that statute was being implemented, after a session.

And I would think that this would be something
similar. This was a discussion to help the Department develop rulemaking and rule language for implementation of this new statutory authority.

And I think the transcript would be available. If anybody was looking back to see what had been discussed in the development of the authority. But again, OGC may want to speak to that, as well.

MR. RICHARDS: Presiding Officer Doran. This is David Richards. May I have permission to speak?

MR. DORAN: Yes. Mr. Richards, please.

MR. RICHARDS: Members, the Department contemplates and the Board contemplates through its Advisory Committee structure that we take votes. Again, I think -- not to beat a dead horse, but I think both Ms. Thompson and Mr. Ge have explained that these are just examples.

These specific scenarios are not going to find themselves into the rulemaking process whatsoever. So, with that in mind, I mean, this just kind of gives us an idea of the Department -- or Ms. Thompson’s division as an enforcement division, a good idea of what the thinking is. I have heard somewhat contradictory comments made. That on one hand, there might be twists and turns. And then, on the other hand, they are too fact-specific. Again, we are not trying to pin anybody down as
to a position. This is -- your votes on a motion for
these individual scenarios is merely a guidance tool for
the rulemaking process that, again, the DMV Board will
approve. And let’s not lose sight of the fact, too, that
there are due process procedures in place, that this
decision to order a refund by the Board is made, it
obviously will come back to the Board. And they can look
at each scenario and determine, based on the facts before
them and the law, whether or not a refund, in the
particular situation that they are presented with, should
be, in fact, ordered.

So, you know, this isn’t anything that is going
to be written in stone. This is just a guidance document.
You are perfectly willing -- able to vote against the
motion.

But what we contemplate through our Advisory
Committee process is that, in fact, motions are made and
votes are taken. And again, on recommendations. Strictly
recommendations. And those who are not in favor, that
will be noted, as Ms. Thompson said, in the transcript.
And the reasons why.

So, all of this is being taken down by a court
reporter. And that will be something that the Board will
consider as well, when making rules. But I can assure you
that these specific examples or scenarios are not going to
be in the rules. We are looking at more simplistic, straightforward rule language that mirrors the statute that the Legislature gave us, and marching orders.

So, to kind of lay out some guardrails as Member Doran mentioned. So, Presiding Officer Doran, and members, I would ask that we do take motions. You can vote them up. Vote them down. But that way, we can at least have something to present.

We presented this particular format to the Board at our June 11th meeting. So, we would like to maintain the same format, if we could. Thank you.

MR. DORAN: Thank you. This is Presiding Officer Duran. I believe Member Olah was wanting to make a motion on this particular item. And then, I believe our plan was to go back at the conclusion of taking up each of these items and revisit Member Smith’s motion regarding the definition of refund.

MR. GE: That is correct.

MR. DORAN: Well, Member Olah, we could entertain your motion.

MR. OLAH: With all the discussion, I kind of lost the wording that I had contemplated for a motion. If I may ask Mr. Ge to suggest the wording of a motion.

MR. GE: This is Brian Ge. May I be recognized?
MR. DORAN: Mr. Ge, you are recognized.

MR. GE: The proposed recommendation language is, the Department may order a refund where a consumer had to purchase one or more 30-day permits because the dealer did not transfer title before the buyer tag expired, and where nothing outside of the control of the dealer prevented the transfer, like the consumers action, or a natural disaster.

MR. OLAH: Officer Doran. This is Member Olah. May I speak?

MR. DORAN: You are recognized, Member Olah.

MR. OLAH: I will adopt the suggested motion by Mr. Ge, and so make the motion.

MR. DORAN: Member Olah has made the motion. Is there a second?

MS. JOHNSON: Cheryl Johnson. I just would like to second that motion.

MR. DORAN: Okay. Member Johnson has made a second. I will now call for the -- if there is no further discussion, I will now call for a vote. Please, as I call your name, please state your support for the motion by saying yes, or no if you do not support the motion.

Member Brooks.

MR. SMITH: Officer Doran. Member Smith. Request permission to speak.
MR. DORAN: Member Smith. You are recognized.

MR. SMITH: With regard to the discussion.

MR. DORAN: Yes.

MR. SMITH: When I read this [inaudible 1:34:10] and I’m thinking now what we experience in car dealers on almost -- in a daily fashion. And if I look at the totality of the -- and we get into the talking point.

For instance, it says additional. Unless consumer is buying a salvaged or non-reparable vehicle implicitly in the purchase [inaudible 1:34:26].

You know, it carries that to such depth that I am concerned that when we talk about a consumer’s expectations. I mean, that is not hearsay. I don’t know what the legal term would be, but when we start writing and approving things that are based on a customer’s expectation, I believe again, I will vote against it. But I believe that we are getting too narrow. And where a guardrail becomes a roadblock.

MR. DORAN: Okay. Thank you, Member Smith.

Members, we have heard some additional commentary from Member Smith. We have a motion that is pending. It has been seconded.

And we were about to commence with a vote. If there is no further discussion, we will move forward with that vote.
MR. RIGBY: Michael Rigby. Permission to speak?

MR. DORAN: Member Rigby, you are recognized.

MR. RIGBY: Can you just read the motion back a little slowly, so I can make sure I understand it. Thank you.

MR. DORAN: Sure. Thank you. I am, again, Presiding Officer Doran. I am actually going to ask Mr. Ge to read the motion back for the group.

MS. JOHNSON: Officer Doran, this is Cheryl Johnson, asking to be recognized to speak.

MR. DORAN: Member Johnson, would it be beneficial to hear the motion prior to your question?

MS. JOHNSON: Well, if every member would look on page 2 of their agenda, it is the proposed recommendation. The only change is “fails” was “did not transfer title.” It is softer words, but it is exactly as the proposed recommendation in the agenda.

MR. DORAN: Okay. Presiding Officer Doran. Mr. Ge, just for those who might not have the agenda up in front of them, and for the record, would you mind reading it one more time?

MR. GE: Absolutely. This is Brian Ge. The Department’s proposed recommendation is, the Department may order a refund where a consumer had to purchase one or
more 30-day permits because the dealer did not transfer title before the buyer tag expired, and where nothing outside of the control of the dealer prevented the transfer, like the consumers' actions, or a natural disaster.

MR. DORAN: Thank you. Okay. Members, you have heard the motion. If there is no further discussion, we will call for the roll. I am sorry. We will call for the vote. Member Brooks.

MS. BROOKS: Agree.

MR. DORAN: You are voting in favor of the motion, as agreed?

MS. BROOKS: Yes, sir.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: Against.


(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes. I support the motion.

MR. DORAN: I am sorry, Member Gonzalez. Can you repeat your vote, as if you are in agreement. You
approve or do not approve of the motion.

MR. GONZALEZ: I approve of the motion. Did you hear me?

MR. DORAN: I did. Yes, sir. Thank you.

MR. GONZALEZ: Thank you.

MR. DORAN: Member Johnson.

MS. JOHNSON: I approve of the motion.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Okay. Member Rash.

MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: Opposed.

MR. DORAN: Member Solis.

MR. SOLIS: Yes.

MR. DORAN: And I am Member Doran. I vote yes on the motion as well. The motion passes. Members, I would like to call for a five-minute recess. And so, we will go off the record here at 10:40. And we will come back at 10:46. We are now off the record.

(Whereupon, a short recess was taken.)
MR. DORAN: This is Presiding Officer Doran, it is now 10:47. Going back on the record. And having taken a vote on the last motion, I would like to proceed forward, Mr. Ge, with continuing on with your presentation.

MR. GE: All right. This is Brian Ge for the record. The second example that I have is when a consumer has to make additional payments on a trade-in vehicle to their original lender, because the dealer was late in making, or did not make the agreed-upon payoff.

And the recommendation that we propose is that the Department may order a refund, where a consumer has to make additional payments on a trade-in vehicle to their original lender, where the dealer was late in making or did not make an agreed-upon payoff within a reasonable time frame after the consumer submitted all the necessary paperwork to the dealer, to legally process the trade-in. Since those additional payments were already built into the purchase price of the vehicle.

And the rationale behind that recommendation is the consideration given by the consumer. And by that, I mean, what the consumer paid to the dealer was the vehicle that was traded in to the dealer.

Additional consideration could be negative equity from that trade, or if that amount was rolled into
the new loan or purchase price of the new vehicle. And so, when a dealer doesn’t make that trade payoff for a consumer, after the consumer has given them the car, the dealer is really getting more than what the dealer negotiated for.

So, at the time a trade-in is made, that car is appraised as of that day. And part of that appraisal is how much the consumer has paid off on the car, how much is left on it, and what not.

And so, when the dealer doesn’t make the payoff, and the consumer has to make additional payments, the dealer is now getting what they originally bargained for, which was that vehicle. But now, they are also getting the extra of that extra payment that the consumer made to the lender. So, the amount that the dealer would have had to pay to the lender as a payoff lessens.

And so, in that regard, the Department views this situation as an overpayment by the consumer. And so, that is how we fit it into our definition of refund. I am here to field any questions.

MR. RIGBY: Michael Rigby. Permission to speak?

MR. DORAN: Member Rigby, you are recognized.

MR. RIGBY: Is there a statute or a rule that requires a dealer to pay off a trade-in within a
particular period of time? Thank you.

MS. THOMPSON: Corrie Thompson. Officer Doran, if I may be recognized?

MR. DORAN: Ms. Thompson, you are recognized.

MS. THOMPSON: Yes. There is a statute. And I knew someone was going to ask. And so, I should have dug it out, but I do believe they have ten days.

MR. SMITH: Member Smith. Officer Doran, permission to speak?

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: To sort of answer that question, yes. But the problem we have is the amount of time it takes the lienholder to return it by. That becomes the issue, oftentimes, in the problem.

MR. DORAN: Member Smith, this is Presiding Officer Doran. I was wondering if you and Member Cavender, just from a dealer perspective, could share with the group during a transaction, when a dealer has to call the lender to get the payoff loan amount?

I am thinking in terms of what happens when you are buying a house. You get a snapshot in time for that day. But if that loan amount, they can change if the transaction doesn’t close on that day.

So, if you don’t mind, would you mind just kind of explaining how that works from a process standpoint?
When a customer comes in, and they are in month 42 on a 48-month car loan?

MR. SMITH: Sure. Member Smith. Thank you for the question. The general process of course, is that the dealer would need to always call and get a payoff.

And when we do that, we are given most generally a payoff number and a date until that payoff is no longer good. And then many times, after that date, they will tell you what the per diem is for days exceeding that.

So, we get -- usually, it is a week or ten days that the payoff is good. So, it is incumbent upon dealers, and certainly, their intention to get that car paid off just as quickly as we possibly can.

I can say, the problem often comes once the lienholder has the payoff. Sometimes they take forever to get a lien, or they hold your check.

And many times, we have to send a cashier’s check to get a title. And then, they will still hold the check. So, the cashier’s check clears.

