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locations; and

- SB 604, eliminating representative licenses and adding licensing education and training requirements for independent motor vehicle dealers
  (Proposal Published August 23, 2019 - 44 Tex. Reg. 4462)
  (Review by the Office of the Governor, Regulatory Compliance Division; submission November 22, 2019; comment period closed December 27, 2019)

   (Relating to:
   - HB 1548, establishing procedure for issuance of license plates to golf carts and off-highway vehicles, charging a fee, and updating statutory citations;
   - HB 1755, classification and operation of sand rails;
   - HB 3068, use of certain license plates on classic motor vehicles and travel trailers, custom vehicles, street rods, and certain exhibition vehicles; use of embossed disabled veterans' license plates on certain vehicles; and
   - HB 3171, classification and operation of mopeds)
   (Proposal Published August 30, 2019 - 44 Tex. Reg. 4467)
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   (Review by the Office of the Governor, Regulatory Compliance Division; submission November 22, 2019; comment period closed December 27, 2019)

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   - The proposal was published in the December 20, 2019 issue of the Texas Register (44 Tex. Reg. 7866).

EXECUTIVE SESSION
16. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:
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MR. TREVIÑO: Ladies and gentlemen, good morning. My name is Memo Treviño, and I am pleased to open the Board meeting of the Texas Department of Motor Vehicles. It is 8:02 a.m., and I'm now calling the Board meeting for February 6, 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 January 29, 2020.

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

If you wish to address the Board or speak on an agenda item during today's meeting, please complete a speaker's sheet at the registration table. Please identify on the sheet the specific item you're interested in commenting on and indicate if you wish to appear before the Board to present your comment.

If your comment does not pertain to a specific agenda item, we'll take your comment during the general public comment portion of the meeting. Also, you can leave a copy of any written comments you wish to have
entered into the record at the registration table.

In accordance with Department administrative rule, comments to the Board will be limited to three minutes. To assist each speaker, a timer has been provided. The timer light will be green for the first two minutes, yellow for one minute, and then red when your time is over. Individuals cannot accumulate time from other speakers. Comments should be pertinent to the issues stated on the comment sheet.

When addressing the Board, please state your name and affiliation for the record. Before we begin today, I'd like to remind all presenters and those in attendance of the rules of conduct at our Board meetings.

In the Department’s rules, Section 206.22, the Board chair is given authority to supervise the conduct of the meetings. This includes the authority to determine when a speaker is being disruptive of the meeting or is otherwise violating the timing or presentation rules I just discussed.

And now I'd like to have a roll call of the Board members.

Board Member Bacarisse?

MR. BACARISSE: Here.

MR. TREVIÑO: Board Member Gillman?

MS. GILLMAN: Present.
MR. TREVIÑO: Board Member Graham?

MR. GRAHAM: Present.

MR. TREVIÑO: Board Member McRae?

MS. McRAE: Present.

MR. TREVIÑO: Board Member Prewitt?

MR. PREWITT: Here.

MR. TREVIÑO: Board Member Richardson?

MR. RICHARDSON: Here.

MR. TREVIÑO: Board Member Scott?

MR. SCOTT: Here.

MR. TREVIÑO: Board Member Washburn?

MS. WASHBURN: Here.

MR. TREVIÑO: And let the record reflect that I, Memo Treviño, am here too. We have a quorum. Also the record reflect that no one is absent.

Now we'll start and stand our honor our country and state with the pledges of allegiance. Mr. Bacarisse, would you lead us in the Pledge of Allegiance, and Mr. Prewitt, would you lead us in the Texas state pledge?

MR. BACARISSE: Join me in the pledge to the American flag.

(The Pledge of Allegiance to the American Flag was recited.)

MR. PREWITT: Now if you'll join me, please, for the pledge of allegiance to the Texas flag.
(The Pledge of Allegiance to the Texas Flag was recited.)

MR. TREVIÑO: All right. So we'll start with Member Richardson. We have a new member.

On November 6, 2019, Governor Abbott appointed Sheriff Joel W. Richardson to the Board of the Texas Department of Motor Vehicles as the law enforcement representative. His term is set to expire on February 21, 2021.

He has fulfilled the required training and has completed all required paperwork, has been duly sworn into office, and received his commission from the Texas Secretary of State. You can read more about our new Board member on the department website under the About Us section.

I look forward to working with him and really would like to thank Sheriff Richardson for accompanying me yesterday to the MVCPA meeting and also for his willingness to serve and step into the big hole that was left on this Board by the passing of Sheriff Painter.

Thank you very much for being willing to serve, Sheriff Richardson. Would you like to say anything?

MR. RICHARDSON: Thank you, Mr. Chairman, if I might.

It's a great honor to get to serve on this
Board, especially filling the shoes of Sheriff Painter. Those are big shoes, figuratively and literally, and I've known Sheriff Painter since 1985 when he took over as sheriff of Midland County, and he was a lawman's lawman, a true gentleman, and it's absolutely my honor to get to fill his unexpired term, Mr. Chairman. Thank you.

MR. TREVIÑO: Thank you very much, Sheriff Richardson. I know you will discharge the duties of your appointment well. But again, Sheriff Painter was one of a kind, good friend, a great supporter of this organization and a great Texan, and thank you for stepping up to take that spot.

All right. We'll now move on to item 3.B. Section 1001.023 of the Transportation Code sets out the duties of the Board chair and vice chair. One of the duties of the Board chair is to report to the Governor on the state of affairs of the department. The annual report is in the final draft and will be submitted before our next meeting. This report includes updates on the agency's key accomplishments, revenues, expenditures, performance data, technological improvements and significant legislation enacted by the 86th Legislature.

Once published the report will be distributed to legislators and Board members electronically. It will also be sent to all govDelivery subscribers and posted on
the agency's external website at www.txdmv.gov, at the bottom of the page located under Learn More and Reports and Data.

With that, I will turn it over to our executive director, Whitney Brewster, for agenda item 4.

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

This is the time that we recognize our recent retirees and employees who have reached major milestones in their state service. We celebrate these folks as a show of our appreciation for their years of service at this agency, and more importantly, to the citizens of Texas.

So Mr. Chairman, board members, if you would please join me at the front of the dais.

MS. YANCEY: Good morning. My name is Martha Yancey, Human Resources Division.

The following employee has reached 25 years of state service. DeLisa Dedeaux, come on up.

(Applause.)

MS. YANCEY: DeLisa joined the Motor Carrier Division in September 2018 as a permit specialist. Throughout her many years of state service across multiple agencies, she has been extensively involved in hiring, training, and numerous improvement projects, which
includes the transition and implementation project for the current driver's license system.

While employed with the state and raising three sons, she earned an associate's of applied science in paralegal studies. DeLisa has done an excellent job learning all the processes in the permit section and has become a great asset to our organization. With her can-do attitude and her vibrant personality, she brings a contagious and uplifting spirit to our office.

Congratulations on 25 years, DeLisa.

(Applause; pause for presentation and photos.)

MS. YANCEY: The following employees have reached a state service milestone but were unable to join us this morning: 20 years, Tiffiny Roybal, Motor Carrier Division; 30 years, Melissa Bennett, Motor Carrier Division.

And last, the following employees recently retired from the department: Antonia, or Toni, Knight, Motor Vehicle Division; Idalia Illa-Lopez, Vehicle Titles and Registration Division; Patricia Flores, Vehicle Titles and Registration Division; Beverly Fisher, Enforcement Division; Joyce Wendler, Office of General Counsel; Michael Zalaznich, Motor Carrier Division.

Thank you.

(Applause.)
MS. BREWSTER: Mr. Chairman, that concludes my report.

MR. TREVIÑO: The next item is the memorandum of understanding between Motor Vehicle Crime Prevention Authority and the department.

Yesterday, Chairman Hansen was kind enough to invite me to MCVPAs quarterly board meeting, and I was accompanied by Sheriff Richardson. I would like to thank the chairman for the invitation and thank the Authority for all the meaningful work that they do for the citizens of Texas. The board book includes the MOU which updates legal citations and streamlines the authority and duties of the Texas DMV and the MVCPA from the previous version. No substantive legal changes were made. The Authority considered and approved the MOU at its February 5, 2020 meeting.

Today the Authority's chairman is here to discuss the item, so I'm pleased to welcome Chairman Hansen and Bryan Wilson.

Chairman Hansen, thank you very much for hosting us yesterday. We really enjoyed the meeting and can't say enough good things about the work MVCPA is doing.

MR. HANSEN: For the record, my name is Tommy Hansen. I'm the Board chair of the Motor Vehicle Crimes
Prevention Authority, formerly the Automobile Burglary and Theft Prevention Authority. It's an honor to be here. We've had several meetings with Chairman Treviño, and I think our future looks very bright together.

As you see, we've had a name change and a lot of that name change is we're changing a lot of the direction in which our organization is traveling, including enhancing our relationship with the DMV Board. We have a great relationship with DMV as well, as well as the tax assessor-collectors, which we've already met with them several times and we're scheduled to be at their meeting coming up in June. With the Texas Automobile Dealers Association we're going to greatly enhance what we do for the citizens of the State of Texas.

We have a great group of law enforcement officers throughout the state that are literally the best of the best in the world, and we hope with the legislative last session bill that we're going to be able to greater enhance what we're doing already for the citizens of the State of Texas.

So thank you very much for your time and we look forward to working with y'all on a much more interactive basis than we have in the past.

MR. TREVIÑO: Thank you, Chairman Hansen.
Are there any questions for Chairman Hansen.
MR. HANSEN: Also, we have some staff members here from the Motor Vehicle Crime Prevention Authority. Dan and Mary, would y'all wave your hand over there for us? David, our attorney, is over there. He's the one that keeps me straight.

(General laughter.)

MR. HANSEN: Again, I just can't thank you for being there yesterday. It's a sign of the times to come, and bless you for that.

MR. TREVIÑO: It was a pleasure and an honor, and again, before I joined this Board I wasn't aware of the work MVCPA and the prior acronym was doing, but since I've joined the Board and become familiar with your work, I'm a big fan and advocate, and continue the great work that you do for the citizens of Texas.

MR. HANSEN: Well, we're trying to fix that. I think we're the best kept secret in Texas.

(General laughter.)

MR. HANSEN: I mean, literally the amount of recoveries and stuff that this small elite groups does. I'll give you just an example, we're looking at about 230 people for the whole state recovering 11,000-plus vehicles in one year, that's good work.

MR. TREVIÑO: I'm looking forward to the
coordination work that you're talking about, coordinating with all the agencies who are working in that area, I think it will pay big dividends for everybody.

MR. HANSEN: Well, for the rest of the Board too, with the change in the name came changes in responsibilities, thanks to the Sunset Commission. We used to work title fraud and odometer fraud and those type of things, but it really wasn't in our statute, and now all of that has changed to allow us and our groups to openly really work with DMV investigators and others on virtually any kind of case involving vehicles, whether it be insurance fraud, title fraud, odometer fraud. So with that permission from the legislature to greatly expand that and we get our funding corrected, then we can be a much major asset to your organization.

MR. TREVIÑO: Great. Thank you very much.

MR. WILSON: This is Bryan Wilson, for the record. Thank you for the opportunity to be here and recognize our staff, and thank you.

But I have nothing else to add. Available to take questions. Thank you.

MR. TREVIÑO: Thank you, Bryan.

Any questions from the Board?

(No response.)

MR. HANSEN: Thank y'all very much.
MR. TREVIÑO: Gentlemen, thank you very much for coming to speak with us.

Before we move to the next item which is a contested case, before moving to the contested case presentation, we'll hear from our general counsel, Ms. Tracey Beaver.

MS. BEAVER: Thank you. Tracey Beaver, general counsel, for the record.

I just wanted to let the Board know that after staff's presentation, both parties will be given to present their case and five minutes for rebuttal. The parties will make sure that their verbal presentations do not go into information outside the record, and they will specify where in the record their statements can be found.

If a question from Board members is asked, the speaker will tell you when it's not in the record, and also, if it's not in the record, you wouldn't be able to use it to make a decision anyway.

Thank you.

MR. TREVIÑO: Thank you, Ms. Beaver.

Daniel Avitia and Michelle Lingo will now address agenda item 6. Contested Case.

MR. AVITIA: Thank you, Chairman.

Chairman, members, Ms. Brewster, good morning.

For the record, I'm Daniel Avitia, director of the Motor
Vehicle Division. Alongside me this morning is Ms. Michelle Lingo. Ms. Michelle Lingo is an attorney with the Motor Vehicle Division and created or put together the executive summary and collective relevant documents for the Board's review and consideration on this matter.

Materials for agenda item 6 can be found on pages 10 through 78 of your Board books.

Regarding agenda item 6, the Board is hearing a complaint by two World Car Hyundai dealerships against Hyundai Motor America, LLC. The matter is before the Board after the Third Court of Appeals, one, reversed the Board's August 17, 2017 order, and two, remanded the contested case to the Board for further proceeding, consistent with the Third Court of Appeals July 2019 opinion and August 2019 mandate.

The issue presented in this case is whether World Care established by a preponderance of the evidence that Hyundai's actions or programs violate Texas Occupations Code by: one, requiring adherence to unreasonable sales or service standards; two, directly or indirectly discriminating against a franchised dealer or otherwise treating franchised dealers differently as a result of a formula or other computation or process intended to gauge the performance of a dealership; three, by discriminating unreasonably between or among
franchisees in the sale of motor vehicles owned by the distributor; or four and finally, by failing its duty of good faith and fair dealing owed to its franchisee.

The ALJ found that World Car failed to meet its burden of proof to show that Hyundai violated the Occupations Code. The ALJ recommended the Board deny World Car's complaint.

Hyundai Motor America is represented by Bruce Bennett, with Prichard Hawkins McFarland & Young. Lead counsel for the two World Car dealers is Lee Kaplan, with Smyser Kaplan & Veselka. All parties received notice of the Board's meeting and counsel are present to provide comments today.

Members, that concludes my remarks on this matter for now.

MR. TREVIÑO: Thank you, Mr. Avitia.

Any questions from Board members?

(No response.)

MR. TREVIÑO: We will now proceed with Complainant's presentation. I believe it's Mr. Lee Kaplan.

MR. KAPLAN: Members of the Board. My name is Lee Kaplan.

This matter has been before the Board twice, the first time by a vote of six to three, the second time
by a vote of five to two, with two of the current members participating in the majority on both cases. The Board found in favor of Complainants and reversed the ALJ's decision. That was then appealed to the Court of Appeals. The Court of Appeals has given us explicit instructions on what the Board must do to comply with the requirements of the law in not accepting the ALJ's decision.

We had previously submitted a proposed order to the Board on prior occasions, and the previous counsel apparently advised the Board not to enter that order. We have filed a corrected final order this time which is virtually the same as the last order, with additional citations to make sure that everything the Court of Appeals mentioned is in our current corrected final order which we've proposed to the Board which was filed on January 28. I don't know if members of the Board have seen that, but it was filed and we requested it be provided to the Board. We've been told today that we are not to use any visual aids or handouts. This is an official filing made by us eight days ago and it is the correct order that should be entered.

Let me tell you why. The reason is that the Board has the authority to make legal decisions and in making legal decisions it also has the authority to decide what are the relevant facts, and based entirely on the
record, the relevant facts show that Hyundai, during the
tenure of one particular regional manager over several
years, violated the rights of the Complainants. If I were
to direct you to no other piece of paper, it would be
Plaintiff's trial exhibit 126, which is in the record at
R16584, which showed that during a three-year period the
manual allocations alone, not any algorithmic ones, just
the manual allocations alone to two similar situated
dealers over the two of Complainants' dealers in San
Antonio outstripped them by roughly three to one, almost
1,800 to 600. That was in the record and never disputed
at any time in the proceedings or before the Board on two
occasions.

The other piece of record that I think is very
critical is that the requirement was placed on the
Complainants to essentially sell cars they didn't have,
and we contended, and I think the evidence is undisputed,
that that's an unreasonable -- an unreasonable sale or
service standard because you can't sell cars you don't
have.

The ALJ misinterpreted this to mean that if the
dealer agreement, the written agreement didn't require it
that it wasn't a requirement. In fact -- and we showed at
Plaintiff's trial exhibit 67 which is Record-159189 --
that the regional manager told this dealer: Your
dealership is in material breach of the dealer agreement because you are not selling at what's called 100 percent sales efficiency by this manufacturer. To reach that the dealer would have had to sell cars that the manufacturer refused to allocate to it. And while there are various excuses offered for that, the bottom line is you cannot put people in peril of their dealership agreement if you won't give them the cars and let them fail. They never got the chance. Two members of this Board were there at the time that we've argued this twice before and both times agreed with us about that.

So what we have done is gone back to the statute, and there are three parts to the statute that were violated. The first is 2301.4682 which is that there may not be unreasonable discrimination between or among franchisees. The second is the Occupations Code 2301.467(a)(1) that a manufacturer or distributor may not require adherence to unreasonable sales or service standards. And finally, at 2301.478(b) each party to a franchise owes to the other party a duty of good faith and fair dealing. All of these are legal concepts that are determined on facts, but the legal determination of what facts matter is obviously the Board's decision. Otherwise, the Board is just a rubber stamp and we might as well have ALJs do all the work.
The ALJ did not receive the authority that the Board has, and that's something that was pretty clear in the Court of Appeals' opinion, that what the Board has to do is articulate its reasons for departing from the ALJ's findings. It may determine that certain findings of fact are simply not relevant and that other findings of fact matter more, and that's why we submitted the first time around an order which ultimately was not adopted, and this time around, on January 28, another proposed final order which we think is extremely specific and points out exactly where the ALJ went wrong. All of these things are policy-related and it's the Board's responsibility.

I think it was Mr. Treviño and Mr. Graham who were members of the Board at the time, and while we were not privy to the discussions, but what was said in the hearing it was pretty clear that what we were offering to the Board is our proposition made sense.

I want to say one other thing, and that is that each of the findings of fact which we have proposed have extensive record excerpts from the hearing transcript and from the actual exhibits so that the Board, if it reviews the order we provided on January 28, can find comfort that we have supported everything which we have offered. All we're doing is conforming to the rulings of the Court of Appeals, which we tried to do originally and for whatever
reason did not occur.

Our proposed order makes sense and it really recognizes what ought to be the result. This is a dealer who was similarly-situated but for other reasons was not treated fairly and was discriminated against, held to unreasonable standards, not dealt with in good faith, and these are legal issues for the Board to decide. So I implore the Board to take a look at the order that we've submitted.

And I want to say something else and that is if, in fact, the Board decides that the ALJ's decision is fine and should be upheld, then we're setting a very dangerous precedent. That case, this case will be cited for years to come by franchisees, perhaps in other industries but certainly in this one, that basically say a manufacturer can do whatever it wants, can allocate as many vehicles or as few as it wants, can threaten dealers with breaches of standards that are not even in the dealer agreement, and if that happens then we will have disserved the legislature's policy where it gave the Board the authority to make those decisions.

So if there are any questions, I'll be happy to answer them. Otherwise, I'll reserve the rest of my time for the second argument.

MR. GRAHAM: I do have a question.
MR. KAPLAN: Yes, sir.

MR. GRAHAM: I don't believe I've seen that final order from January 28.

MR. TREVIÑO: Counsel Beaver, if you can discuss that, please.

MS. BEAVER: Thank you, Chairman. Tracey Beaver, general counsel, for the record.

Both parties were advised that they were not to be providing any additional evidence for this case in writing and that they would be giving verbal presentations only, and if there were documents presented a week before the Board meeting, both parties would need an opportunity to review that as well.

MR. KAPLAN: May I comment on that, Member Graham?

MR. GRAHAM: Let me respond. That is of interest to me simply because I'm not an attorney. I've struggled with the role as a Board member without being an attorney on some of these facts, and so you know, I would be very interested to hear both sides case as to why and how it could be done and why it shouldn't be done. I want to hear both of those in detail because I think that's very relevant.

MR. KAPLAN: I can respond very briefly. First of all, the Texas Occupations Code 2301.153 gives the
Board general powers which includes receiving evidence and pleadings. We actually filed this January 28 before we were advised -- and we had prepared a power point -- before we were advised that the Board would not accept any handouts or materials at the hearing. This is actually -- I have multiple copies of it that I can give to the general counsel and the Board can decide whether it wants it -- but we eFiled this on January 28, well in advance of the hearing. We also sent an email to Mr. Richards, the associate general counsel.

We understand the instructions we've received, but this is in the file, and in our view the Board should have it. It is correct, it's the right order. It's very similar to the one we had submitted in 2016 or '17, and for whatever reason, Mr. Duncan -- I don't know what advice the Board received. But this is proper filing, it's in the official record, service was made, of course, on opposing counsel, and we think that's the regular order of business, that the Board should see what it is we're asking the Board to do. And that's in the Board's discretion. The Board may decide it's not interested in our proposed order, it just wants to accept the ALJ's findings. But we've done it the way we understand the law allows us to do and requires us to do.

We want you to do the right thing, we don't
want to run afoul of any requirements of this law or the administrative procedure, so we've proceeded in what we think is the regular order.

MR. TREVIÑO: General Counsel Beaver.

MS. BEAVER: Thank you, Chairman. Tracey Beaver, general counsel, for the record.

I'd just like to reiterate that both parties were notified that no additional evidence outside of the record from when the case was originally heard would be permitted. The Board is restricted to looking at the findings of fact and conclusions of law in the ALJ's proposal for decision, and if there is any additional information that either party would like to verbally present to the Board today, they may do so. So if there's information or arguments in a proposed final order or other documents the parties would like to present to the Board, they're more than welcome to do so verbally.

Thank you.

MR. KAPLAN: And I guess my only comment is it's a filing, it's an official filing. The Board is authorized to receive it if it wants it, it's authorized to say we're not interested. But this is not an argument, it's a proposed order. That's why we filed it and we invite the Board to review it and decide whether to enter it or not.
MR. TREVIÑO: And we did discuss this, counsel did discuss this with me. It wasn't specific to this information, I wasn't aware of the type of information but we agreed, based on counsel's recommendation, that since no new material was to be presented, I concurred with that and that's what we went with.

MR. KAPLAN: Understood. We just don't regard it as evidence, it's a filing, it is a proposed order that the Board can enter or not enter. And we actually filed it before we received any of that kind of notification.

MR. TREVIÑO: Thank you.

Member Gillman.

MS. GILLMAN: So your suggestion is yes, you can -- Mr. Kaplan can read his proposed corrected order, we just can't get a copy?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

No new evidence or information would be able to be admitted for this case. The Board has the information from the SOAH PFD and the Appeals Court. If the parties wanted to present additional argument, such as what they would present in a proposed final order, they're free to do so in their verbal presentation in ten minutes.

MR. GRAHAM: But not upon -- so I would like to hear the other side and the in the event that I wanted to
circle back to this, you're saying if it's going to be done it has to be done now?

MS. BEAVER: Absolutely. I'm sorry. It doesn't have to be done during the presentation, there's also a rebuttal, and then the Board will have an opportunity to ask questions of both parties.

MR. GRAHAM: Okay. Perfect. Thank you.

MS. BEAVER: Thank you.

MR. TREVIÑO: Member Prewitt.