But we, most of the time, we know the payoff. We know our time window. And we rush to get it accomplished.

MR. DORAN: Thank you.

MR. CAVENDER: Member Cavender. Permission to
MR. DORAN: Member Cavender, you are recognized.

MR. CAVENDER: We are certainly working with our lenders that we know are qualified to help us. So, we really have kind of a limited selection of these lenders that we work with. We do have great fiduciary relationships with these lenders here in San Antonio, where I am a dealer.

And as Carroll says, it is at full dispatch. Once we have the opportunity to make a sale, we are certainly going to make the payoff as fast as we can. Typically, two and three days would be the dispatch on the pay-off for the title to clear.

And so, we really take these scenarios as they come. But again, as this talking point is arranged here, there is just so much gray area in there, that I would feel compelled to probably vote against the motion.

MR. DORAN: Thank you, Member Cavender. This is Presiding Officer Doran again. And this is a question for the whole group, and particularly maybe the independent dealer could speak to how the process might differ if you are a buy-here pay-here dealer, as opposed to a franchise new dealer that is working with some preferred lenders?
(Pause.)

MR. SMITH: Member Smith, Officer Doran.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: A couple of things, other things that kind of cloud this issue that we do run into, is we do have occasions where a lienholder might give us a payoff. And then, their customer, who then said, I was going to trade the car in, stops payment on the check. And the lienholder had considered that amount of payment. So, now the payoff changes. One thing that happens to us. Not regularly, but it certainly happens on a number of times. Maybe a couple of times a month for me.

The other thing that we run into that creates a huge issue for us, is the credit union. Many times we will get the payoff. We will send the check. And then, when we don’t get the title, we find out that the customer has to pay off another lien before they release the vehicle, the title that we traded for. So, then we end up in the midst of problem that we have got no control whatsoever. Thank you.

MR. DORAN: Thank you, Member Smith. This is Presiding -- I am sorry.

MR. GE: This is -- I am sorry.

MR. DORAN: Go.
MR. GE: This is Brian Ge. I was asking to be recognized.

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: To respond to Member Smith’s concern, again, these are all -- the scenarios that he brought up, they will all be considered by our investigatory staff, and our legal staff. The example as laid out on paper is exactly what we are trying to address.

We are not really trying to go down all the rabbit holes. Obviously, we know the rabbit holes exist. And that it is a fact-specific inquiry when it comes to potentially ordering a refund in any given situation.

But I don’t think Mr. Smith needs to worry about those situations, because the facts of any specific case will be considered before any refund is ordered. Thank you.

MR. DORAN: This is Presiding Officer Doran with a question for staff. So, based upon the description that Member Cavender and Member Smith gave, it sounds like there a lot of balls in motion during a typical transaction.

And I guess I was just wondering if it was -- if staff had in mind what they would consider to be sort of a safe harbor period of time. Because it sounds like there could be situations where, through no fault of the
dealer, things -- that is just the way the cookie crumbles, and the way things have transpired, due to the lending company and actions by the customer, it is just not possible for all those ducks to line up in a row, such that an additional payment isn’t made.

Is staff considering a threshold period of time, before which they would, you know, consider this? In other words, okay. They have had to make two months of payments or three, or --

MS. THOMPSON: Officer Doran? This is Corrie Thompson. If I may?

MR. DORAN: Yes. Please.

MS. THOMPSON: So, I confused my language. So, the ten days comes from Transportation Code 501.115(a) about discharge of a lien. So, there could be a violation for failure to release a lien within ten days of payment.

The scenario that we are talking about now is actually from Finance Code 348.408, Part C, that says, a retail seller must pay in full the outstanding balance of a vehicle traded in, not later than the 25th day after the date that -- and so, here is your guidance, then -- the retail installment contract is signed by the retail buyer, and the retail buyer receives delivery of the motor vehicle, and the retail seller receives delivery of the motor vehicle traded in, and the necessary and appropriate
documents to transfer title from the buyer. And again, that is Finance Code 348.408. So, that is 25 days.

MR. DORAN: Okay. Thank you.

MR. SMITH: Member Smith. Officer Doran.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: Is that jurisdiction OCCC, or is that DMV on payoffs?

MS. THOMPSON: So, it is a dealer duty and we in this particular -- Member Doran, I apologize. Corrie Thompson.

MR. DORAN: Member Thompson, you are recognized. Sorry.

MS. THOMPSON: And so, we cite back to -- we have provisions where we can cite any other statute that is a violation of motor vehicle sales and distribution. And we connect that back through Occupations Code 2301.651. I believe that we have a representative from OCCC through the General Counsel’s office, if they have any additional guidance on that, as well.

MR. RIGBY: Michael Rigby. Permission to speak?

MR. DORAN: Member Rigby. You are recognized.

MR. RIGBY: Yes. So, I am General Counsel with the OCCC. But I think that Ms. Thompson’s representations are accurate. I don’t have anything to add.
MR. GONZALEZ: Officer Doran, Member Gonzalez. Permission to speak?

MR. DORAN: Member Gonzalez, you are recognized.

MR. GONZALEZ: Thank you, sir. I would like to ask the staff, how prominent is this, all of this situation? Do they find more violations along the border? Or is this a problem in East Texas, North Texas, Central Texas?

Is it very often or common that this happens, where the dealer makes the consumer pay off? I would like to get a general feeling of the problem that we have.
Thank you.

MS. THOMPSON: Corrie Thompson. Officer Doran. If I may be recognized?

MR. DORAN: Ms. Thompson, you are recognized.

MS. THOMPSON: I believe the last I saw of our violation report, from last fiscal year, total violations, now consider the fact that there are multiple violations in some cases. Some cases may only have one violation.

I believe we had 31,000 some-odd violations across all of our cases. I would say that these particular violations probably make up 1 percent of those violations that occur.

So, we also have this come up in different
scenarios this year. So, for instance, those of you have been members of the group through the past couple of meetings, we have talked about when larger dealerships go out of business, or they are going bankrupt. And then, they could just completely fall off with paperwork for hundreds of consumers.

We have seen people this past year affected that way, more so than in prior years. And as to whether or not there are any particular hot spots in the state, I do not have that information to be able to speak to.

MR. GONZALEZ: Thank you very much.

MR. DORAN: Is there further discussion on this item?

(No response.)

MR. DORAN: Again, this is Presiding Officer Doran. I guess the part that I am uncomfortable with here is, it seems like there is a lot going on during the immediate period following when the customer comes into the dealership.

And I guess it is not clear to me, after -- at what point would the DMV find the situation to be egregious enough that a refund would be owed? And I guess, in this particular instance, you know, the recommendation could lend itself to the interpretation that -- I guess, I need to better understand when that is
going to trigger, I think.

That is the part I am also struggling with.

When staff would envision it coming into play.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Yes, Brian. You are recognized.

MR. GE: So, the concern here isn’t so much when. Like, if the consumer has to make payments, and it is through no fault of the dealer, we are not going to order a refund in that situation.

If the dealer fulfilled its part of the deal, so to speak, if they did everything they were supposed to, we are not going to order a refund. Because the consumer had a second lien that was undisclosed, or anything like that. So, we are really -- like the language that is pointed at in the recommendation is, an agreed-upon payoff was made, within a reasonable time frame.

So, once the dealer makes the payment, they have completed their side of that transaction. All the other wheels spinning, that is not on the dealer. So, we are not trying to hold the dealer liable for other people’s actions or inactions.

MR. DORAN: Thank you. This is Presiding Officer Doran again. Just a follow up question, and this may again go to our dealer members, possibly.
So, what evidence is contained in the deal jacket that shows when the dealer initiated that payoff? Is it a wire? Is it a photocopy of a check that goes to the lender, on the trade-in vehicle?

It is not clear to me, and I am wondering if maybe somebody could speak to that.

MR. SMITH: Member Smith, Officer Doran.

Request permission to speak?

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: We would keep a copy of a check. Our process would be, keep a copy of the payoff check. It actually would be in the file for the vehicle that had been traded in, the car that was actually paid off. And of course, the check would be dated in most cases, for us.

When it requires a check payoff, the payoffs that we do through our captive lenders go electronically. But for a required check, we would have a copy of it. And typically in our case, we sent the amount either overnight, or some kind of mail to have copies.

So, we know when they have received it. But yes, we obviously have copies.

MR. DORAN: Thank you, Member Smith. Question for staff, then. This is Presiding Officer Doran. In terms of the record-keeping requirements that the DMV imposes on dealers of what needs to be contained in the
deal jacket, is it safe to assume then, that this type of
documentation is required by the Agency, by the
Department?

MS. THOMPSON: Corrie Thompson, Member Doran.

MR. DORAN: Yes. Ms. Thompson, you are
recognized.

MS. THOMPSON: Yes. So, there is a laundry
list of items that need to be maintained in the deal
jacket, including of course, a catch-all about all
documents related to a sale or purchase of a vehicle.
They would have to be retained by the dealer for the 48-
month retention period outlined in Administrative Code
Title 43, Rule 215.144.

MR. DORAN: Thank you. Members, is there
further discussion on this particular item?

(No response.)

MR. DORAN: I think we would be ready to
entertain a motion at this point, from any member on this
item.

MS. JOHNSON: Officer Doran, Cheryl Johnson,
requesting to be recognized to speak.

MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: I am going to try and go through
this simply. I would like to propose -- I would like to
move that the Committee adopt the proposed recommendation
as included in the agenda. I can either read that, or if
that is sufficient, then I will stop there.

MR. DORAN: Is there a second to Ms. Johnson’s
motion?

MR. OLAH: Member Olah seconds.

MR. DORAN: Okay. All right. Members, I will
now -- unless there is any further discussion, I will call
for the motion.

And as I call your name, please state whether
you support the motion by stating yes or no -- no being if
you do not support the motion. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: No.

MR. DORAN: Okay. Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.
MS. JOHNSON: Yes.

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Okay. Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Member Rash.

MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: Opposed.

MR. DORAN: Okay. Member Solis.

MR. SOLIS: Yes.

MR. DORAN: Okay. And I am Member Doran. I also vote yes. Okay. The motion passes. All right. Presiding Officer Doran again. I turn it back over to Mr. Ge.

MR. GE: Thank you. This is Brian Ge. The third scenario is where a consumer has to pay for a safety inspection that should have been completed by the dealer. The proposed recommendation is the Department may order a refund where a consumer explicitly paid a dealer for a safety inspection and the dealer did not
complete the inspection or take the vehicle to be
inspected, or where a dealer sold a vehicle that could not
have legally been sold without first having obtained a
safety inspection. As the cost of that safety inspection
was built into the over amount that the consumer paid for
the vehicle.

Our reasoning behind that recommendation is
that usually the cost of an inspection is a line item on a
sales transaction. So, if the dealer doesn’t actually
take the car to be inspected, they are just not fulfilling
their end of the contract. And so, we would be ordering
just a straight refund, as everyone understands the term
refund.