MR. PREWITT: Mr. Kaplan, going back to SOAH Docket Number 608-14-1208.LIC on the PFD, it sounds like you're basing a lot of your arguments on the behavior of the GM that was in place for Hyundai at the time and how that affected. What specifically on the 53 findings of fact in that document on page 23 through page 27 are you disputing on the findings of fact for SOAH?

MR. KAPLAN: In the proposed final order that we filed, long before being told we couldn't provide anything else to the Board and something that under law we are entitled to file, we contested findings of fact 20 and 21, finding of fact 27, finding of fact 30 -- I'm sorry -- 20, 21, 27, 30, 50, 52, 53, and some conclusions of law, and our order has all of this. I couldn't read it out in ten minutes but it points out why the findings of fact were simply as a matter of law contradicted by the
evidence or irrelevant.

You know, there are plenty of facts in this world which are true but don't matter to the question of law, and this is all in our proposed final order which was drafted explicitly in compliance with the rulings of the Court of Appeals. And I would invite the Board to read it because we gave the specific reasons and legal basis there on pages 2 through 4 of our proposed order.

MR. TREVIÑO: I would just remind Board members to press their mic buttons on if they are going to comment.

MR. KAPLAN: I hope I was heard.

MR. TREVIÑO: No, you were fine, you were great, everybody heard you.

MS. GILLMAN: It is just really frustrating that we can't -- I was thinking it was not new evidence, that it's just proposed corrective order.

MR. KAPLAN: That's our view.

MS. GILLMAN: So it's frustrating that we can't see that.

MR. TREVIÑO: Under the advice of counsel when we discussed this, I was not told whose party was entering information, I wasn't aware of the nature of the information, it was just an agreement based on counsel's recommendation that we do not accept any new information
this late in the game without having both parties an
opportunity to review, and so that's where we're at.

MS. McRAE: Mr. Chairman.

MR. TREVIÑO: Yes.

MS. McRAE: I have a question.

MR. TREVIÑO: Member McRae.

MS. McRAE: Tracey, is it possible for Mr. Kaplan to verbally tell us what changes that he has in
between the original order and the amended order that he has now? Can he do that verbally?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

Absolutely. He can verbally present any
information he'd like and during the ten-minute
presentation that's absolutely something he could have
presented. And also, as Board members you're able to ask
questions. If you would like to ask him those questions,
that would be appropriate.

Thank you.

MS. McRAE: Okay.

MR. TREVIÑO: So Member McRae, if you'd like to
put that in the form of a question.

MS. McRAE: Mr. Kaplan, is it possible for you
to -- I don't know how many changes you have in the new
order, proposed order.
MR. KAPLAN: I'm very reluctant to violate any instructions I've received and incur the wrath of the Board, but I have to tell you as a lawyer of 40 years standing, I have never been told that a board or a court cannot consider a formal filing of a proposed order. I've never heard that ever, and we simply disagree. And the Board will be handicapped if it can't see the official filing of what we've offered and just read it. I mean, I've got on each of these findings of fact that we are rejecting and replacing or modifying, we have like a paragraph.

MR. TREVIÑO: Mr. Kaplan, I don't mean to interrupt you but Member McRae has a question for you --

MR. KAPLAN: I may have misunderstood the question.

MR. TREVIÑO: -- and we have counsel, and counsel has advised that it's okay for you to explain those changes that you make.

If I'm correct on this. Right, Counsel Beaver?

MS. BEAVER: General Counsel Tracey Beaver, for the record.

Yes, that is correct.

MR. TREVIÑO: Member McRae has put it to you in the form of a question, we have counsel's agreement that it's fine to be entered into the record, so if you would
like, you are welcome to articulate the changes that you are suggesting.

MR. KAPLAN: Thank you. I will do so. On page 2 of the order --

MS. BEAVER: I'm sorry. Tracey Beaver, general counsel, for the record.

I'm sorry to interrupt. I just wanted to clarify that it's not being entered as an exhibit in the record but counsel is free to verbally explain his position if it's responsive to Member McRae's question.

Thank you.

MR. TREVIÑO: Thank you very much for the clarification.

MR. KAPLAN: That's right. The proposed order is on file, it's a public filing already. I will be happy to verbally read it. Now, to me verbal also means written, but I'll just read it.

MS. BEAVER: Tracey Beaver, general counsel, for the record. Sorry to interrupt.

It's fine for the presenters to go ahead and use documents to refresh their memory if they would like to use those in order to remember what the arguments are, and so counsel is free to use that document to refresh his memory but not actually enter it as an exhibit.

Thank you.
MR. KAPLAN: I'm not offering it as an exhibit, I'm not making an argument, I am reading what we have filed in a public filing that the Board should have. And that's what I'll do unless the Board instructs me not to do so.

MR. TREVINO: Under advisement of counsel, you are welcome to do so.

MR. KAPLAN: Thank you.

All right. On the second page of our order we define specific reasons and legal bases for changes to findings of fact and conclusions of law.

(Mr. Kaplan is reading from document.)

Findings of Fact 20 and 21 are rejected and replaced with Finding of Fact 20A under Texas Government Code 2001.058(e)1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code Section 2301.468(2). Central to whether HMA's different treatment of World Car versus Red Combs constituted "unreasonable" discrimination in violation of Occupations Code Section 2301.468(2) is whether the dealerships were similarly-situated when the different treatment began. The ALJ improperly regarded and failed to mention in the PFD the undisputed facts that Red McCombs closed an entire Hyundai dealership in 2009, turned down nearly three times as many allocations than World Car did in the first six
months of 2010, and had a similar level of inventory as World Car in mid 2010.

See Hearing Transcript at 726, 1005-06;
Defendant's Trial Exhibit 46, 47; Hearing Transcript at 80-81, 643, 1046-47; Plaintiff's Trial Exhibit -- I'm saying Plaintiff's Trial Exhibit instead of PTX and Defendant's Trial Exhibit instead of DTX -- PTX 18;
Defendant's Trial Exhibit 175, Defendant's Trial Exhibit 181, Defendant's Trial Exhibit 188.

By disregarding these undisputed facts, the ALJ misinterpreted and misapplied the concept of "unreasonable discrimination" in Occupations Code Section 2301.468(2) because the ALJ did not consider that the dealerships were similarly-situated when the different treatment began.

Next bullet point. Finding of Fact 27 is rejected under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code Section 3201.468(2). The inquiry under Occupations Code Section 2301.468(2) is whether HMA unreasonably discriminated against World Car. Whether World Car "chose to participate" in the "programs" mentioned by the ALJ would not excuse HMA's discriminatory treatment and is therefore irrelevant. Moreover, the ALJ improperly speculated about the inventory that World Car might have received if it had
participated in the "programs" mentioned by the ALJ. The ALJ's misapplication and misinterpretation of the test for "unreasonable discrimination" led to the ALJ's misplaced emphasis on possible inventory that World Car "might have" received rather than properly focusing on HMA's actual allocations to World Car as compared to Red McCombs for which there was a threefold disparity.

See PTX 110, PTX 123, PTX 126.

Next bullet point. Finding of Fact 30 is rejected and replaced with Finding of Fact 30A under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code Section 2301.468(2). It is undisputed that between July 2010 and September 2013 HMA provided Red McCombs with 1,788 manual allocations as compared to 621 manual allocations to World Car.

See Plaintiff's Trial Exhibit 109, 110, 111, 126.

This disparity in allocations to similarly-situated dealerships was not rational, sensible, acceptable or fair. There was no material dealership difference between the dealerships that would justify this unreasonable disparity.

See Hearing Transcript at 726, 1005-06; Defendant's Trial Exhibits 46, 47; Hearing Transcript at
80-81, 643, 1046-47; Plaintiff's Trial Exhibit 10, Plaintiff's Trial Exhibit 17, Plaintiff's Trial Exhibit 18, Plaintiff's Trial Exhibit 82; Defendant's Trial Exhibit 175, Defendant's Trial Exhibit 181, Defendant's Trial Exhibit 188.

The Board finds that as a matter of policy and to ensure a sound and equitable system of distribution of motor vehicles in the State of Texas, a distributor's (here HMA) discrimination and allocation is unreasonable under Occupations Code Section 2301.468(2) when one dealership (here Red McCombs) receives nearly three times manual allocations as a similarly-situated dealership in the same city (here World Car).

Next bullet point. Finding of Fact 50 is rejected and replaced with Finding of Fact 50A under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code Section 2301.467(a)(1). The ALJ improperly assumed that Occupations Code Section 2301.467(a)(1) is limited to unreasonable sales standards that are expressly stated in the dealer agreement. The text of 2301.467(a)(1) does not mention or include any reference to the dealer agreement or franchise agreement. The statute is not so limited but rather prohibits a manufacturer or a distributor from requiring adherence to
any unreasonable sales standard wherever and however it is imposed. HMA "required adherence" to 100 percent sales efficiency as contemplated by Section 2301.467(a)(1) because the consequence for non-compliance was to be in "material breach" of the franchise and risk losing the dealership franchise.

See Plaintiff's Trial Exhibit 67, Plaintiff's Trial Exhibit 1 at 16.B.3, page 19; Hearing Transcript at 113, 437, 1013, 1086-87.

Next bullet point. Is there a reporter? Am I going too quickly for the reporter. Are we being recorded also?

THE REPORTER: Yes, sir.

MR. KAPLAN: All right. Thank you.

Finding of Fact 52 is rejected and replaced with Finding of Fact 52A under Texas Government Code Section 2002.058(e)(1) because the ALJ did not properly apply or interpret the applicable law. World Car's complaint is not that "measuring sales efficiency" was unreasonable but rather that requiring adherence to 100 percent sales efficiency was unreasonable. This requirement was unreasonable because HMA knew that World Car did not have sufficient inventory to meeting 100 percent sales efficiency and HMA ignored or rejected World Car's repeated requests to buy more inventory so that it
could achieve 100 percent sales efficiency.

PTX 3; PTX 4; PTX 67; PTX 81; PTX 120, at 180-81; Hearing Transcript at 1004, 1033-34.

Next bullet point. Finding of Fact 53 is rejected and replaced with Finding of Fact 53A under Texas Government Code Section 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code 2301.478. The ALJ did not properly apply the concepts of fairness and good faith. HMA's discretionary allocations to Red McCombs were nearly triple the amount provided to World Car, which was unfair based on the circumstances, i.e. similarly-situated dealerships all asking for more inventory.

See PTX 109, PTX 110, PTX 111, PTX 123, PTX 127; Hearing Transcript at 726, 1005-06; DTX 46, 47; Hearing Transcript at 80-81, 643, 1046-47; PTX 20, 17, 18, PTX 82; DTX, that's Defendant's Trial Exhibit 175, Defendant's Trial Exhibit 181, Defendant's Trial Exhibit 188.

It was also unfair for HMA to know that World Car did not have enough inventory to meet 100 percent sales efficiency, to turn down World Car's request for more inventory so it could achieve 100 percent sales efficiency, and then tell World Car that it was in breach of the franchise for not meeting 100 percent sales.
efficiency.

See PTX 3, PTX 4, PTX 67, PTX 81, PTX 120 AT 180-81; Hearing Transcript at 1004, 133-34.

Next bullet point. Conclusion of Law 6 is rejected and replaced with Conclusion of Law 6A under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law, namely Occupations Code Section 2301.467(a)(1). Based on the Board's adoption of Findings of Fact Numbers 50 and 52A, the Board finds that World Car met its burden to show HMA violated Occupations Code Section 2301.467(a)(1) by requiring adherence to an unreasonable sales standard.

Conclusion of Law 8 is rejected and replaced with Conclusion of Law 8A under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret Occupations Code Section 2310.468(2). Based on the Board's adoption of Findings of Fact 20A and 30A, the Board finds that World Car met its burden to show HMA violated Occupations Code Section 2301.467(2) by unreasonably discriminating against World Car in manual allocations between 2010 and 2013.