Where the costs of the inspection isn’t broken
out, it is, as we discussed at our last meeting, certain
vehicles that haven’t been inspected in a certain amount
of time before they can be sold, they need to be inspected
again. And so, in that situation, we would say the cost
of the inspection is built into the purchase price. And I
am here for any questions.

MR. DORAN: This is Presiding Officer Doran. I
did have a question.

I am curious as to how often this actually
comes up, because I think the general impression from the
consuming public is that with the Texas Two Step, the one-
sticker situation, that as part of the vehicle registration process, the vehicle has to have a valid inspection on it. Therefore, if the vehicle is able to be registered, the consumer in all likelihood, believes that the vehicle has been inspected.

So, I guess I am struggling with how often this would occur, if the impression is that the vehicle couldn’t be registered if the inspection was stale, or about to expire.

MR. SMITH: Member Smith. Officer Doran, request permission.

MR. DORAN: Sure. I will defer to Member Smith here.

MR. SMITH: Yes. Officer Doran, you are on to something there. We cannot register a vehicle without it being inspected.

And I would venture a guess and tell you that there are in the low single digits numbers of vehicles that do not carry a lien. So, certainly we cannot get our money until we are able to register. So, the number of times this would happen would be just minutiae.

MR. DORAN: Mr. Ge, I think you had a comment as well.

MR. GE: Yes. Thank you. This is Brian Ge. Member Smith is correct. This situation doesn’t come up
all that often. But when it does, usually it is with a
used car, and for someone who is putting tags on vehicles
in a manner that they shouldn’t.

And that is really where it comes up.
Typically, for a used car, if it hadn’t been inspected in
a period of time -- I forget the exact number, but they
wouldn’t be able to attach a buyer’s temporary tag onto
that vehicle without getting it inspected first.

And sometimes, either through negligence or
just inexperience, a dealer fails to understand that
obligation of theirs. And they just print off the buyer’s
tag, put it on, and send the customer on their merry way.

And then, they find out when they -- through
the course of registration or some other process that,
hey, this car needs an inspection. And usually, the
dealer will just take the car back and get it inspected
for the consumer.

But sometimes they don’t. Sometimes, they just
say you know, tough cookies. And so, again, this really
doesn’t happen all that often. But when it does, as you
can imagine, the consumer is upset.

MR. DORAN: This is Presiding Officer Doran
again. I know firsthand that there are times, in fact it
happens more often than we would like, where the state
inspection system goes down. And you know, you are not
able to complete the inspection.

So, I know there are situations where a dealer may not be able to complete that inspection. And if you are talking about a customer that lives outside the area of that dealer, they are not going to be able to bring that vehicle back to get it inspected.

My knowledge is a little rusty here. But aren’t we talking about $12.95 for an inspection on a used vehicle? That would be to staff, or anybody who knows. I don’t think it is very much money, is what I am saying.

MS. THOMPSON: Corrie Thompson. I don’t --

Member Doran, if I may be recognized?

MR. DORAN: Yes. Ms. Thompson.

MS. THOMPSON: I don’t recall the exact amount, but yes. We are talking about less than $50. And it is a rare occurrence. But again, we are tasked with identifying items that will allow for additional consumer protection by the Department.

MR. DORAN: Okay. Members, is there further discussion on this item?

MR. CAVENDER: Member Cavender, request to speak, please.

MR. DORAN: Member Cavender, you are recognized.

MR. CAVENDER: Yes. I think we need to
understand that safety inspections, state inspection does protect the consumer as well. And it does protect others in the driving situations.

So, I would yield that, you know, although our state inspection that I charge is $7 on itemized sales receipt here. I would certainly understand that a refund would be due if a dealer failed to make that inspection.

MR. DORAN: This is Presiding Officer Doran, again. This question is for Brian. So, really, kind of looking at it, there is the failure to perform the inspection.

But there’s -- it seems to me from your comments that there is -- the trouble here is that there has been a representation in the paperwork that the inspection has, in fact, been performed. And that seems a little different to me.

MS. THOMPSON: Member Doran, this is Corrie Thompson.

MR. DORAN: Yes. Ms. Thompson.

MS. THOMPSON: I know you posed the question to Brian. But I would also like to say that we can’t lose sight of the fact that there are also other violations that the Department is allowed to allege against dealers in connection with some of these other things that may trigger refunds for consumers.
So, we are talking about, you didn’t timely transfer the title. You put a tag on a vehicle that couldn’t have a buyer’s tag on it because it didn’t have a safety inspection.

There is other things connected, that the Department would potentially be charging in connection with things that could trigger this refund authority. So, I just want to make everybody aware of that, as well.

MR. DORAN: Ms. Thompson, thanks for addressing the elephant in the room. I think what we were all saying is, it is hard to think of an occurrence where a customer would pursue recourse to get $7 back on its own. And that a dealer wouldn’t simply just take care of that, if they were able to, without having to go through the agency to deal with all of that. So, thank you for your explanation there.

MS. JOHNSON: Mr. Doran. Cheryl Johnson requesting to be recognized and to speak.

MR. DORAN: Ms. Johnson, you are recognized.

MS. JOHNSON: I can tell everybody that from the standpoint of working in a tax office, the people vehemently complain when this happens. Because not only is there a fee paid at the inspection station, we also collect a portion of that fee and send it to the state.

So, it is not just -- there might be some
amount that the dealer is paying, but there is more that
the consumer is having to pay. And they get upset about
the least amount of things, it appears. So with that
said, I would like to move that the Committee adopt the
proposed recommendation as presented in the agenda.

MR. DORAN: Members.

MS. JOHNSON: Pay for the inspections that
should have been completed by the dealer.

MR. DORAN: Members, Ms. Johnson has made a
motion. Is there any further discussion before we ask for
a second?

(No response.)

MR. DORAN: Not hearing any. I will ask for a
second for Ms. Johnson’s motion.

MR. OLAH: Member Olah seconds.

MR. DORAN: Okay. There has been a motion made
and it has been seconded. I will call for the question.
Members, as I call your name, please state your support
the motion by saying yes, or no if you do not support the
motion. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Member Cavender.

MR. CAVENDER: Yes.

MR. DORAN: Member Colvin.

(No response.)
MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.

(No response.)

MR. DORAN: Member Johnson.

(No response.)

MR. DORAN: I will come back to you. I know it was your motion. Member McCullah.

(No response.)

MS. JOHNSON: Member Johnson votes yes.

MR. DORAN: Okay. Thank you. Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Okay. Member Rash.

MS. RASH: Yes.

MR. DORAN: Okay. Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: Opposed.

MR. DORAN: Okay. Member Solis.
MR. DORAN: Member Solis.

(No response.)

MR. DORAN: And I am Member Doran. I also vote yes. Okay. The motion passes. Mr. Ge, I will turn it back over to you.

MR. GE: All right. The next scenario is where a consumer has out-of-pocket expenses because a dealer failed to honor their bid on the We Owe portion of the contract.

The proposed recommendation is that the Department may order a refund where a consumer has to pay an out-of-pocket expense because a dealer failed to honor the written We Owe portion of the contract. The Department may not order a refund where the dealer agreed to obtain the products or services of a third party for the consumer in the We Owe portion of the contract, obtains the products and services of a third party for the consumer, and the consumer is unhappy with the performance of the third party.

Here, again, the reasoning behind the recommendation is that the Department is ordering a refund of something that the consumer explicitly contracted with the dealer for, and the dealer failed to deliver. And that, I believe, takes care of Member Smith’s original
concern, when we were talking about Item 1, where sometimes the customer changes his mind, or where they ask for a refund of that item, but it has already been financed and it can’t be refunded to the consumer.

Or where the dealer already purchased the parts, and the consumer doesn’t want it. In those cases, I mean, the dealer would be able to present that evidence and obviously, the Department is not going to pursue ordering a refund in situations like that. It is just, we are really focused on situations where the consumer wants what is in the We Owe, and the dealer fails to provide what’s in the We Owe.

MR. DORAN: Members, is there discussion? That sounded like Member Smith.

MR. SMITH: This is Member Smith. Here, this one may be the most cloudy, in my opinion, because the devil is in the details. And I will give you a couple of examples.

For the most part, it would be my expectation that when you look at a We Owe, and it may say We Owe, I am going to use a set of new tires. Or whatever it is that we owe. I think that you would find that very seldom is there any sort of a breakout of what the value of that We Owe is.

The tire is $500. I don’t think you are going
to see a number on that. I think that anything that we provide is going to be consideration that would have been included in the price of the automobile.

So, I think that the Department would have a very difficult time to know what a correct refund would be. And therefore, how could you offer a refund when the value of that We Owe is not ever disclosed or even talked about.

The other thing about it -- I tell you, it was cloudy on this, is just another example. If I put on a We Owe, and I sold a car, a used car, that set of new tires, and then, it begs the argument, when the guy comes back. And you say, I am putting Cooper Tires on your car. And he says, oh no. I wanted Corelli.

And so, then you end up with a disagreement over what was promised. And again, how do you value the difference between a Cooper Tire and a Corelli Tire, or what was promised?

So this one is an extremely cloudy example. And I believe difficult for -- based upon the fact, even the facts that you have got here, it would be very difficult to make a conclusion that the consumer was due a refund.

MS. THOMPSON: Officer Doran, Corrie Thompson.

If I may be recognized?
MR. DORAN: Yes. Ms. Thompson. You are recognized.

MS. THOMPSON: And so, I do think, Member Smith, to address your comment, that there are particular scenarios that come up, even in cases we do today, every single day, where the remedy available is more appropriately sought through a private civil action between the consumer and the dealer. And so, we are weeding out cases like that on a routine basis.

That may be the case here, with one of these We Owe type agreements, in the event that somebody didn’t specify which brand of tire was going to be put on the car. As to ones that are appropriate for the administrative refund authority, I would say that no, maybe they are not. Maybe there is not a way to determine the amount from the outset, but that is why we talk about using the sanction authority at different points of the administrative process.

So, it may not be something in the initial charging document that we allege, like hey. You owe the consumer a refund in this specific dollar amount. But it may be something in a settlement agreement that after discussions with the consumer at the dealer, we have arrived at an amount that satisfies both the dealer and the consumer, that can be repaid to the consumer as part
of that settlement agreement. And we could use the
authority that way.

MR. SMITH: Member Smith. Thank you, Corrie.
And this goes exactly to my point, is that we would have
confidence in the Department to come to a correct and fair
conclusion. And I believe it points out, again, my point
that we are down rabbit trails trying to come up with
specific examples that can have all sort of different
variations. Thank you.

MR. DORAN: This is Presiding Officer Doran
with a question for staff. So, let’s go through a couple
of hypotheticals. Let’s say you have a situation where a
consumer is buying a car.

And on the We Owe, the dealer has said that
they were going to provide window etching. Let’s say,
they are going to, let’s say, install satellite radio,
LoJack. And then, let’s say, the customer also believed
that they were purchasing a service contract as part of
the deal.

And then, lo and behold, months later, they
discover that there is a problem with one of those.
Whether it is, you know, the satellite radio, they thought
they were getting twelve months, and they got three
months, or whatnot.

So, I guess, my question for Corrie and Brian
is, to what extent does the Agency, when they are investigating this, contact or try and get information from those third parties?

Because in the service contract context, it is going to be important to know, you know, what was the date that that service contract went into effect? Because a refund of a service contract, according to normally the terms and conditions of that service contract is not the full amount paid. But typically, if you are turning the vehicle in, and it has been in effect, you are getting a prorated amount.

So, if you had a situation, and I am just going to stay on the service contract example for a minute. Let’s say, in month five of ownership, the customer had paid for the service contract. It hadn’t been activated.

I guess I am thinking that might be a situation where the customer wouldn’t be -- well, let me back up. The question was simply, to what extent does DMV staff seek information from these third-party service providers or product providers in order to get information as part of an investigation?

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Yes. Mr. Ge, you are recognized.

MR. GE: So, our investigators are -- they are
consume professionals. They look at everything, sometimes too carefully. But they look at everything.

If the deal jacket isn’t clear on the terms of any length of agreement, I mean, I would take the position that this is a consumer issue. If they had the wherewithal to have the item included in the We Owe, but not any details of it, I mean, that is not for us to decide if the consumer is right or the dealer is right.

We are not going to assess a penalty or a sanction against the dealer for something -- for lack of clarity that the consumer should have insisted upon, if that makes sense. I mean, I don’t think that is necessarily the most consumer-friendly move, but it is the fairest thing that the Department can do. So, we resolve ambiguity in favor of what is actually written down.

MR. DORAN: Okay. Thank you. Members, is there further discussion on this item?

MR. GONZALEZ: Chairman Doran.

MR. CAVENDER: Mr. Cavender. Permission to speak?

MR. GONZALEZ: Permission to speak?

MR. DORAN: Okay. I heard Mr. Cavender first, but then we will come right to you, Member Gonzalez, right after that. Member Cavender. You are recognized.

MR. CAVENDER: Yes. Thank you. In regards to
a We Owe, it is a very -- monitored very carefully through one person in our dealerships. And it has to be monitored carefully. But it also is a two-way street. The We Owe is consumer and dealer.

And frequently, we will put a We Owe out, and the consumer will fail to come back for the service or for the -- and I am thinking about, as an example, the Clear Shield that we provide, the pay protection that we provide.

So, sometimes, very rarely, we sell to an out-of-town customer and that customer will not come back. So, there is some weight on the consumer to come back to us, as well. So that the dealer is not always the only one who is guilty of the not completing the We Owe.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Yes. And then we do need to come back to Member Gonzalez who’d asked to be recognized.

MR. GE: Yes. I will be brief. I just wanted to address Member Cavender’s concern. Absolutely in that situation, the Department would not be assessing a refund.

It is, like you said, it is a two-way street. The consumer has obligations. The dealer has obligations. So long as the dealer offers to perform, it is not -- the Department isn’t going to order a refund where the
consumer refuses it. That’s it for me.

MR. DORAN: Thank you. Member Gonzalez. You are recognized.

MR. GONZALEZ: Thank you, sir. I have a question. Since we are dealing with a contract, I want to know if there is a standardized contract for all dealers. But normally, during a contract, there is a 72-hour clause for cancelling the contract. Is there a standard, 30-day time period before the consumer can come back to the dealer and complain about the product? Is there any rule or policy that would prevent the consumer from coming back to the dealer under this clause in the contract? That is a question for my information.

MS. THOMPSON: This is Corrie Thompson. And if I may be recognized?

MR. DORAN: Ms. Thompson, you are recognized.

MS. THOMPSON: There is nothing specific in statute that allows a consumer to rescind after a 72-hour period. I will let any of the dealer members speak to any offers that they have.

There are some dealers that do specifically say in their advertisements or otherwise that they will allow a consumer to bring a vehicle back within a specified number of days. As to how that would be affected by this
agreement, I mean, by the refund sanction, that would be
very case-specific, and we would have to look at the
details of that specific case to make sure that it didn’t
overlap with any of that, any of those agreements offered
by the dealer.

MR. GONZALEZ: So, Ms. Thompson, so this means
that the consumer has possibly -- if it is not identified
in the contract, they could come back and file a complaint
six months later, because the dealer failed to do a
promise, to guarantee a product. There is no limit here,
that -- where it kind of expires?

MR. GE: This is Brian Ge, if I may.

MS. THOMPSON: Go ahead. Sorry.

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: So, to address Member Gonzalez’
concern, we are only talking about a situation where the
dealer doesn’t at least offer to perform on their
obligation. So, if six month passes, and the dealer --
sorry about that.

In a situation like Mr. Cavender said, about
putting the clear film on. If the customer purchases it,
and the dealer offers to put it on, and the customer
doesn’t, for some reason, go back and get the service
performed, we are not going to sanction the dealer for the
customer’s refusal.
Likewise, if -- six months down the line, if the customer has been asking for this clear film the whole time, and the dealer has said, we’ll get to you. Or at some point, they just say, no. We are not going to do it. I mean, in that situation, yes. I think it is perfectly fair to order a refund.

MR. GONZALEZ: Okay. Thank you very much for the clarification.

MR. DORAN: Members, is there any further discussion on this item?

MS. JOHNSON: Member Johnson wishes to be recognized, and to speak, Officer Doran.

MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: I would like to move that we approve the proposed recommendation, in the instance where the consumer has out-of-pocket expenses because the dealer failed to honor the written We Owe portion of the contract.

MR. DORAN: Members, there has been a motion made. Is there a second?

MR. OLAH: Member Olah seconds.

MR. DORAN: Okay. All right. Members, if there is no further discussion, we will move forward with calling the question for vote. As I call your name, please state your support for the motion by saying yes, if
you support. No, if you oppose. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Member Cavender.

MR. CAVENDER: No.

MR. DORAN: Okay. Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Member Rash.

MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: No.

MR. DORAN: Member Solis.
(No response.)

MR. DORAN: And I, Member Doran, vote yes. The motion passes. Okay. Mr. Ge, we will turn it back over to you.

MR. GE: Thank you, Officer Doran. The next situation that we have is where a consumer has to get a bonded title, because the dealer could not provide title, or did not get a bonded title for the consumer.

The Department’s proposed language is that the Department may order a refund where a consumer has to pay an out of pocket expense, where a dealer does not provide title, or get a bonded title for the consumer, when the consumer’s actions did not prevent the dealer from providing title, as the title is built into the overall amount the consumer pays for the vehicle.

And our rationale behind that recommendation is that when a consumer purchases a car, they are implicitly paying the dealer for title to that car. I mean, otherwise, it would just be leasing the car, or renting the car.

And while the consumer didn’t pay the dealer to obtain a bonded title for them, they did pay for a title. And if the best title that the consumer can get to a vehicle is that bonded title, then we would argue that by virtue of selling the consumer that car, the cost of that
bonded title is built into the purchase price of the vehicle. And that the dealer is under an obligation to get that consumer that bonded title.

I know that this one is a bit of a doozy. And I know it doesn’t affect franchise dealers all that much. So, this usually comes up with our independent dealers. I am happy to answer any questions or offer any explanations.

MR. DORAN: Members, is there discussion on this item?

MR. GONZALEZ: Member Doran. Permission to speak? This is Member Gonzalez.

MR. DORAN: Member Gonzalez, you are recognized.

(No response.)

MR. DORAN: Member Gonzalez, you are recognized.

MR. GONZALEZ: Thank you. I would like to ask the staff, what type of fees are you considering to refund? The bought amount, the title fees, registration fees, inspection fees, or just anything related to the bond title itself, of obtaining it and presenting it. Could you elaborate on what type of fees you want to address under this refund process? Thank you.

MR. GE: This is Brian Ge. If I may be
recognized?

MR. DORAN: Yes. Mr. Ge, you are recognized.

MR. GE: Member Gonzalez. It is our view that if it comes down to a situation where the only way a consumer can get a title is through a bonded title, then the dealer should bear the cost of getting that bonded title for the consumer. And that includes the entire process of getting that title, and all the fees associated with it.

MR. GONZALEZ: Okay. Permission to speak?

MR. DORAN: Member Gonzalez, you are recognized.

MR. GONZALEZ: Yes. Now, there is a -- there could be a conflict. If you are asking the dealer to get a bond, then his name is going to be on the surety bond. It is not going to be the customers. So, in essence, to get a surety bond, the customer themselves has to be bondable, and they have to put their name on the surety so the title can be issued.

You are asking the dealer to get a bond in his name, then they have to go through all the qualification. Once they get the bond, then they have to establish title in their name before they can transfer it to the consumer. Has that been thought out, as to what procedural aspect it is going to take regarding obtaining the bond?
MR. GE: This is Brian Ge. May I be recognized?

MR. DORAN: You are recognized, Mr. Ge.

MR. GONZALEZ: Member Gonzalez, the consumer would be getting the bond themselves. The dealer would just be paying for it. We are not expecting the dealer to apply for the bond and title for the consumer.

MR. GONZALEZ: Oh, forgive me. So, the dealer, because he is obligated to provide title, you are not making him establish a title record in his name?

MR. GE: Well, I mean, if we are getting to the point where — oh, this is Brian Ge, by the way. If we are at the point where the consumer can only get title via upon the title, I think we are a little past that step.

MR. GONZALEZ: Thank you very much for your input.

MR. DORAN: This is Presiding Officer Doran. Mr. Ge, would the dealer always know that a bonded title is needed? Or are there situations like, say a dealer is buying a vehicle at auction and maybe they thought it was going to come in with a normal blue title. And then they discover later on that, no.

In fact, it is a bonded title. And you know, they weren’t able to make that representation timely to the retail customer. Is that something that occurs? I am
just trying to make sure that this isn’t a situation where
dealers might get caught flatfooted.

MR. GE: This is Brian Ge. So, before a dealer
sells a car, they should have the title in hand. We get
into these situations because a dealer is selling the car
before they get the title to the vehicle that they are
selling.

And so, if they just waited until they got
title, this would never come up. And they would
absolutely know if they needed to get a bonded title for
the consumer. Because they would know they themselves did
not get title to the car.

MR. DORAN: Right.

MR. GE: So, these kind of things would come
up, not necessarily out of the consumer seeking payment
for the bonded title, but more complaining that they
didn’t receive the title at all. And that failure to
transfer leads us to advising the consumer that they need
to get a bonded title.

And with this extra authority, we are thinking
of perhaps as a settlement option against the dealer,
instead of assessing a civil penalty, they pay for the
consumer’s bonded title. And Jeremiah Kuntz was the
Director of Vehicle, Titles, and Registration. He would
be able to speak to that as well.
MR. DORAN: Thank you. Members, is there additional discussion on this item?

(No response.)

MR. DORAN: Members, we could entertain a motion at this time, on this item.

MS. JOHNSON: Officer Doran, Cheryl Johnson requesting to speak and to be recognized.

MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: I move that in the instance when the consumer has to obtain a bonded title because the dealer could not provide title and did not get a bonded title for the consumer, that the proposed recommendation be adopted.

MR. DORAN: Members, there has been a motion made. Is there a second?

MR. OLAH: Member Olah seconds.

MR. DORAN: There has been a second. Members, unless there is any further discussion, we will move forward with calling the question. Members, as I call your name, please state your support for the motion by saying yes, if you agree; no, if you oppose. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: All right. Member Cavender.

MR. CAVENDER: No.
MR. DORAN: Okay. Member Colvin.
(No response.)
MR. DORAN: Member Eshpeter.
(No response.)
MR. DORAN: Member French.
(No response.)
MR. DORAN: Member Gonzalez.
MR. GONZALEZ: Yes.
MR. DORAN: Member Johnson.
(No response.)
MR. DORAN: Member Johnson.
(No response.)
MR. DORAN: Member McCullah.
MS. JOHNSON: Yes.
MR. DORAN: Okay. Member McCullah.
(No response.)
MR. DORAN: Member Olah.
MR. OLAH: Yes.
MR. DORAN: Member Rash.
MS. RASH: Yes.
MR. DORAN: Member Rigby.
MR. RIGBY: Yes.
MR. DORAN: Member Smith.
MR. SMITH: Opposed.
MR. DORAN: Member Solis.
(No response.)

MR. DORAN: And I am Presiding Officer Doran and support the motion, vote yes, as well. And the motion passes. Mr. Ge, we will turn it back over to you, to continue with your presentation.

MR. GE: Our next scenario is situations where the consumer is overcharged for tax, title, and license, documentary fees or other non-government regulated or mandated fees. The Department’s proposed recommendation for this scenario is the Department may order a refund where a consumer was overcharged for government-regulated fees, such as tax, title, and license or documentary fees, provided that the dealer did not already return those fees to the consumer through the regulatory action of another governmental body.

So, if say a dealer overcharges on the dock fee, and OCCC catches wind, orders the refund, and the dealer refunds the overpayment, we are not going to come back in and say, hey, refund the guy again. We are just not going to do that.

But we would also like to be able to order a refund where the consumer is charged an unregulated fee, and where those fees were made to appear that they were regulated or mandated by a governmental body, but they weren’t. So, if a dealer passes off say, like a COVID-19
cleaning fee.

And it is one thing if they say, hey. This is a fee we are imposing. It is another thing if they are saying, yes. The State of Texas is requiring that we assess this fee.

That wouldn’t be true. And if the customer believed that statement to be true and paid it, and then later learned that it wasn’t, we want to be able to order a refund in that situation.

MR. DORAN: This is Presiding Officer Doran. Question for staff. Have you seen examples of that type of conduct? The -- I will call it the fake COVID-19 state-mandated claim for a fee.

MR. GE: This is Brian Ge. In developing these scenarios, I consulted with our chief investigator. And this was one of the examples that he provided, where a customer is charged like $900 for a cleaning fee.

And you know, the customer didn’t know. He couldn’t not pay it. So, it does come up. I don’t know how often it comes up. But it came up enough for it to turn into an example.

MR. DORAN: Okay. Thank you. Members, is there a discussion on this item?

MS. JOHNSON: Officer Doran, Member Johnson, request to be recognized and to speak.
MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: I would like to move that we adopt the proposed recommendation in [inaudible 1:03:49] a consumer is overcharged for TT&L, documentary fees, or a non-government regulated or mandated fee.

MR. DORAN: Members, a motion has been made. Is there any further discussion?

(No response.)

MR. DORAN: Okay. Is there a second to Ms. Johnson’s motion?

MR. OLAH: Member Olah seconds.

MR. DORAN: Okay. The motion has gotten a second. I will now call the question. Members, as I call your name, please state your support for the motion by saying yes, if you support the motion; no, if you do not support the motion. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Member Cavender.

MR. CAVENDER: No.

MR. DORAN: Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)
MR. DORAN: Member Gonzalez.
MR. GONZALEZ: Yes.
MR. DORAN: Member Johnson.
MS. JOHNSON: Yes.
MR. DORAN: Member McCullah.
(No response.)
MR. DORAN: Member Olah.
MR. OLAH: Yes.
MR. DORAN: Member Rash.
MS. RASH: Yes.
MR. DORAN: Member Rigby.
MR. RIGBY: Yes.
MR. DORAN: Member Smith.
MR. SMITH: No.
MR. DORAN: Member Solis.
(No response.)
MR. DORAN: And I, Presiding Officer Doran, also vote yes. The motion passes. Members, we are going to take another five-minute break. This will probably be our last break this morning. And we will -- we are going to go off here at 11:55 and we will come back at 12 noon. But we are now off the record.
(Whereupon, a short recess was taken.)
MR. DORAN: Twelve noon, we are going back on the record. And I just wanted to -- I know we have been
going for quite a while, and wanted to let the CPAC members know that it is our intent to finish this agenda item, and then take up the remaining two agenda items at future meetings.

So, when we get to the point that we finish 2A, we will move on to public comment and then, adjournment. So, I appreciate everybody’s time today, as we go through this very carefully. And with that, if Mr. Ge is back on, I will turn it over to him.

MR. GE: The next scenario [inaudible 1:06:45].

The Department recommendation [inaudible] --

MS. JOHNSON: Officer Doran, I cannot hear the speaker.

MR. DORAN: Member Johnson, yes. I am also struggling as well. Mr. Ge, if you wouldn’t mind getting a little closer to the microphone, that way the CPAC members can hear your presentation better.

MR. GE: Is this better?

MR. DORAN: That is wonderful. Thank you.

MR. GE: Okay. Sorry about that. I was saying, the next scenario is where the consumer purchases a third-party extended warranty that is offered by a dealer, and the dealer does not submit the paperwork or the funds for that warranty.

The consumer later finds out that they need
repairs. And they discover that they don’t have a warranty. This recommendation was modified, based on feedback from the Board.

The Department now recommends that the we have the authority to order a refund of the cost of that third-party extended warranty, where the consumer paid a dealer for the warranty, and the dealer failed to obtain said warranty for the consumer. The Department will not order a refund for the cost of repairs, as the cost of those repairs were not paid to the dealer, and it would constitute restitution. And I believe that covers my talking points as well.

MR. DORAN: Members, is there any discussion on this item?

MR. OLAH: This is Member Olah. I ask to be recognized.

MR. DORAN: Member Olah, you are recognized.

MR. OLAH: I just wanted to be clear that what we are talking about essentially, is the premium that is paid for that warranty. Is that correct, Mr. Ge?

MR. GE: This is Brian Ge. Yes.

MR. OLAH: Okay. Thank you.

MR. DORAN: Mr. Ge, Laird Doran again, Presiding Officer. So, if I understood you correctly, really, the cap on the ceiling on the type of refund in...
this instance would be the cost that the customer paid the
dealer for the service contract or third-party warranty?

MR. GE: This is Brian Ge. Yes. You are
correct. We are talking about a very specific situation
where the customer buys a third-party warranty or a
service contract and pays for it.

And then, the dealer takes the money, but never
gets that service contract for the consumer. So, it is, I
have paid you for X, and I did not deliver X, so we will
order a refund of X.

MR. DORAN: Okay. Thank you. Members, is
there any discussion on this item?

(No response.)

MR. DORAN: Members, we could entertain a
motion on this. If there is no discussion.

MS. JOHNSON: Officer Doran, Member Johnson
requests to be recognized and to speak.

MR. DORAN: Member Johnson, you are recognized.

MS. JOHNSON: I would move that we adopt the
proposed recommendation in the instance when a consumer
purchases a third party [inaudible 1:10:45] offered by the
dealer, and the dealer does not submit the paperwork or
funds, and the consumer needs repairs and discovers they
have no warranty.

MR. DORAN: Member Johnson has made a motion.
Is there a second?

MR. OLAH: Member Olah seconds.

MR. DORAN: Okay. Members, the motion has been made. It has been seconded. As I call your name, please state your support for the motion by saying yes, if you agree; no, if you do not support the motion, if you oppose. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: No.

MR. DORAN: Okay. Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

(No response.)

MR. DORAN: Member Gonzalez.

(No response.)

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Member Rash.
MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

(No response.)

MR. DORAN: Member Smith.

(No response.)

MR. DORAN: Member Solis.

(No response.)

MR. DORAN: And I, Laird Doran, also support the motion. There being five yeses and one no, the motion passes. Question for counsel. David, Presiding Officer Laird.

MR. RICHARDS: Yes, sir.

MR. DORAN: If it appears we have dropped below quorum, is that a cause for concern?

MR. RICHARDS: Yes, it is. Have we actually dropped, or is someone just not answering?

MR. DORAN: Well, I know we didn’t get a vote out of Ms. Johnson on that one, but she did offer the motion.

MS. JOHNSON: I apologize. I did vote for that.

MR. DORAN: Okay. Great. So, that would be -- I guess that is seven ayes and one no.
MR. DORAN: Okay. That would keep us at eight.

Okay.

MR. RICHARDS: Keep us at eight. Right. Yes.

MR. DORAN: Okay. All right. Thank you, everybody. I will turn it back over to Mr. Ge.

MR. GE: Thank you, Officer Doran. The final talking point today is for household goods movers. So, for all the household good movers on the Committee, this is the time to pay attention.

The scenario is where a consumer is charged for costs that are not listed on their tariff after the household goods mover takes possession of the consumer’s property, and the mover refuses to unload goods until those charges are paid. And that is a very specific scenario.

And I imagine that is the only scenario we would be ordering a refund for. The Department proposed recommendation is that the Department may order a refund where a consumer is charged for costs not listed under a household goods movers tariff, and the household goods mover takes possession of the consumer’s property and the household goods mover refuses to unload the customer’s property until those charges were paid.

Based on the conversation at our first or
second meeting, the initial recommendation was also for
the Department to refer unregistered carriers to law
enforcement authorities. Happy to answer any questions.

MR. DORAN: Presiding Officer Doran. A
question for you, Mr. Ge. I think it was maybe Member
French earlier on, who was describing how this worked.

And it sounded as though there were a number of
regulatory requirements already imposed on household good
movers that specified what they could and couldn’t charge
for. I am not familiar with what those are.

So, my question would be more along the lines,
are there charges that are customary in this industry that
would typically be on a customer’s bill, but might for
some reason be inadvertently left off, like fuel or
mileage or something like that? Or are all of those types
of line items or charges, if they exist, specified in the
regulations that Member French was referring to, that
already governs that part of the industry?

MS. BROOKS: Member Brooks. May I speak?

MR. DORAN: Yes, you may.

MS. BROOKS: Thank you. The household goods
industry is highly regulated. We -- each mover is
required to have a maximum tariff on file with TxDMV.

If those charges -- if they have fee charges
and the proper paperwork on file with TxDMV and apply
that, then those charges are payable by the customer. If the mover does not provide for all the charges in the proposal for work, then certainly, a refund is obviously required.