Next bullet point. Conclusion of Law 9 is modified under Texas Government Code 2001.058(e)(1) because the ALJ did not properly apply or interpret the applicable law. Based upon the Board's adoption of
Findings of Fact 20A and 30A, HMA's discretionary allocations were not reasonable. Based on the Board's adoption of Findings of Fact 50A and 52A, HMA required adherence to unreasonable sales standards. The Board therefore finds that World Car met its burden to show HMA violated the duty of good faith and fair dealing through manual allocations and by requiring World Car to meet 100 percent sales efficiency between 2010 and 2013.

Having considered the evidence, the arguments, and the findings of fact of conclusions of law presented in the PFD, the Board enters these findings of fact and conclusions of law. The ALJ's Findings of Fact 10, 21, 27, 30, 50, 52 and 53 and Conclusions of Law 6, 8 and 9 are rejected. The ALJ's Findings of Fact 1 through 19, 22-26, 28, 29, 31-49 and 51 and Conclusions of Law 1-5 and 7 are adopted and therefore not restated herein.

Then we provided the actual modified findings of fact.

20A. In 2009 and 2020, World Car and Red McCombs voluntarily reduced their inventories and in mid-2010 their inventories were at similar levels.

30A. It was not reasonable for Hyundai to provide nearly three times as many discretionary allocations to Red McCombs (1,788) as to World Car (621) between July 10 and September 2013 because the dealerships
were similarly-situated.

50A. Maintaining 100 percent sales efficiency is a requirement to avoid being in material breach of the franchise agreement with Hyundai.

52A. Requiring World Car to meet 100 percent sales efficiency in order to avoid material breach of the franchise agreement was requiring adherence to an unreasonable sales standard because Hyundai was aware that World Car did not have sufficient inventory to meet 100 percent sales efficiency.

53A. Hyundai's discretionary allocations to the San Antonio market between 2010 and 2013 were unfair, and Hyundai's requirement that World Car meet 100 percent sales efficiency despite the dealership's known lack of inventory was also unfair.

And then modified conclusions of law.

6A. World Car met its burden of proof to show that Hyundai required adherence to unreasonable sales standards. Texas Occupations Code 2301.467(a)(1).

8A. World Car met its burden of proof to show that Hyundai violated the Occupations Code by engaging in unreasonable sales discrimination in the allocation of vehicle inventory between 2010 and 2013 because Hyundai provided disproportionate discretionary allocations of inventory to World Car's nearest competitor in San Antonio.
that were not justified by any material differences between the dealerships. Texas Occupations Code 2301.468(2) (2003).

9A. World Car met its burden of proof to show that Hyundai violated its duty of good faith and fair dealing through disparate manual allocations and by requiring World Car to meet 100 percent sales efficiency between 2010 and 2013. Texas Occupations Code 2301.478(b).

And then the final is just ordering the that those findings and conclusions are adopted and that the complaints are upheld.

MR. TREVIÑO: General Counsel.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

If there's any other Board member questions, they can ask those at this time.

MR. TREVIÑO: Great. Thank you very much.

Any other questions from Board members at this point?

MR. PREWITT: I want the general counsel to let me know if it's appropriate to ask this question. If not, then I withdraw the question. And the question is was there any economic damage -- I'll restate this. As far as meeting the 100 percent sales efficiency, what was the
consequence of that to World Car dealerships?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

Are you asking about what happened after the closure of the case?

MR. PREWITT: Yes.

MS. BEAVER: Anything that happened after the closure of the case wouldn't be relevant to the decision for today.

MR. PREWITT: Okay. Then what happened during the term of the case then? Would that be appropriate to ask that?

MS. BEAVER: As it relates to the facts of the case?

MR. PREWITT: Yes.

MS. BEAVER: If you're asking about a specific finding of fact, that would be permissible.

MR. PREWITT: Right.

MR. KAPLAN: If I understand your question, when the complaint was filed, this discrimination magically ceased. If that's the answer to your question.

MR. TREVIÑO: Mr. Kaplan, hold on a second.

MR. KAPLAN: As to actual economic damage, that's a matter for another forum. I'm not sure if I've answered your question.
MR. TREVIÑO: General Counsel.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

That's fine to ask the question and then if there's any information that's provided that's outside the record from the case, that wouldn't be able to be used by the Board in their final decision.

MR. PREWITT: Thank you.

MR. KAPLAN: Actually, sir, that is in the record. It's part of Plaintiff's Trial Exhibit 126 which is in the record at 160584. There's a timeline which shows that and it's supported by the documents. It's in the record.

MR. PREWITT: Thank you.

MR. SCOTT: I have a question.

MR. TREVIÑO: Member Scott.

MR. SCOTT: Thank you.

Following up on John's question, I think the question is you've referred several times to failure to meet sales efficiency and that being a material breach of the franchise agreement. And the question is when Hyundai said that World Car was in material breach of their franchise agreement, that's one statement, but were there consequences to World Car as a result of that finding.

MR. KAPLAN: Yes, sir. That's an important
question. Following up on my earlier statement about what is in the record, the record shows that the consequences that are outside the record that we're not going to discuss are for another day, but we do know that the dealership did not have its dealership terminated. The threat was made, the lawsuit was filed, and these damaging events slowed down or ceased. It took assertion of our rights to change the conduct.

MR. TREVIÑO: Mr. Kaplan, thank you.

Any other questions from Board members.

MR. KAPLAN: Thank you for your patience.

MR. TREVIÑO: Thank you.

General Counsel, any other comments? Please feel free to jump right in there if you see we need to be doing something different.

Okay. We'll now proceed with Respondent's presentation. I believe we have Mr. Bennett.

MR. BENNETT: Yes, Mr. Chairman. I will take the first eight minutes of our ten minutes, and then Mr. Hance, Kent Hance, is going to take the last two minutes of our first opening presentation.

MR. TREVIÑO: Thank you very much. Great.

Welcome

MR. BENNETT: Mr. Chairman, members of the Board, I am Bruce Bennett, and along with Kent Hance,
Dudley McCalla, David Prichard, we represent Hyundai Motor America. Also present is Mr. John deNeve, who is regional general manager for Hyundai.

First I want to take up this proposed order. It was filed, Board members, with SOAH, the State Office of Administrative Hearings, not with your agency. We did not see it until last night. So all the stuff about an official filing, it wasn't filed here, they filed it over at SOAH, and they didn't copy us on it.

Now, another thing I want to address right up front is the implication is here from Kaplan's presentation that the Third Court approved the prior Board decision, just said, well, you just need to clean it up. That's not at all correct. The Board's order was reversed. The Court of Appeals expressed no opinion on the merits. That's for you to decide today, but it told you how the process must work to reach that decision, and that is what we're here again. The PFD is before you, the Court of Appeals has expressed no one way or the other on it, it's just given you guidance on how this decision must be made.

Now, I have to quote President Reagan: "There you go again." He is trying to retry this case, World Car is trying to retry the case before this Board, and this is a case that World Car lost after two years of discovery,
after five days of trial, and after 350 exhibits were introduced, and the ALJ weighed the evidence. There were conflicts in the evidence, there were many disputes in the evidence, there's been reference here to undisputed facts, there were hardly any undisputed facts, the facts were hotly contested, and the ALJ made basic findings of fact to support her recommended decision to you that World Car failed to prove its case. And now here we are again today, and World Car is once again trying to get this Board to step outside its proper role and find facts the ALJ never found, find facts contrary to the ALJ's findings.

Now, World Car is claiming unreasonable discrimination by now focusing on the difference in allocations during the period from July 2010 to September 2013. And he says, well, these dealerships, the McCombs dealerships and the New World Car dealerships were similarly-situated. That could not be further from the truth.

What was going on during that period? Well, first and foremost, the difference in allocations existed because World Car made the business decision not to participate in the programs that Hyundai offered that would have increased discretionary allocations. During this time period, McCombs was remodeling its northwest
Hyundai store, it was upgrading it to add the Equus line, it was converting the store into an exclusive Hyundai dealership. McCombs other store, the Superior store, it became an exclusive Hyundai dealership during this time period.

McCombs participated in the service loaner program, you know, where you bring your car in to get serviced, your Hyundai, they put you in a new Hyundai. That helps increase your allocations because you bought those service loaner cars from the manufacturer and that ups your allocations. McCombs was doing that but during that same period World Car chose not to participate in any of those programs. If you took your Hyundai into a World Car dealership to get serviced, you know what they put you in? A Nissan. They wouldn't even do that which would have increased their allocation.

They chose not to go exclusive, they chose not to do the upgrades to get the luxury line, all those things, those are huge differences, that's apples and oranges, folks, that's not apples to apples comparison. These people were not similarly-situated. The McCombs dealerships were investing a lot of money to do these upgrades to go exclusive and that was why they received more allocations than World Car.

Now, again, it's their voluntary business
decision, but the critical findings that run throughout
the ALJ's proposal for decision is that New World Car
could have participated, there were no barriers to
participation, and they would have received more
allocations had they participated. So what Mr. Kaplan
puts up here is, well, it was three to one. That's three
to one with New World Car voluntarily choosing not to
participate. It would have been different, and that's
what the ALJ's findings are. Mr. Kaplan tries to pass
that off as speculation. That's not speculation, that was
based on the evidence. The testimony and the evidence
was: Yes, you, World Car, would have gotten more
discretionary allocations had you participated.

So there were no barriers and they would have
received more, and the would finding is there's no
improper motive here, and that's why the ALJ found that
Hyundai made a reasonable business judgment in making the
discretionary allocations that it made. And based on
these facts, that's why the ALJ said they didn't prove
their case.

Now, World Car is trying to say, well, the non-
participation in those programs, that's just irrelevant,
just don't even pay attention to that. That's the
relevant fact in this case, that's the outstanding fact in
this case, that explains why there was a discrepancy in
allocations. It's highly relevant. And there was no improper speculation, the evidence convinced her that they would have and could have received more allocations if they'd just only participated.

Now, World Car, in their proposed order that was read to you, seems to be advocating a per se rule, three to one allocation is just always unreasonable as a matter of law. Well, that's not true. You have to look at the facts. As the Third Court said, in determining whether this is unreasonable discrimination, it's a highly fact-specific inquiry that you have to make, and the ALJ's basic findings of fact explain why the allocation difference existed and why it was reasonable.

Creating a per se rule like they want you to do would be harmful to the Texas consumers and to this state's automobile industry. Dealers participate in these programs by making investments that improve the facilities, spur increased demand for the brand, and enhance customer service to the motoring public. Those investments justify an award of extra allocations.

Why would manufacturers offer incentive programs that are beneficial to the consumers if the dealer can choose not to participate but then turn around and sue the manufacturer because it didn't get similar allocations as the participating dealers? Why should non-
participating dealers, like World Car, be allowed to make
successful claims and bring lawsuits when they themselves,
by their own decisions, caused or contributed to the
allocation differences they complain about?

And you know, he says you're going to set a
dangerous precedent if you rule for Hyundai. Absolutely
not. You're going to set a dangerous precedent if you
rule for them because they want you to create some rule
that's going to guarantee any dealer who can sit back and
decide not to participate in these programs can bring some
lawsuit against the manufacturers and seek damages for
claimed lost sales that wouldn't have been lost if they'd
just participated in the programs.

The rest of his order goes on about adherence
to sales, 100 percent sales efficiency. The ALJ found
there was no such requirement, it is not a breach. The
dealer agreement, the franchise agreement does not require
that, that they be 100 percent sales efficient.

And just to clear up real fast, there is no
requirement, there was no punishment, Commissioner, there
was no consequences, they still got allocations, they
still had their dealership franchise renewed, they're
still operating under valid agreements as of the close of
the record, so there were not consequences, there were not
penalties.
I'll yield the balance of my time to Mr. Hance.

MR. TREVIÑO: Thank you very much, Mr. Bennett.

MR. BENNETT: Unless you have questions for me.

MR. TREVIÑO: Does any Board members have any questions for Mr. Bennett?

MS. WASHBURN: Mr. Chairman.

MR. TREVIÑO: Member Prewitt.

MR. PREWITT: And again, I run this question through general counsel.

It is asserted by opposing counsel that Red McCombs closed down a dealership during this time of — I guess time of record-keeping. Is that true?

MR. BENNETT: I'm sorry?

MR. PREWITT: It was asserted that Red McCombs closed down a dealership.

MR. BENNETT: Red McCombs closed a dealership before this period in question began, Commissioner. I think he closed it down in 2009. What they're complaining about is from July 2010 through September 2013. Red McCombs had two dealerships. Those are the dealerships that were renovated and became exclusive Hyundai dealerships.

MR. PREWITT: And the second question was in relation to turning down inventory at levels equal to or greater than World Hyundai. Can you address that, or is
that possible to address during the time period?

   MS. BEAVER: Tracey Beaver, general counsel, for the record.

   It's fine to ask questions for the other party about the rebuttal of the previous party.

   MR. BENNETT: Yes. World Car was turning down inventory requests before this period began. They had decided to cut back on their inventory, and the ALJ so found. The ALJ also found that McCombs was maintaining their inventory levels. But they turned down cars. They continued to turn down cars during this period of time we're talking about.

   MR. PREWITT: Right.

   MR. BENNETT: And they refused to do anything that would have increased their sales and increased their allocations, despite Hyundai working with them, asking them to cooperate.

   MR. PREWITT: Okay. That's all I have.

   MR. TREVIÑO: Thanks, Member Prewitt.

   Any other questions for Mr. Bennett?

   (No response.)

   MR. TREVIÑO: Hearing none, Mr. Hance.

   MR. HANCE: My name is Kent Hance, and I'm proud to represent Hyundai. And Mr. Chairman and members of the Board, I appreciate your service to the state of
Texas. It's not a high-paying job, and I've had some of those.

This is a simple case. There was discrimination or there was not discrimination, and there was not discrimination. We had discretionary programs. We come out with a new car, they refused. We asked them to remodel, they refused. We asked them to be a stand-alone dealership, they refused. This is unbelievable to me. We asked them to use our car as the loaner cars and they refused consistently.

Administrative law judge, they worked a period of five days, they heard 17 witnesses. We had experts, they had experts. And they found in our favor. Your staff went along with them, said that's correct. And then there was a mistake made, made a decision, didn't have findings of law and you didn't have the facts, and so then you put some in and the Third Court of Appeals reversed it. If you take the order that Mr. Kaplan -- and he's a good lawyer, he's been practicing 40 years, but when he's been practicing 52, I think he will learn more -- just had to throw that in, I couldn't let it get by.

(General laughter.)

MR. HANCE: The Third Court of Appeals, the Sunset Commission, they're saying this is wrong, and this is big.
Let me tell you one last thing to look at. We've got 64 dealers, this is the only one that's done this. We want to sell cars. We've tried to help them sell cars, and they wanted to wait and say when we get the same benefits as Red McCombs -- who participated with us -- they want the same benefits but didn't do the work. It's kind of a Bernie Sanders approach, and that's not an approach that should be in the State of Texas. This case should be dismissed.

Thank you very much.

MR. TREVIÑO: Thank you, Mr. Hance.

Any questions for Mr. Hance?

(No response.)

MR. TREVIÑO: No? Okay. Now each party will have five minutes for rebuttal. First we'll hear from Mr. Kaplan for the Complainant.

MR. GRAHAM: While he's coming up, a question for general counsel.

So they'll have rebuttal and then that's when the Board will be able to discuss the matter among ourselves?

MS. BEAVER: Tracey Beaver, general counsel.

MR. GRAHAM: And potentially ask further questions should it be needed?

MS. BEAVER: Absolutely. Tracey Beaver,
general counsel, for the record.

After the rebuttal of each party you're absolutely welcome to ask questions.

MR. GRAHAM: But they're going to rebut, we ask questions, then we're going to have a conversation amongst ourselves here in front of God and the public.

MR. TREVIÑO: Yes.

MR. GRAHAM: Because we have not been able to do that in any way. And then should a question arise in the course of this Board's deliberation, can we then return and ask a question if a question comes up?

MS. BEAVER: Absolutely. During our deliberation if you want to bring a party back up to ask a question, then you would be able to bring both parties back up so they could have an opportunity to respond.

MR. GRAHAM: Okay. Thank you.

MR. TREVIÑO: And also, at any time if any member of the Board would like to speak with counsel privately, feel free, we can call a recess at any time, and just give me a heads up and we'll make sure that happens.

Any other questions? Any other comments?

(No response.)

MR. TREVIÑO: Mr. Kaplan, please.

MR. KAPLAN: While I bow to Mr. Hance's
seniority, I contributed to one or more of his campaigns and I can promise the Board I've never contributed to Mr. Sanders' campaign.

(General laughter.)

MR. TREVIÑO: Let the record show.

MR. KAPLAN: Everything I'm about to tell you is also in the full record and was discussed in 2016 when we first presented to the Board and/or 2017 when we presented again to the Board.

First of all, the reduction in inventory was accomplished by the other dealerships by closing a dealership, which our dealer did not do. Second, the promotions we allegedly refused to participate in, we asked for exactly the same kind of aid or assistance that the other dealership received and we did not get it. We sought to build a new dealership down on 410, a brand new dealership that would be freestanding, and were turned down because they said that's not a good neighborhood. In other words, they decided the dealer can't do that.

We didn't renovate the dual facility because we had been told we wouldn't get any aid for it, whereas, the other dealership that received favorable treatment got aid for those renovations. And we found that that renovation, the aid had been promised, the renovation took later.

And our refusal to participate in a deceptive
service loaner program is something I really need to talk about. Something I never knew, until I got into this case, is when you buy a car that's called like -- if you have a service loaner in service a short enough period of time you can still call it a new car, but the customer, at least with this manufacturer, doesn't learn that the warranty started when they first put it into service loaner business. So if you walked in on March 31 and bought a car that had been a service loaner for a little while back in, say, December, you didn't know that you ran out of warranty four months sooner than the, say, seven-year warranty that you think you got.

Mr. Zabihian -- and he's in the room -- I'm proud to say he thought that was deceptive and improper. He wouldn't do it. And Mr. Hetrick, the regional manager who discriminated against him, at another national dealer's meeting admitted that that was a process that had caused a lot of heartburn for dealers. I don't know if they changed or not, but calling Mr. Zabihian a bad man for refusing to participate in something that's deceptive -- because Hyundai had no requirement that dealers tell consumers you're buying a car with a warranty already started -- that's the most outrageous thing that I heard in the entire case.

Now let me talk about allocations. It is not
true that these manual allocations are dependent on these programs. You can participate in some of these programs and you may get extra allocation that way, but Mr. Zabihian wanted good cars, these dealerships wanted good cars, just like everybody else, and the good cars went to the other dealers who turned down many more vehicles than did the World Car dealerships, many more.

And in fact, one of the other things that's in the record, Hearing Transcript at 1086-87, which I mentioned in the order, is that before Mr. Hetrick ever met this dealer, he presented him with a letter to get signed authorization to sell the dealership. They wanted to get rid of him from the beginning. And only the existence of this proceeding forestalled that effort, and fortunately there's a new regional manager now.

Another thing that's in the record and is very important is that this dealer, like other dealers, has other franchises. The other franchises sell hundreds more cars. You don't walk across the street at a dealership and suddenly become a bad dealer for one manufacturer when you are a good dealer right next door. Human nature being what it is, you're a good dealer or you're not a good dealer. It's a hard business, but you don't suddenly walk across the lot to the other dealership and become successful when you're an awful dealer here, and vice
versa.

That's exactly what happened, and that record is undisputed, and it's something that was made clear to this manufacturer and I believe it's in the record of one of the two presentations -- it's also in one of the two presentations that we made to the Board earlier. Mr. Zabihian had made a letter of complaint about that and pointed out that he had many more cars in stock at a Kia dealership than a Hyundai dealership.

So I want to explode these false notions that he's just some kind of an uncooperative person who made them mad and deserves unfavorable treatment. There was discrimination, and to the extent anybody says there wasn't any, that's just wrong. The question is a legal one: is it unreasonable discrimination? And if the Board doesn't get to decide that and the ALJ does, then we might as well not have a Board.

MR. TREVIÑO: Thank you, Mr. Kaplan.

Any questions for Mr. Kaplan at this point?

(No response.)

MR. TREVIÑO: Hearing none, then we'll go to the rebuttal from Mr. Bennett, I believe, for the Respondent.

MR. BENNETT: There he goes again. He's rehashing evidence that was disputed. He keeps trying to
act like it's undisputed. These things were all disputed. There's no deceptive programs. There's no findings of deception, there's no findings to support anything you just heard. These are just theories and excuses that they presented to the ALJ that she found not credible and she refused to make findings that supported what you just heard because the evidence was disputed and the evidence was this is a proper program. There's nothing in the proposed order of findings about anything being deceptive or improper. These are programs that are common in the industry. That is in her PFD: these are common in the industry. All manufacturers have these kinds of programs; there's nothing wrong about them at all.

Now, again you just heard pieces of evidence, a small part of five days of testimony and hundreds of exhibits, but it was disputed and there's no findings to support what Mr. Kaplan just told you.

This letter that he mentioned that Mr. Hetrick when he came on board. What was the situation? World Car was cutting back on their inventory, World Car was not participating in any of the programs, and Mr. Hetrick just says, You know, if you want to sell, we'll help you find a buyer. That's all it was. There's no threat to terminate. He was just saying, you know, you seem to be interested in your other brands, you're not really focused
on Hyundai, and that's all that was about. And again, there's no findings by the ALJ that there was a threat.

These are basic findings, and what the Third Court said is, look, the basic findings which are like who, what, when, where, how, those are for the SOAH judge to decide. You make a decision based on the basic findings that are found by the SOAH judge, and those basic findings support only one conclusion here: Hyundai didn't do anything wrong.

I mean, World Car and Mr. Kaplan, I'm sorry, they're just at war with the legislature, they're at war with the Sunset Commission, they're at war with the Third Court of Appeals. There is this process on how this works and it's a good process. SOAH is your agent by statute. They are delegated the power to find these basic facts for you so you don't have to sit for five days of testimony, and that's the process.

And I mean, if you adopt the order that he read to you this morning -- which we only got last night -- we'll be back here in two or three years. This is contrary to the Third Court of Appeals. He's got stuff in here about requiring adherence to sales standards. That was all argued in the Court of Appeals and the Court of Appeals said the ALJ found there was no requirement of a 100 percent sales efficiency, it's not required in the
dealer agreement. These are findings that were made and the Third Court says those are basic findings that the ALJ makes, and the Board cannot make contrary findings.
That's what he's asking you. This order is littered with new basic findings that the ALJ never made and he's trying to get you to make. I'm an appellate lawyer. That's been most of my career besides from being at this Board, and I can tell you if you adopt this order, we will be back.

The course here and the only course really, proper course here and legal course here is to adopt the proposal for decision. It's sound, it was based on evidence and it's based on the proper legal procedures that the legislature has established for how this Board goes about making its decisions.

Unless the Board has any questions for me, I think that's it. We just implore you do not create a bad precedent by adopting this order that MR. Kaplan wants you to order. It will make us an outlier. All the other states in the Union this is permissible. It will make Texas an outlier because the manufacturers they'll fear any unequal allocation they make will lead to a lawsuit. Lawyers, fees, costs, lawsuits they have to deal with. It will guarantee it. Adopting some per se rule that any three to one or whatever they're trying to pick out of the air, that's not how this works. It's a fact-intensive
issue, it's something that the manufacturers look at who's participating, who's not participating. And again, you would take us out the mainstream if you do what Mr. Kaplan and World Car want you to do.