And there are instances where a mover will get a contract signed and go to location. And the customer, once the mover gets there, the customer will say, I was going to move the things in the garage myself but didn’t have time. Can you do that.

The mover at that point then has the option to either refuse that, because it is not on the contract, or they can issue what is called an addendum to the contract and get the customer to sign it. What frequently happens is that a mover has not provided the necessary charges and filed it with TxDMV. Or they do not complete the addendum and perform the services, and expect to be paid when they get to location.

So, as the rule is written, it appears to be appropriate to ask for a refund if the mover has not provided those specific charges in their tariff and it is on file with TxDMV and/or when they have failed to issue the appropriate paperwork when additional services are required beyond what is on the contract.

MR. PEREZ: This is Luis Perez, staff. Permission to be recognized.
MR. DORAN: Mr. Perez, you are recognized.

MR. PEREZ: Thank you. And Ms. Brooks is correct. There are some regulations in place for these household good movers, in that they can basically charge our consumers anything that they want, as long as it is listed in their tariff that is on file with the Department. We have made changes to where a household good carrier would not get their certificate to operate unless they do file that tariff.

There are some instances, however, where a mover will want to throw on some sort of ad hoc fee. For example, let’s say they have to wait for a couple of hours for the consumer to be ready to move. Or they had to serve up maybe an additional laborer that they do not have listed in that tariff items.

And they will want to do this with a verbal agreement on the move. And we do get complaints afterwards to where there becomes an issue that they were overcharged because that item is not listed in their tariff. So, there are instances where there are some household good movers that don’t have all the items that they wish to charge their consumers on the tariff.

MR. DORAN: This is Presiding Officer Doran. Another question for staff. The way I read the call of this question, it is a situation where the mover is
refusing to unload the goods or release the goods. It is a poor choice of words, but it is almost like ransom.

Would this not -- this would not come into effect where there is a dispute over how many hours the mover ended up working. So, the example being, if the mover said, I think it is going to take me eight hours to move all of your stuff. And it ended up taking ten hours. And the argument is between the customer and the mover over the actual time spent moving. This wouldn’t come into effect. Right?

MR. PEREZ: Luis Perez. Permission to speak?

MR. DORAN: Yes. Permission granted. You are recognized.

MR. PEREZ: You are correct. Typically, when the move is agreed to up front, if it is based on an hourly move, the customer acknowledges up front that they understand that they don’t need to get the number of hours total to get that move completed until they get to the end of the move.

And I may need to ask Brian for some clarification on this, on that last part. I am not sure if that was intended for maybe the unlicensed moving companies. We have more problems with the unlicensed moving companies that would want to, you know, refuse to unload a move, or unload a shipment until they get paid.
Most of the registered carriers typically have that agreement already upfront. They dictate, or they put on their contract when the payment is required, and when they are going to unload the items. So, that is already known upfront.

We do have an issue with unlicensed movers, which we do push over to law enforcement. But that is an issue. And like I said, I am wondering if that is what that was meant for, Brian?

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: So, the intent of any of these refunds, both for household good movers and for dealers is not to unjustly enrich the consumer. So, in a situation where you know, you hire movers. They quote you like an hourly fee, but it is capped at ten hours max. And the move takes twelve hours.

Well, in your written agreement, you said ten hours max. And so, anything you try to charge above that, we would try to seek a refund for. But if the customer asks the movers to do extra work, and that extra work takes extra time, I think out of fairness, even if it wasn’t listed on the contract, we wouldn’t necessarily pursue a refund in that situation.
So, I think I may have misspoke or spoke too soon earlier, when I said it is only limited to this very specific situation where the mover refuses to unload goods. But I can’t see other situations where there is a legitimate reason why we may want to order a refund.

And also, situations where even if on paper, it seems legitimate, we wouldn’t pursue that. Because it wouldn’t be equitable to the mover.

MS. BROOKS: Member Brooks. May I speak?

MR. DORAN: Member Brooks, you are recognized.

MS. BROOKS: Thank you. The problem -- the issue comes about where many independent movers, those that are not members of an association, tariff, or they are not agents for a van line will file minimal revisions with TxDMV in order to get their license.

And then, it appears that at that point, they totally ignore what they put in a tariff with TxDMV and charge whatever they choose. Our position would be -- is if it is in the tariffs, and it is on the paperwork, then the mover is -- and accepted, and charged the customer, if it is not in their tariff and is not on their paperwork, and the mover charges it, then definitely a refund is due.

MR. DORAN: Thank you. Members, any additional discussion on this item?

MR. FRENCH: I am sorry. Member French wishes
Mr. Doran: Member French, you are recognized.

Mr. French: I quite honestly agree with what Ms. Brooks said. When you start holding somebody’s household goods, that is what it is. It is an illegal act. And you know, in the old days, I would say get a rope. But I can’t say that anymore.

But anyway, it is -- in this scenario, it is [inaudible 1:25:58] to demand a refund. Unfortunately, in those cases, the money had been paid, so there is not a refund. It is illegal.

Mr. Doran: Thank you, Member French. Is there any additional discussion?

(Pause.)

Ms. Johnson: Officer Doran, Member Johnson, requesting to speak and to be recognized, please?

Mr. Doran: Member Johnson, you are recognized.

Ms. Johnson: While I would really love Member French to make this motion I would move that we adopt the proposed recommendation regarding household goods, when a consumer is charged, but it is not listed on the tariff, and the mover takes possession of the property, and the mover refuses to unload goods until charges are paid.

Mr. Doran: Members, you have heard the motion. Is there a second?
MR. FRENCH: How about if I second that?

MR. DORAN: Okay. Member French seconds the motion. Members, I will now call for the vote. Members, as I say your name, please state your support for the motion by saying yes, or no, if you do not support the motion. And Members, if you wouldn’t mind putting your phones on mute, so we can hear each of the members vote accurately, that would be helpful. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: Yes.

MR. DORAN: Okay. Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

MR. FRENCH: Yes.

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.
MR. DORAN: Member Rash.

MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

(No response.)

MR. DORAN: Member Solis.

(No response.)

MR. DORAN: And I, Presiding Officer Doran, vote yes as well. Okay. The motion passes. Okay.

Members, I believe when we started down this road today on Item 2A, we had tabled Member Smith’s motion with respect to the definition of refund. And I think that is the only part of this that we still need to close out before finishing up this item.

MR. GE: This is --

MR. DORAN: I am sorry. Go ahead, Mr. Ge.

MR. GE: Thank you. This is Brian Ge. There are two items and one talking point. I think I will start with the talking point first, since that is not coming up for a vote.

Originally, the thought was, we presented to the Committee the question of how long is too long to order a refund. And it was the Committee’s decision that four years was good, because that coincided with the
amount of time a dealer had to keep paperwork for.

                After consultation with Counsel, the Department
determined that we should not treat our refund authority,
which is a sanction, differently from our other sanctions.
And those sanctions have no time limit. So, we are not
going to impose a time limit on the Department’s authority
to order a refund.

                Now, that said, before we would ever get to the
point of ordering a refund, we have to, one, have
evidence. And two, that evidence has to be strong enough
to prove our case of a violation.

                The thing is, after a certain amount of time,
let’s say, around that four-year mark, when the dealer no
longer has to keep records, that evidence goes away. We
are going to have a harder and harder time to prove our
case as time passes.

                So, I don’t think it will be a concern. It
obviously affects some of that regulatory clarity that you
were speaking about earlier.

                But it will be treated like any of our other
sanction authority, and all the due process that
accompanies that. If anyone has any comments on that, I
am happy to address them. If not, I will move on.

                MR. DORAN: This is Presiding Officer Doran. I
think, in fact, when we initially discussed this, myself
and maybe one of the other attorneys that is a member of the Committee, had recommended four years.

Because that was, I believe, the statute of limitations in Texas on contract actions. As well as, as you mentioned, the recordkeeping requirement that is imposed on dealers by DMV.

I was just wondering if you could speak a little bit more to why the Department would want to go beyond four years. I think what you were saying was, the Department would take into consideration the fact that a dealer is not legally obligated to keep documentation related to the transaction in question beyond four years.

But just perhaps you could speak a little bit more to this. Because it does, I think, open up a certain level of uncertainty from a compliance standpoint for dealers. And I, as a practitioner in this area, would struggle, kind of, with the guidance to give a dealer as to how long they need to hold on to paperwork, if they thought that there was a reasonable probability that it would be exculpatory in some way, beyond four years.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Yes. You are recognized.

MR. GE: So, yes. You are correct that the original basis for that four years was one, the
recordkeeping requirement, and two, it coincides with a contract cause of action.

The thing is, this is a civil sanction. We are acting as the role of a prosecutor, essentially. And we are charging you, the dealer, with violations. Not criminal, obviously, but violations of our rules and our statutes.

Just because we can’t order a refund -- and this is assuming this goes off course. But even if we can’t order a refund, we would still be able to sanction you, based on that activity that was passed four years ago. So, it is not really -- this ability to order a refund isn’t any more of a stick than the penalty already is.

And we want to treat all of our sanctions the same. So, it didn’t make sense to introduce an artificial limitation on one sanction, when every other sanction can be applied evenly and equally. Does that make sense?

MR. DORAN: Yes. Thank you.

MR. GE: And, this is Brian Ge again. Especially in the context in which we are planning to use this refund authority, it is going to mostly be a settlement tool.

So, say five years down the line, there is evidence of a violation. And the consumer is out of --
let’s say, an extended warranty. So, the extended warranty was for six years.

On year five, the consumer goes in and tries to use that warranty, but discovers hey, the dealer never paid for it. And suddenly why, that at year four, we could order a refund of that warranty. But at year five, we can’t.

And at year five, if the alternative is to sanction you for $1,000 for a civil penalty for that misrepresentation, wouldn’t it be better if, instead of assessing that as a penalty, we say, hey. Maybe as a settlement, you just refund the money to the consumer for what they paid for that warranty. And we, given the age in this case, we just settle and call it even.

MR. FRENCH: This is Mr. French. May I speak?

MR. DORAN: Member French, you are recognized.

MR. FRENCH: Got a little conflict in the rules governing consumer protection subchapter S and 218-51, item F states, household good carrier or agent shall keep records of whatever shipment it sells or handles for at least two years after the date of the shipment. Once two years goes by, those records, they totally disappear.

MR. GE: This is Brian Ge. If I may respond?

MR. DORAN: Yes. Brian, you are recognized.

MR. GE: Member French, so it is the
Department’s policy. Well, I don’t know if it is official policy, but it is my policy, that we don’t go after dealers or movers for records-type violations after they no longer have to keep those records.

And as I said before, in relation to one of the examples, we typically resolve ambiguity in terms of what is in the documents. If there are no documents, one, we won’t be able to prove our case.

And two, out of fairness, I don’t think the case ever would have been brought in the first place. Does that address your concern?