So unless you have any questions for me, thank you for your time.

MR. TREVIÑO: Thank you, Mr. Bennett. Does the Board have any questions for Mr. Bennett?

MR. BACARISSE: Mr. Chairman.

MR. TREVIÑO: Member Bacarisse.

MR. BACARISSE: I just have a question for general counsel. There's been a lot of very impassioned arguments both sides this morning. I want to make sure I'm not getting lost in what we're actually here being asked to find.

The issue that really is before us -- tell me if I'm right -- the issue that's before us as a Board is whether World Car has established that Hyundai's actions or programs violate the Texas Occupations Code, period, end of story. It's not about anything else. Is that right?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

That's correct. The Occupations Code sections
that are applicable in this particular case are also outlined in the conclusions of law in the SOAH ALJ's PFD.

MR. BACARISSE: And is it counsel's opinion that the administrative law judge's outlines of the Occupations Code were correct in their findings of fact?
Do you have a problem with any of those?

MS. BEAVER: The charge of the Board today is to review the PFD and both the basic findings of fact as well as the conclusions of law and make a policy choice as to whether or not they would uphold that PFD and making sure that they set forth with sufficient justification any reasons if they disagree and any explanation of basic facts that would contradict that final finding and make sure it's sufficiently explained in the deliberation portion.

MR. BACARISSE: Okay. Thank you.

MR. TREVIÑO: Thank you, Member Bacarisse.
Any other questions? Member Graham.

MR. GRAHAM: I would just like to speak to the Board since, you know, we haven't been able to do that, and as one of two Board members who was present when this came to this Board and as, of those two members, the franchised dealer, I kind of feel obligated to visit with you about all of this and where I was at the time. I'll be hesitant to tell you where I think this Board was.
MR. TREVIÑO: Excuse me. General Counsel Beaver.

MR. GRAHAM: Yes.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

Sorry to interrupt, Member Graham. Before the Board goes into the discussion and deliberation there will need to be a call for the motion from the chairman.

MR. TREVIÑO: Okay. So before we start discussion.

So at this point are there any other questions for either side any member -- I'm sorry -- of the either Respondent or the Complainant and their attorneys? No questions?

MR. GRAHAM: I've got a question.

MR. SCOTT: Mr. Chairman. I have a motion that I would like to make, please.

MR. TREVIÑO: Member Scott, we'll get to that in one second.

MR. GRAHAM: Well, go ahead, go ahead. It's just staying with Robert's Rules of Order when it comes to this, but that's another fight for another day.

MR. TREVIÑO: We're trying to work through this thing here.

MR. GRAHAM: Yeah, I know, I know.
MR. TREVIÑO: Appreciate your patience, Member Graham.

So at this point we're in the question phase, questioning the attorneys who have presented to us today. We're good with that. Right?

MR. GRAHAM: But again, if we make a motion we can still circle back if we have a question. Is that correct.

MR. TREVIÑO: Yes.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

Absolutely.

MR. GRAHAM: Okay. Just making sure.

MR. TREVIÑO: So let's get back to this.

Questions, no questions for the attorneys who presented to us today?

(No response.)

MR. TREVIÑO: So hearing none, I would like to entertain a motion.

MR. SCOTT: Mr. Chairman, I have a motion.

MR. TREVIÑO: Okay. The chair recognizes Member Scott.

MR. SCOTT: Mr. Chairman, I move that the Board uphold SOAH's PFD and adopt the Findings of Fact 1 through 53 and conclusions of law, as stated in the proposal for
decisions, with amendments to Conclusion of Law Number 3 and Number 8, to correct the typographical errors in the citation.

Mr. Chairman, I believe the SOAH proposal for decision should be upheld because World Car made several business decisions that caused them to receive less inventory. World Car did not prove that Hyundai treated them unfairly, used unreasonable sales discrimination, or violated their duty of good faith and fair dealing.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

Sorry to interrupt, but then before the deliberation there will need to be a second.

MR. TREVIÑO: Correct. He's still making his motion, I think. Thank you for bringing that up.

MR. SCOTT: Some of those business decisions that World Car made that ultimately caused them to receive less inventory include World Car voluntarily reducing their inventory in 2009 and 2010, as stated in Finding of Fact Number 20. In Finding of Fact Number 23, World Car, unlike Red McCombs was not an exclusive Hyundai dealership. In Finding of Fact Number 27, 28 and 29, World Car made a business decision not to participate of some available programs provided by Hyundai that could have caused the increased allocation available to them.
Additionally, in Conclusion of Law Number 8 the ALJ found that World Car did not participate in several programs that would have permitted additional discretionary allocations.

It is clear to me from reviewing the PFD several times that World Car did not prove their case and that World Car had the burden of proof. In making this motion I take into consideration that during the relevant time periods in question a devastating tsunami hit Japan which resulted in lower vehicle production in Japan which led to a greater demand in U.S. for Hyundai by both franchised dealerships and consumers. As a result, available inventory for Hyundai motor vehicles available for allocation became greatly reduced by this sudden demand. I view this case as one in which World Car made a conscious business decision not to participate in Hyundai programs that could have produced additional inventory for Complainants' dealerships.

Finally, I support the findings of fact and conclusions of law reached by the SOAH ALJ in the PFD.

Thank you.

MR. RICHARDSON: Second.

MR. TREVIÑO: We've got a motion from Member Scott, second from Member Richardson, and now we can begin discussion.
Member Graham.

MR. GRAHAM: Okay. Thank you.

MR. TREVIÑO: Go ahead.

MR. GRAHAM: First of all, my first question is for Sheriff Richardson. You got all that, Sheriff?

(General laughter.)

MR. GRAHAM: Sort of. I mean, what a way to start. Oh, my gosh. I think this has been the doozy for us since I've been on the Board, very difficult, a lot of considerations.

I want the Board to know that as a franchised dealer in think this might be one of the most important things we do as a board, and it is extremely important, and that's why we're here, one of many reasons but one of the most important reasons.

So going back to 2016 when we heard this case in 2016 and SOAH's decision that they failed to meet their burden of proof, and as you know, at that time the Board disagreed with those conclusions and that Hyundai held New World Car to an unreasonable sales standard, and it was really based, at least at that time for me -- again, I'll be very cautious to speak for anybody else on the Board -- it was just a common sense approach that having a dealer that is held to a sales standard that is unattainable was just unreasonable. I disagreed with the ALJ on that case.
In Texas our statute provides dealers the opportunity to make business decisions, as you pointed out, that's based on the best interests of their family, of their business, their employees, and at that time this dealer made decisions that they felt, I presume, was in the best interests of all of those. Sometimes those decisions don't necessarily line up with best interests of the manufacturers; manufacturers want to sell vehicles. But we have a statute to protect them in the event that they do that.

So you know the result, we reversed the ALJ decision. General counsel at that time didn't tell us we needed anything else, so off it went and back it came. Once it came back, general counsel, again at that time, wrote up and drafted what he believed was -- this was not general counsel that we have in place today -- what he believed was a case of our points. I think we've learned since that that was poorly executed, and as I go back and read it, it deserved to come back to the Board, and I think as a Board member of DMV, we owe and apology to both parties for not getting that right. They've spent a lot of time and a lot of money having to continue this process.

So here we are, we're back square one, and we've still got the question at hand which is is the ALJ's
conclusion that New World Car failed to prove its case correct, or did Hyundai in some violate statute and perhaps hold them to an unreasonable sales standard.

As a franchised dealer, I take no issue with the manufacturer's decision to allocate vehicles in the way that they did. There are underlying things there but we can't consider that in this deliberation, in my opinion. I know that when a dealer makes a business decision they can sometimes do things that will get them more vehicles or they can bow out, not make the investment and not get the inventory. I'm not going to disagree that manufacturers have that right.

In this case, however, New World Car alleges discrimination in allocation in Conclusion of Law 7 and in this case the manufacturer allowed a regional manager a 15 percent discretion of vehicle allocation, and I was surprised that the ALJ did not take issue with that, but after I go back and I've studied this thing inside and out, I have concluded that the reality is that this agency and this Board really hasn't clarified that. It is my understanding that the statute gives us broad guidance and this Board then makes rules to provide clarity to some of those things. We have not provided clarity in the history of this agency, and so in all reality, there was nothing to hold the manufacturer to one way or the other. So I
don't believe there's an issue there either.

I do believe that this is something this Board needs to consider in the future and take a hard look at because a 15 percent discretion is significant, that is a lot of vehicles. You know, we could figure out what might be or what might not be, but anyway, I'm going to move on from that because that is a discussion for another day.

In Finding of Fact 50, it states: "Maintaining 100 percent sales efficiency is not a requirement to be or to remain a licensed Hyundai dealer." So as I worked all the way through this, this is where I get hung up. I remain perplexed by the ALJ's conclusion because when you read the statute, this big book that I've got right here that has become half my friend -- well, it's always my friend but we've spent a lot of time together lately -- if you look in that statute, in 2301.455 this is the section of the statute that lays out very clearly the reasons of good cause and termination of a dealer. The very first item reads: "The dealer's sales in relation to the sales in the market is good cause for termination." Number one.

Fortunately, our legislature had the sense to add, after it lists about eight things, then there's (b) to add a sentence that said that in and of itself basically can't be cause -- market penetration does not in and of itself constitute good cause. So number one can't be the only
reason but it is a reason.

So in this case Hyundai stated in record, in the PFD -- which is what we can look at -- that sales efficiency is measured to help dealers improve their performance and sales efficiency is not a standard that World Car or any other dealer is required to adhere to. And if that's the case, then that would be in full compliance, and obviously that is what the ALJ concluded.

However, when you look at the facts in the PFD that in 2013 they sent New World Car a notice of failure of performance based on their sales efficiency, advising them either meet your standards or we'll work with you on a sale, and stating that it left them in material breach of the dealer agreement. Based on how I read it, their testimony contradicts themselves.

When this dealer failed to meet those sales efficiency goals or standards, for all the reasons -- and there are a bunch of reasons in this case, there was a lot going on in this market with Toyota -- well, I'm not going to go through that because I didn't cross-reference that in the PFD -- there was a lot of reasons going on as to why they may or may not have been able to do that. But clearly, it looked to me that the manufacturer said it was required based on their actions. So that is why it is imperative that sales standards be reasonable and
attainable for dealers.

Their own testimony stated that they knew that New World Car couldn't reach -- they were not going to get enough allocation to reach their standards, they testified that they knew other dealers weren't going to get enough to reach their standards, but when New World Car asked them either provide us more cars so we can reach our standard or just lower our standard, they didn't do either. So again, that's my primary issue in this case, my struggle is to understand how the ALJ came up with that conclusion in Finding of Fact 50. If a manufacturer can set sales standards that are unattainable, they only need to go find something else and then they can terminate you, and as a dealer that is very concerning to me.

I think the fact that they may have -- the dealer may have very well prevented or got ahead of the manufacturer from sending them a termination notice, and that may factor into this at the end of the day, but that's where I'm hung up. I don't think there's any question that it was an unreasonable sales standard and the fact that the ALJ decided that because they really didn't enforce anything it was okay. I disagree with that entirely.

So I'll yield the microphone and say that's where I'm hung up on this case.
MR. TREVIÑO: Thank you, Member Graham.

Member Gillman.

MS. GILLMAN: Mr. Chairman -- am I on?

MR. TREVIÑO: Yes.

MS. GILLMAN: I move that the Board amend or add amend Findings of Fact 30, 52 --

MR. TREVIÑO: General Counsel Beaver.

MS. BEAVER: Sorry to interrupt, Member Gillman. Since there was already a motion and a second, the deliberation will be around that particular motion and second, but you're free to deliberate and discuss any reasons that you disagree with the PFD. New motions at this time couldn't be made unless they're to amend or substitute the first motion, and that would only be if it's in support of the first motion, it couldn't be to reject and do a new motion.

MS. GILLMAN: When can I reject and do a new?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

MS. BEAVER: If the Board does not vote to adopt the first motion, then the chairman may call for a new motion, but at this time, the deliberation is for all the Board members to express their viewpoints, and then a final vote will be taken.

I'd like to address some of the points. Number one, with regard to allocation. So I feel that the ALJ misapplied the law in finding that Hyundai's discretionary allocations were not unreasonable or discriminatory. Discretionary allocations are on their face unreasonable and to me this is a clear case where Hyundai allocated more cars to World Car's closest competitor which in turn made it impossible for World Car to obtain 100 percent sales efficiency, which made World Car receive less allocation, which further reduced its ability to meet sales efficiency targets. The discretionary allocations created a situation where World Car was trapped in a cycle of ever-reducing inventory.

The word discretionary is really what I have a problem with. The word discretionary, in my opinion, lends itself to unfair practices. Dealers would like manufacturers' policy to be clear and transparent, reasonable formulas that can be enjoyed by all. Discretionary allocation lends itself to unregulated, unpredictable, subjective ways of doing business.

A more precise formula is a more reasonable way to behave when both parties can have confidence in their professional partnership. The word discretionary means arbitrary and up to the whim of a person. This creates unclear non-transparent distribution methods and I think
the formula needs to be clear and not discretionary. Hyundai should have a defined method of calculation, which is the standard in the industry. Hyundai should have a defined method of calculation, which is a standard in the industry.

In this case the standard formula was only 85 percent, under Findings of Fact Number 9 and 11, yet I feel the standard allocation should have been 100 percent of a dealer's units earned. Any human being, such as a national sales manager or a zone manager, that has the ability to manipulate or alter the earned formula is subjecting their franchise to potential litigation. Findings of Fact Number 8, 11, 18 and 19 are not a metric by which you can hold any dealer to.

Finding of Fact Number 18 shows that in just six months of that one year, 134 units went to Red McCombs and only 20 to World Car. That shows Red McCombs received 114 more cars in just six months. Under Finding of Fact 19, the differences in discretionary allocations continued for four more years. Four more years of that same treatment would result in a serious delta.

Page 2 of the proposal for decision under the heading Applicable Law Section 2301.468 says, A manufacturer may not otherwise treat franchised dealers differently as a result of a formula. I feel that's
what's happened here. They may not -- this is another
point in Section 2301 -- they may not discriminate
unreasonably between franchisees in the sale of motor
vehicles owned by the manufacturer. Additionally, Texas
Occupations Code 2301.468 says, Manufacturers have a duty
of good faith and fair dealings in their relationships
with franchisees.

I feel that the Finding of Fact Number 8
supports my argument that Hyundai's allocation consists of
formula allocations, discretionary allocations and manual
allocations. The discretionary allocations piece is an
unfair business practice under Section 2301.468. A
manufacturer may not otherwise treat franchised dealers
differently.

To support this, Finding of Fact Number 11
supports my arguments. Discretionary allocations are made
by Hyundai's regional general manager who may distribute
up to 15 percent. Discretionary allocations are an unfair
business practice under 2301.468.

I'd like to talk a little bit about these
programs. Participation in manufacturer programs may
result in increased allocations, and it is reasonable for
dealers to be rewarded if they participate in certain
manufacturer programs. I do not dispute that. But the
formula about deciding the number of additional units
should not be discretionary. That's what I have a problem with. The discretionary allocation needs to be redefined as bonus allocation over and above a standard. In my opinion, bonus allocations should be a manufacturer's prerogative over and above a standard formula of allocation.

For example, if a manufacturer has more supply than a standard formula offers, they can offer more vehicles to a dealer. Or if a dealer has achieved some wonderful monumental task, like being number one in customer satisfaction in the nation, you might earn one or two extra, but this is over and above a standard allocation that's equal for all dealers, not 85 percent lending itself to 15 percent discretion. So I think that regular allocation to dealerships should not have a component of discretionary allocation in it at all. And although Findings of Fact Number 22, 24, 25, 26 and 36 show that Red McCombs participated in programs and World Car did not, it is unfair for Hyundai to give more discretionary allocation to Red McCombs because these allocations were not based on a standardized transparent formula.

I feel it is reasonable to reward dealers to participate in renovating their facilities, however, I disagree with that formula being at someone's discretion.
I feel a formula that's well defined, transparent and published is a more reasonable method of rewarding dealers for participation in Hyundai's facility program. Regarding the facility renovations, upgrades and new construction, preferably a standard formula and method of calculation based on actual receipts, actual dollars spent, rather than discretionary decisions made by one person that would affect allocation of new cars.

So because of this misapplication of the law, I feel like parts of the PFD should be amended, and we'll get to that motion later.

I'd also like to talk about sales efficiency. Despite the fact in Finding of Fact Number 50 that says, Maintaining 100 percent sales efficiency is not a requirement to be a licensed Hyundai dealer, it does affect allocation, and the resulting unfair discriminatory practices. From page 18 of the PFD, Mr. Hetrick rewarded discretionary allocations by looking at sales efficiency. For this reason, sales efficiency was a significant factor in determining whether or not World Car received any of their 15 percent discretionary allocation.

Please note Finding of Fact Number 42. Hyundai was aware some dealers could not achieve 100 percent sales efficiency with their lower inventory. Therefore, a dealer's sales efficiency should not be a measurement by
which allocation is distributed arbitrarily. That's the key point. Hyundai had an unreasonable expectation for World Car to meet sales efficiency with their formula of discretionary allocation.

I have, of course, specific amendments to findings of fact and conclusions of law that while I am not a lawyer at all, I tried to be thorough, I'll wait.

MR. GRAHAM: Well, let me ask this question.

MR. TREVIÑO: Member Graham, would you hold on a second.

I'd ask Ms. Gillman if she's finished with her statement.

MS. GILLMAN: Yes. For right now, yes.

MR. TREVIÑO: Great.

MS. GILLMAN: Thank you.

MR. TREVIÑO: So if we could, I would like to call a recess just for a minute here. Okay? We're recessed just for a moment.

MS. BEAVER: And the time is now 9:53. When we will be getting back on the record?

MR. TREVIÑO: In a moment.

MS. BEAVER: Thank you.

(Whereupon, a brief recess was taken.)

MR. TREVIÑO: So let the record show that it is now approximately ten o'clock, we are back in session. I
hope everybody feels more comfortable now.

All right. Let's go back to this. So Member Gillman had just finished her eloquent summation there, and now any other?

Member Washburn.

MS. WASHBURN: Thank you, Chairman. So I've got quite a few comments.

So on sales efficiency, so it's my understanding that sales efficiency is measured the same way for every dealer based on -- what I read in here -- based on a national average, so that's one thing to consider. And there's on case or prior Board decision or statutory provision that I'm aware of that says a manufacturer cannot set a sales standard that's in excess of the vehicles that a dealer is allocated to sell. And in this instance the dealer turned vehicles down, so there's no unreasonable discrimination. So that's on sales efficiency.

As far as the letter that was sent, so the record is pretty clear that Hyundai was not trying to terminate this dealer. While Hyundai may have wanted their performance to improve, they had not sent a notice of termination. So a buyer's assist letter, which is what this letter was, is very customary in the industry. Manufacturers send them to dealers for all kinds of
reasons, things like succession planning, to evaluate the
tvalue of their store, or perhaps what it sounds like in
this case would be the dealer might want to sell in order
to be eligible or financially ready to purchase a
different kind of store, or maybe just didn't want to be a
dealer anymore.

So let's look at World Car wanted in this case.
They wanted the ALJ, and therefore the Board, to conclude
that what Hyundai had done was a violation of statute in
Texas, but let's look at what they were complaining about
and let's look at the actions that Hyundai took.

So number one, McCombs got additional
allocation of vehicles because it participated in
Hyundai's rental car program. World Car did not, although
they could have. This was their decision. There was no
unreasonable discrimination by Hyundai in not giving World
Car the same number of vehicles as McCombs.

The buyer's assist letter that we talked about,
this had nothing to do with the vehicle allocation and
Hyundai was not seeking to terminate World Car's
franchise, just wanted to see if they were committed to
the brand, because unlike McCombs, World Car had not
chosen to invest in their facility. Had they invested in
their facility they would have been eligible for
additional vehicle allocation like McCombs.
Discretionary allocation of 15 percent by Hyundai's regional manager. It is customary in the industry that manufacturers have some amount of discretionary allocation of vehicles that they can spread across their dealers, so this comes into play when there are things like a hailstorm and a dealer has depleted inventory, or in some cases dealers will raise their hand to take vehicles that maybe a dealer turned down or more vehicles during a changeover. So the fact that Hyundai, like other manufacturers, has a discretionary allocation of 15 percent is not unreasonable discrimination.

Facility upgrade. The de-dual facility by McCombs receiving additional vehicles. That's okay. Manufacturers want dealers to invest in their brand in their facilities, it's good for the customers. And manufacturers want dealers to be financially successful after they make those investments, so they provide those dealers with additional vehicles if they want them. World Car had the same opportunity to make a similar investment in their facility to obtain additional vehicle allocation.

So Hyundai's actions were not actions that were unreasonably discriminatory towards World Car. Stated in another way, they were actually reasonable. Just to be clear, on these facility programs that result in rewarding dealer with additional vehicle allocation, that is
customary in the industry. Toyota, Ford and many other manufacturers utilize these same kind of programs. And I'm not aware of any Texas case or decision suggesting that these programs are inappropriate or wrong.

To the contrary, these programs are so customary that in one of our neighboring states Arkansas, codified in their Motor Vehicle Code to say the following:

A franchisor may, consistent with its allocation obligations at law to its other dealers, provide a dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the dealer to expand, improve, remodel or renovate its facilities if the provisions of the commitment are contained in writing, voluntarily agreed by the dealer, and are made available on substantially similar terms to any of the franchisor's dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

So there's really no argument here that providing additional vehicles to dealers as a reward for investing in their facilities as being customary in the industry and certainly not an unreasonably discriminatory practice by any stretch.

MR. TREVIÑO: Thank you, Member Washburn.

Any other comments? I see Member Gillman, but
I think I'd like to let all the other members of the Board speak before we kind of go back, circle back. Member Gillman will have plenty of time to speak, but I'm just kind of throwing it out there on McRae's side, Prewitt's side, Richardson's side, Bacarisse's side.

Member Bacarisse.

MR. BACARISSE: Thank you.

Just a brief observation from a public member. It seems to me in what my colleagues have very, very well stated issues that are brought up in their comments -- I mean, I hear them and am appreciative of them -- it seems to me that it's incredibly important for any business who deals with a franchisor that supplies them with product to have an incredibly well negotiated contract between the two parties so that expectations are laid out well in advance and so that there is as little gray area as possible.

And then secondly, I would comment, just a thought, question really, is if something needs to be fixed and you can't fix it in a contract relationship, then the other best remedy is to try to take that issue to the legislature, and I'm sure that industry does that on a regular basis.

So I think there's some interesting and important points that have been brought forward today and
I appreciate my members, and I'm learning by being here and listening to each of you, so thank you.

MR. TREVIÑO: Thank you, Member Bacarisse.

Member Prewitt, did you?

MR. PREWITT: I have really no discussion at this time.

MR. TREVIÑO: Thank you very much.

Member Graham, I think you were the one, I interrupted you.

MR. GRAHAM: No. Well, actually all I was going to say to Board Member Gillman was she could discuss why -- and I wasn't trying to interrupt to take over, I apologize for that. Let me just point to a couple of things and then I'll come back to that.