MR. FRENCH: No, it doesn’t. Because it implies that people wanting to complain or whatever has four years to do it. The rule, the household goods rules clearly states the dates. Like, after a move, the consumer has 90 days in which to file a claim for loss [inaudible 1:38:04].

The records are kept for two years. If we are going to -- Texas DMV rules should be consistent and not jump around, you know, and what an adjuster thinks, or examiner thinks. Because everybody has a different opinion. We need a firm rule that is livable. Thanks.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Mr. Ge, you are recognized.
MR. GE:  Member French, the rules concerning the Department’s sanction authority is six. It is in for 218, it is as you said, Subchapter F, for dealers it is in 215.

But there are no limitations to, or time limitations on the Department’s sanction authority. It -- this refund authority doesn’t affect that part of it. It is just, we are treating it as any other sanction.

It’s -- you say you don’t want to be subject to the whims of any person. But it’s -- I mean, in any of these cases, you are. That is what is happening.

I mean, you are not subject to the whims of that person. But they are following the Department’s rules, and if the Department’s rules allows for sanctions in these enumerated instances, whether or not there is approval to add refunds to that list, it won’t affect anything else.

So, I don’t know if that addresses your question, or if it is just -- or if it sounds like I am saying, too bad. Because I am not trying to do that. I just don’t know of a more eloquent way of saying it.

This is a sanction. It will be treated like every other sanction.

MR. FRENCH:  Member French wishes to speak.

MR. DORAN:  Member French, you are recognized.
MR. FRENCH: I hear what you are saying. Do I like it? No. You know, there has been several occasions in my career in the moving and storage business which there has been a difference of opinion between an examiner and you know, the mover, that I am aware of. And you know, I guess we are down to the point of, too bad, then. And so be it. Thank you.

MR. GE: This is Brian Ge, if I may be recognized?

MR. DORAN: You are recognized, Mr. Ge.

MR. GE: Member French, not to get too far into the weeds, but absolutely, movers will be able to be heard. There is, we are not just working off the consumer’s complaint. We have investigators, often with dozens of years of experience going out and assessing the situation. They have their supervisors which approve their recommendations. Once they have that supervisor approval, it goes to an attorney who exercises their legal judgment.

After they make their recommendation, their manager, which in this case, would be me, goes in and approves it. So, before anything even comes out of our mail to you, you will already have had four layers worth of checks.

Then, on top of that, once you receive that
notice of the Department’s decision, you can reach out to us. You can tell us your side of the story. We will listen. We will work with you. We will try to settle it, if we can.

If we can’t, it will go in front of an administrative law judge. That judge will make a decision. And you know, if you are not happy with that, you can file a motion for rehearing, and see if you can appeal that.

If that gets denied, you can appeal it to District Court. There are many, many levels of review. And so, there will always be due process with regards to any sanctions. Not just refunds.

I mean, you get that level of attention from that many personnel every time one of these things even get alleged. So, I hope that gives you some reassurance. It is definitely not a situation where we are just saying, tough, live with it. Because it is not. We give everyone an opportunity to be heard, and sometimes, multiple.

MR. DORAN: Members, is there further discussion on this? It is a talking point now, according to Mr. Ge, and not a recommendation to be voted on, via a motion. Is that correct, Mr. Ge?

MR. GE: This is Brian Ge. Yes.
MR. DORAN: Okay.

MR. CAVENDER: Member Cavender. Permission to speak, please.

MR. DORAN: Member Cavender, you are recognized.

MR. CAVENDER: I can’t speak for all 1,400 franchise dealers in Texas on their records keeping. But I just know that franchise dealers have become very successful in DMS systems and maintaining records.

So, the four-year issue, if you are talking about that, I think as dealers, I can see no reason to oppose the Agency’s desire for a time limit. But of course, discovery would become problematic, I am sure, after four years.

Especially if they need to see deal jackets and that kind of thing, the physical deal jacket. Because that is when we kind of move that into archive, as I understand. I may have to ask my office management staff. But I believe that is true.

But I would like to try to re-center us back to the original motion that our Member Smith had proposed, in the essence of time. If we could go ahead and get back to that. I would appreciate that.

MR. DORAN: Thank you, Member Cavender.

MR. GE: This is Brian Ge. If I may be
recognized?

MR. DORAN: You are recognized.

MR. GE: If there is no further discussion on that, I would love to move on to how a refund should be defined.

MR. DORAN: Please proceed, Mr. Ge.

MR. GE: All right. I believe that Mr. Smith proposed that we modify the proposed recommendation to read, a refund should be defined as the return of any consideration that a consumer paid or contracted to pay to a licensee or registrant. If I am restating that incorrectly, please let me know.

MR. DORAN: Presiding Officer Doran here. You said registrant? Is that the distinction.

MR. GE: This is Brian Ge. A registrant refers to a motor carrier in, for our purposes, household good movers. And a licensee refers to dealers.

MR. DORAN: Thank you. Members, is there further discussion on the definition?

MR. GONZALEZ: Member Doran, permission to speak? This is Member Gonzalez.

MR. DORAN: Member Gonzalez, you are recognized.

MR. GONZALEZ: Thank you. In the interest of layman’s terms, why not use that terminology that you just
mentioned, Mr. Ge?

Instead of licensee, show dealer. Instead of registrant, show motor carrier or household goods mover. I think that would be simpler to understand. And that specific definition of licensee or registrant, I was a little bit thrown off.

The registrant could be a vehicle owner, you know. This term in this sense, we are talking about a household good mover, or a licensed dealer. If you mean a licensee and refer to it as a dealer, a license dealer, or in the case of a registrant, a motor carrier or household good mover.

That would be my comment. Thank you.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: Member Gonzalez, I apologize. I, in my training, I try to be as precise as I can in my language. In this case, because we are dealing with licensees in 2301 and registrants in 645, I used those terms.

But again, as I mentioned previously, these are just recommendations. And it is not the actual rule language.

So, absolutely. If you prefer that the
recommendation is -- or rather, if it is the Committee’s preference to switch out licensee and registrant for dealer and household good mover, I have absolutely no qualms with that, whatsoever.

MR. DORAN: Mr. Ge, this is Presiding Officer Doran. Can you refer us or remind us what the Sunset Commission directed on this? What was in the legislation. Did it say dealer, or did it say licensee?

Because legislative intent is probably pretty important here. And it is not clear to me whether the Legislature was intending to include a manufacturer, a distributor, a converter, other types of licensees, beyond just dealers.

MR. GE: This is Brian Ge. I will look that up for you right now.

MR. DORAN: Thank you.

(Pause.)

MR. CAVENDER: Member Cavender. Permission to speak, please.

MR. DORAN: Member Cavender, you are recognized.

MR. CAVENDER: I believe we are having some technical issues with Member Smith. He is on the call, but he cannot -- for some reason, he is muted. So, can somebody look at him on the technical side, to see if we
can bring Mr. Smith back to the discussion?

MR. SMITH: This is Member Smith. Can you hear me now?

MR. DORAN: Yes. We can, Member Smith. You are recognized.

MR. SMITH: Thank you. A couple of things. I mean, you have a question there for Mr. Ge. I think the 2301.807, to answer Officer Doran’s question, it says, determines that a person -- so I assume that would mean a manufacturer, a dealer, or a distributor. But that is a question for Mr. Ge.

And then, after that is answered, I would like to again, talk about my motion.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: So, as part of TxDMV Sunset Bill 2301.807, it says, if after a proceeding under this Chapter and Board rules, the Board determines that a person is violating or has violated this Chapter or rule adopted, or order issued under this Chapter. So, we are talking about 2301, which is related to the licensees regulated under 2301.

MR. DORAN: Understood. Thank you, Mr. Ge.

MR. GE: And the same goes for -- this is Brian
Ge, again. The same goes for 643, where the refund authority for motor carriers is found. So, to answer Member Smith’s question, it is relating to the sale or lease of motor vehicles, so persons regulated under that Chapter.

MR. SMITH: So, I am not clear. This is Member Smith, again. So, that would apply to manufacturers, distributors and dealers, all three?

MR. GE: My understanding is that it is dealers. But I can seek further clarification on that.

MR. SMITH: My comment would say that it says buyer. And of course, dealers are buyers from the factory, or for the distributor, but I am not the lawyer.

MS. THOMPSON: Corrie Thompson. I can say that Sunset’s intent was for this to be a dealer refunding a public purchaser, as a consumer, is the intent behind the implementation of the statute.

MR. SMITH: Member Smith, Officer Doran.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: When you are ready to move forward, I would like to restate my motion.

MR. DORAN: Members, is there any further discussion on this item before we proceed to Member Smith’s motion?

(No response.)
MR. DORAN: Not hearing any. Member Smith, you are recognized.

MR. SMITH: My motion was to adopt a definition for a refund as quote, a refund is defined as the return or repayment of consideration, period. Under Section 2301.807, a refund is limited to the amount paid by the consumer, and without the inclusion of any additional consideration of damages or harm. Period.

MR. DORAN: Members, you have heard the motion. Is there a second to the motion?

MR. CAVENDER: Cavender seconds.

MR. DORAN: Okay. The motion has been seconded. Okay. Members, I will now call for the question. Members, as I call your name, please state your support for the motion by stating yes, or no if you do not support the motion. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: Yes.

MR. DORAN: Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

MR. FRENCH: Yes.
MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Member Rash.

MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: Yes.

MR. DORAN: Member Solis.

(No response.)

MR. DORAN: And I, Laird Doran, Presiding Officer, also vote yes. The motion is unanimous, or the motion passes unanimously.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: You are recognized, Mr. Ge.

MR. GE: Okay. And the very last thing that we have to talk about is, under what circumstances should TxDMV order a dealer or household good mover to provide a
refund. I believe in the course of our discussion, with all the examples, we have made it or at least hopefully made it very obvious and clear.

While we can use this refund authority as any other sanction, we do intend to use it judiciously, and as part of -- just as another sanction in our toolbox. So, we would be following our normal enforcement process.

And all the due process would be there. And it would be governed by our rules as any other sanction that we could impose.

So, with that in mind, I propose the following recommendation for when TxDMV should be able to order a refund. As the refund is just one sanction or tool that the Department or that Enforcement can use as part of the Department’s normal enforcement process, including during settlement negotiations, the Department may order a refund from a dealer or household goods mover after they have established that a violation was committed as part of the enforcement process outlined in the Department’s rules.

MR. DORAN: Members, do we have a motion to -- well, let me take a step back. This is Presiding Officer Doran. This is a question for staff. Do you need a motion to put forth your proposal for the Committee to vote on?

MR. GE: This is Brian Ge. Yes, that would be
preferred.

MR. DORAN: Okay.

MR. SMITH: Member Smith --

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: Can he repeat the motion, please?

MR. GE: Yes, sir. This is Brian Ge. The proposed recommendation as written is, the refund is just one sanction or tool that Enforcement can use, as part of the Department’s normal enforcement process, including during settlement negotiations.

The Department may only order a refund from a dealer or household good mover after they have established that a violation was committed, as part of the enforcement process as outlined in the Department’s rules.

MR. DORAN: This is Presiding Officer Doran. Question for staff. So, in the proposal and the language you just laid out there, in describing this refund authority as being a sanction or tool that the Department can use, is it the Department’s position that this is a -- the procedures around this, and the treatment of this particular sanction are to be considered on par or the same as the other tools that the Department?

MR. GE: This is Brian Ge. Yes.

MR. DORAN: Thank you.

MR. SMITH: Member Smith, Officer Doran.
MR. DORAN: Member Smith, you are recognized.

MR. SMITH: Again, is this in writing somewhere that we can read it? I tried to listen to it. But I think he said that it was only limited to dealers. It seems to me that maybe that ought to be broader.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Yes. Mr. Ge, you are recognized.

MR. GE: Member Smith, everything that we have talked about today is written down and included in the meeting materials that were distributed to you yesterday. It is on page 5 of the TxDMV packet materials. And yes, it is --

MR. SMITH: Under number two?

MR. GE: Yes. Under number two.

And as to the second part of your question or your comment, as we said earlier, the intention was -- for Sunset was to apply this to dealers and household good movers. If you would like to broaden that in a motion, I have no objection.

MR. SMITH: Member Smith, Officer Doran.

MR. DORAN: Member Smith, you are recognized.

MR. SMITH: I would like to strike a part that says from a dealer or household good mover and put in there, from a license holder.
MR. DORAN: Members, Member Smith is seeking to amend the motion. Is there discussion?

MR. FRENCH: This is Member French. May I speak?

MR. DORAN: Member French, you are recognized.

MR. FRENCH: I did not hear the substitution very well. Would you repeat that, please, Mr. Smith?

MR. SMITH: Yes, sir. Thank you. In the third sentence down, order a refund from a dealer or household good mover is the verbiage. I omitted that by just saying, a refund from a license holder.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: So, the problem with saying license holder, one, is that while we license household goods, they have a registration. That is their operating authority. That is what we regulate. So, that is why I have been referring to the motor carriers as registrants.

Second, in the event that we -- that there is unlicensed activity, say from an unlicensed mover, if we can somehow get them to agree to a refund, we would certainly like to be able to include them in that definition. Whereas, if we just say license holder, it precludes all the unlicensed activity that may go on.
But again, this ultimately -- rule language
will be developed for public comment. And the verbiage
used in this recommendation will be superseded by that.

MR. SMITH: Member Smith.

MR. DORAN: Member Smith. You are recognized.

MR. SMITH: What if we said licensee or registrant? It seems to me that you are going to be
[inaudible 21:31] when you say dealer or household good mover.

There are others that might be party to some sort of complaint that you might want to order a refund.
I would amend my motion to say licensee or registrant if that works for Mr. Ge.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: Member -- I am sorry. Mr. Ge, you are recognized.

MR. GE: If it would be easier, we can even just replace that with person.

MR. DORAN: This is Presiding Officer Doran.

Since we are discussing this particular amendment to the motion, I just want to come back to something Ms. Thompson said, because I want to make sure that all the members understand what I think she described as the legislative intent behind this.
It sounded like, from a prior question that we asked, that it was the direction of the Sunset Committee and that direction was carried through by the Legislature, that this would be limited to dealers and to household movers. I understand that the language of 2301.807 is not so [inaudible 22:43].

So, that is kind of a question that I want to turn back to, one more time, for staff to opine on. Because I personally want to stay true to whatever the legislative intent is.

Not trying to be antagonistic towards any particular group of stakeholders. But want to make sure that we are not taking this in a direction that was beyond what the Legislature contemplated.

MR. RICHARDS: Officer Doran? This is David Richards. May I have permission to speak?

MR. DORAN: You are recognized.

MR. RICHARDS: Members, the housekeeping measure, please mute your phones if you are not -- if you haven’t been recognized, or you are not speaking. We are getting a lot of background noise. And I don’t think everybody can hear the discussion. Thank you.

MR. DORAN: Member Smith. Officer Doran.

MR. DORAN: Member Smith, I will get to you. I
think my question was really posed to Ms. Thompson, since she focused on this initially during our discussion.

   MS. THOMPSON: Yes.

   MR. DORAN: So, I will get back to you.

   MS. THOMPSON: Corrie Thompson.

   MR. DORAN: Mr. Smith, after Ms. Thompson speaks.

   MS. THOMPSON: Yes. Officer Doran. Corrie Thompson. If I may.

   MR. DORAN: You are recognized.

   MS. THOMPSON: Yes. And so, I was part of the Department Sunset review.

   I sat in all the meetings with them, and the discussion of this authority came up only ever around additional protections for the consumer public purchasing vehicles from dealers. So, that is the reason for the proposed language in the definition.

   You will note that other points at the statute, too, make reference to the term “person” when they are making the definition of a dealer. But that is the specific reason for the definition language that is proposed currently.

   MR. DORAN: Thank you. Mr. Smith, or Member Smith, you are recognized.

   MR. SMITH: Thank you. Thanks to Mr. Ge for
putting us on the right track. I am perfectly content
with substituting the word “person” instead of dealer or
household good mover. And so, I put that in my motion.

Thank you, Mr. Ge.

MR. DORAN: Thank you, Member Smith.

MS. RASH: I am Member Rash. I have a
question.

MR. DORAN: Member Rash, you are recognized.

MS. RASH: Probably for the Department, because
would this hamper, if you sent a letter to a dealer that
said that an NOV, like a notice of a possible violation.
And the dealer, especially for one that is larger, there
was an error made.

And they are willing to up-front refund. This
doesn’t hamper you all’s ability to do that. Correct?

MR. GE: This is Brian Ge. If I may be
recognized?

MR. DORAN: Mr. Ge, you are recognized.

MR. GE: No. It would not hamper our ability.

These sanctions, they are a last resort. Like if we can
resolve this informally, before we ever issue a charging
document, that is our preference. If we never had to
bring one of these, I would be perfectly content.

MS. RASH: Okay. That is great. The reason I
asked is because it said, you know, that you had to
establish the violation. I guess, that is when you have
to enforce the refund, not if the refund is given because
the dealer wants to go ahead and do the refund.
        Correct?

        MR. GE: Yes. Yes, ma’am. This is Brian Ge.
        This -- that sentence is just saying, we will give the
dealer or the mover their full due process. We are not
just going to assess a refund without proving up
everything else.

        MS. RASH: Okay. Thank you.

        MR. DORAN: This is Presiding Officer Doran.
        Just one last comment I had, responding to the proposed
change of moving it away from just being a dealer to
person.

        Given the fact that we know Tesla Motors is
selling vehicles currently, and they are technically a
manufacturer, I do believe that “person” could be
interpreted to cover entities such as that, that are
engaging in transactions directly with the public -- the
public consumer. So, I too, would support the change from
dealer to person, to coincide with 2301.807.

        (Pause.)

        MR. DORAN: Members, is there any further
discussion?

        MR. OLAH: Member Olah asks to be recognized.
MR. DORAN: Member Olah, you are recognized.

MR. OLAH: Again, with all the discussion, I have lost the handle on whether we actually have a motion by Member Smith, and actually how that motion would be worded. If I may ask for clarification.

MR. DORAN: My understanding -- this is Presiding Officer Doran, and if I am wrong, staff, please step in here. But my understanding is the motion has been made to take the language that is set out in the agenda that currently defines refund, and where that referred to dealer, use the word “person.”

I will defer to staff, if there were additional amendments that were suggested by Member Smith to the suggested definition for refund that was in the agenda.

MR. GE: This is Brian Ge. If I may be recognized?

MR. DORAN: You are recognized.

MR. GE: I believe a correct restatement of Member Smith’s motion was, the Department may only order a refund from a person after they have established that a violation was committed as part of the enforcement process outlined in the Department’s rules.

MR. SMITH: Member Smith. That is correct.

MR. DORAN: Members, you have heard the motion. Is there a second?
MR. CAVENDER: Cavender to second.

MR. DORAN: The motion has been seconded by Member Cavender. I will now -- if there is no further discussion, I will now call for the question.

Members, as I call your name, please state your support for the motion by saying yes, if you agree. No, if you are not in support of the motion. Member Brooks.

MS. BROOKS: Yes.

MR. DORAN: Okay. Member Cavender.

MR. CAVENDER: Yes.

MR. DORAN: Member Colvin.

(No response.)

MR. DORAN: Member Eshpeter.

(No response.)

MR. DORAN: Member French.

MR. FRENCH: Yes.

MR. DORAN: Member Gonzalez.

MR. GONZALEZ: Yes.

MR. DORAN: Member Johnson.

MS. JOHNSON: Yes.

MR. DORAN: Member McCullah.

(No response.)

MR. DORAN: Member Olah.

MR. OLAH: Yes.

MR. DORAN: Member Rash.
MS. RASH: Yes.

MR. DORAN: Member Rigby.

MR. RIGBY: Yes.

MR. DORAN: Member Smith.

MR. SMITH: Yes.

MR. DORAN: Member Solis.

(No response.)

MR. DORAN: And I, Presiding Officer Laird Doran, also vote yes. The motion is unanimous and passes.

Members, are there any other motions?

(No response.)

MR. DORAN: If there is no further motions, then I would like to -- Members, we are going to table Agenda Items 2(b) and 2(c) for a future meeting. And we are now going to move on to Item 2(d), future meeting schedule.

Members, we currently do not have any future meeting dates scheduled. The Office of General Counsel will send out future meeting invites to determine membership availability.

Members, we will now move on to take up Agenda Item 3, which is public comment. David, are there any public -- I am sorry. Are there any comments from the public?

MR. RICHARDS: David Richards for the record.
Presiding Officer Doran, we do not have any public comments today.

MR. DORAN: Thank you, David. We do not have any comment sheets from the public, so we will move on to Agenda item 4, adjournment. Unless there is any further business, I would like to entertain a motion to adjourn.

MS. JOHNSON: Member Johnson moves to adjourn.

MR. DORAN: Motion is made by Member Johnson. Is there a second?

MR. CAVENDER: Cavender, second.

MR. DORAN: Okay. The motion has been made and seconded to adjourn the meeting. All in favor, say aye.

(A chorus of ayes.)

MR. DORAN: Let the record reflect that the vote was unanimous. I would like to thank all the members and staff for their time today. It is now 1:08 p.m. And we are adjourned.

MR. RICHARDS: Thank you, Members.

MR. DORAN: Thank you, everyone.

(Whereupon, at 1:08 p.m., the meeting was adjourned.)
MEETING OF:    TxDMV Consumer Protection Advisory Committee
LOCATION:      Austin, Texas
DATE:      June 25, 2020

I do hereby certify that the foregoing pages, numbers 1 through 160, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Elizabeth Stoddard before the Texas Department of Motor Vehicles.

DATE:  July 6, 2020

/s/ Carol Bourgeois
(Transcriber)

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