First and foremost, it is extremely important that everybody on this Board asks these questions. Thank you for your input, all of you. The last thing we need are the two dealer representatives up here running this show, we do not need them to run this show, we need to give important input to the Board based on our knowledge of this industry and then we need your input and reach a conclusion. So I just wanted to say that I thought that was extremely important.

In regards to your comment about the relationship between manufacturer and franchised dealer be
clear, I couldn't agree with that more. I can tell you that I have a 30-year-old contract and there are dealers with much older contracts. I wish I could tell you, but I don't know, that's the way it works, I guess. There's not much in our contract so we're having to work on this relationship that's really a relationship governed more by statute than by contract because statute trumps contract.

And then back to Board Member Gillman's point, I was just going to say I would like to hear your points on what you're discussing about a potential motion because we have to make sure anything we do complies with those three items that falls in the range of what we can and can't do. So I'm trying to tie anything together there to make sure if we do take any kind of action like this it's got to be rock solid. So anyway, I was just going to ask her to expand on that, not necessarily make a motion but expand.

Thank you.

MR. TREVIÑO: So back to Member Gillman, and Member Graham has asked you to kind of maybe articulate your thoughts on amendments.

MS. GILLMAN: I think what I'd like to clarify is -- and Member Bacarisse, I completely agree with you. A well negotiated contract with little gray area is preferred, and I will say in my experience with ten other
franchises it is more well defined. Formulas for allocation are printed, transparent. Formulas for facility renovations are printed, transparent. It is industry standard. It is not, however, apparently in this case with Hyundai, and I feel that it is setting a precedent allowing this discretion to go on.

And I feel like I would be really proud to have Texas stand up and be an outlier, I would be very proud to have Texas say that, like most all manufacturer programs that exist today, Hyundai needs to comply as well to make all dealers treated equally. The word discretionary just lends itself to unfair practices.

I agree that dealers should be rewarded if they participate in programs. I just want a clear defined formula and then let the dealers decide whether they want to participate. That's okay.

The authority by one guy in a regional capacity to withhold vehicles at his discretion is, in fact, the argument that I want to hone in on that's a violation of the Occupations Code. It's an unfair business practice to have it at his discretion. That's what I'm refuting.

And if there are vehicles that are -- you know, after a standard equation or a formula has been used, if there are vehicles that are extra -- because in Houston, Texas we had Hurricane Harvey, remember, and a lot of
dealers lost all of their inventory, and thank goodness the manufacturers stepped in and dealers came and voluntarily gave up allocation to be distributed to those dealers that needed it. I mean, sometimes that happens. Hailstorms happen, like you said, Shelley. But all of those are exceptions or bonus outside of a standard formula.

I just feel like if, Paul, you -- Member Scott, if you did a million-dollar renovation and I did a million-dollar renovation, I don't want it to be up to the discretion of one guy to give you 20 cars and me zero cars. The point is that if there's a standardized formula then dealers can make a decision, a business decision that would affect their allocation.

I feel like while the meeting sales efficiency, 100 percent sales efficiency was not a condition of the sales and service agreement, if it was a determining factor in allocation and every single time the 15 percent was withheld over a four-year period, that one dealer gets less and less and less and less.

The problem that I have with Hyundai's business rules is that it's gray and lends itself to one guy making up his own rules. A contract should be more clear, I completely agree with you. A method of calculation should be used that's equal and fair treatment to all dealers.
MR. TREVIÑO: Thank you, Member Gillman.
Any other comments?
And is your suggestion that there's a way to fold that into Member Scott's motion as an amendment of some kind? I'm not suggesting Member Scott change his motion, I'm just asking if that was what you were thinking about.

MS. GILLMAN: If I'm correct, Member Scott, you moved that we adopt the SOAH findings, and I think I'm wanting to amend and find in favor the way the Board has voted in the past.

MR. TREVIÑO: Okay. All right.
Member Scott.

MR. SCOTT: Thank you, Mr. Chairman.
I agree to some extent with Member Gillman's frustration with the discretionary allocation. I think that that's something that could or should be addressed by this Board or by this agency, but I don't think that that is what we're here for today. We have a specific case, and the burden of proof in this case falls on World Car to prove that Hyundai treated them unfairly and used unreasonable sales discrimination, and the burden of proof, again, is on World Car.

And I've been back and forth on this myself, I've read this PFD several times. I started with a
completely different approach to this as to who should prevail, back and forth. I just don't see that World Car has been able to prove that they were discriminated against. There were several programs made available to World Car that they chose not to participate and there's a finding of fact that says that in the beginning of this process World Car voluntarily reduced their inventory while McCombs maintained a higher inventory level at the beginning of the recession in 2008 forward.

And I think that McCombs made business decisions that ultimately turned out to be beneficial to them, and I think that World Car made business decisions that ultimately turned out to have a different consequence for them. So as we go through our business situations, we all have to make decisions, some of those work out for us and some of them don't. And I think in this case World Car made some decisions that ultimately did not work out for them as well as the business decisions that McCombs made. McCombs made a decision to continue to invest in the franchise, to remodel facilities, to have participation in the loaner car program, and World Car chose not to. Those decisions have consequences.

So I don't believe that World Car proved that they were unfairly discriminated against. That's it. Thank you.
MR. TREVIÑO: Great. Thank you, Member Scott.

Member Prewitt.

MR. PREWITT: Just a couple of thoughts. One is in regards to codifying franchise agreements that they have to be specific in every manner as far as the allocation of cars of vehicles, I think that gets in the area of where we're trying to basically determine what free enterprise is. And I think if a dealer who's obviously a very competent dealer, has ten dealerships, enters into a franchise agreement where he knows in advance there's a 15 percent discretionary allocation, he's doing so with open eyes and as a prudent man. And to say he's not and we need to protect him tells me he's imprudent, which I don't think is true. I think he's obviously a competent person and a competent dealer.

So then it's a question of why would he enter into that agreement. It's because he wants to sell that brand of car, and if he doesn't want to, he doesn't have to enter into that agreement. He doesn't have to sell Hyundai, he can sell Honda or some other car.

A far as the sales efficiency, I concur with Member Scott in the sense that there's been no consequence to World Car as far as termination of the dealership, as far as restriction of dealership opportunities from them not meeting the 100 percent sales efficiency standard. So
I find, much like Member Scott, that they haven't met the burden of proof in saying that they were discriminated against by Hyundai.

Thank you.

MR. RICHARDSON: Mr. Chairman.

MR. TREVIÑO: Thank you, Member Prewitt.

Member Richardson.

MR. RICHARDSON: Board members, I know that I'm the new kid on the block, but I did spend 12 years at TCOLE and I disagreed with very many ALJ decisions in the past. First thing I did when I was appointed to this Board was to read Sunset, and there were some very important parts of Sunset. The second thing that I did was read the ruling from the Third Court of Appeals.

Now, not knowing anything about automobile dealerships other than, oh, that's a pretty car, the first time I read the PFD and then I read the Court of Appeals, it was my opinion that the PFD nailed it and that's why I seconded Board Member Scott's motion.

MR. TREVIÑO: Thank you very much, Sheriff Richardson.

Member Graham.

MR. GRAHAM: I have a question for Mr. Bennett.

Thank you.

In regards to the sales goal, as we have
discussed at great length here the dealer made decisions that impacted their allocation of vehicles. Right? Those were business decisions they made. Right, wrong or indifferent, they were allowed to make them, you were allowed to impact, in my opinion, their allocation. When they requested for their sales goals to be adjusted to reflect those business decisions, why would Hyundai not do that?

MR. BENNETT: Board Member, my memory is not clear on what the reason was. I recall that being raised. I don't know that they were adjusted. But I think it's very important for you to understand that World Car's own witnesses said that the sales efficiency numbers had nothing to do with the allocations. This is page 452 of the transcript. The question: So do you understand that sales efficiency calculations which are based off of registrations, do you understand the sales efficiency numbers had nothing to do in the Hyundai system of allocations? The answer: Yes. This is a World Car official. Nothing at all. Right? Answer: Yes. Another Hyundai official, same thing. This is on page 597. Mr. Willis, a Hyundai official. Question: And I think it's been established fairly clearly that sales efficiency plays no part in inventory or allocation. Correct? Answer: That's my understanding.
Sales efficiency had nothing to do with their allocations. They got allocations during this whole time.

MR. GRAHAM: Understood and don't disagree, but in regards to the goals that you set for that dealer, it impacts their ability to hit their goals, and so if you start the year and you say your goal is 1,000 vehicles and you say you've got to do this, this and this, don't have to do it but you can elect to do it, and then they elect not to do it and then they don't receive enough cars to reach the goal, to even have a chance to reach the goal that you've set, it seems like that would be problematic.

MR. BENNETT: Well, Board Member, remember World Car was making those decisions not to do things that would have increased their sales, not only increased their allocations but would have increased their sales. So they were not cooperating with Hyundai in a manner that would have increased the allocations and would have increased their sales. These are findings in the PFD. So you know, I don't remember exactly why the goals weren't adjusted but I can imagine that the ALJ thought that, well, these guys just weren't cooperating, they weren't doing anything to up their sales when they could have upped their sales. So why should we adjust those goals when these guys won't do anything to increase their sales? I think that's where we are. That's what the ALJ thought, that's what she
found.

MR. GRAHAM: Okay. Thank you.

MR. TREVIÑO: Any other questions of Mr. Bennett.

MS. GILLMAN: Yes.

MR. TREVIÑO: Member Gillman.

MS. GILLMAN: One more.

MR. TREVIÑO: Mr. Bennett, you're still in the hot seat there.

MS. GILLMAN: During Mr. Kaplan's rebuttal he said that World Car was turned down for a move and renovation aid was not approved. Can you speak to that?

MR. BENNETT: I think the evidence was disputed over that, and again, that was their theory, that was their argument, but that argument did not prevail, the ALJ found that argument not to be credible. And they did ultimate renovate in 2014 after the time period we're talking about, but it didn't happen during the time period we're talking about, so they didn't pursue that. But again, these arguments were made, Ms. Gillman, but they were rejected. I mean, the ALJ who judges the credibility of the evidence and the witnesses and weighs everything did not make such a finding.

MS. GILLMAN: I guess I was looking for what did Hyundai, did Hyundai, not what the ALJ ruled or did
not rule, did Hyundai approve a move or not?

MR. BENNETT: I'm going to ask Mr. Young to come up because he's the trial attorney on this and he would have a better recollection of the evidence than I would, so I will yield the floor.

Thank you.

MR. YOUNG: Good morning -- it's still morning, Board members. I'm Kevin Young, counsel for Hyundai.

To directly answer your question, Board Member Gillman, there was evidence about the way that the Red McCombs dealerships were funded. They received some financial assistance from Hyundai, but the evidence was that they performed the renovations and then they applied for assistance and received it. World Car wanted to do it the other way, they wanted the money up front, and the evidence as the trial was that's not how it works, you do your renovations, just like everybody else, you submit to Hyundai, just like everybody else, and then we'll get you some assistance. I hope that answers your question about assistance.

As for the opening of another dealership, the evidence --

MS. GILLMAN: A move, a move.

MR. YOUNG: I don't remember any evidence about a move. But I can tell you that during this time frame
the evidence was that because the market was so tight for Hyundai vehicles that Hyundai was not opening any new dealerships at all anywhere in Texas during that year. And I don't believe there was evidence that World Car wanted to open a brand new dealership during this time.

MS. GILLMAN: A move.

MR. TREVIÑO: Relocation maybe.

MS. GILLMAN: I guess that was the suggestion. Not a new additional, but a move.

MR. YOUNG: I actually do remember, I do remember what you're talking about. I don't have a record cite for you but I do remember that World Car -- it was a disputed point of fact. World Car indicated that they had wanted to move their south store to a different location but that the Hyundai official had declined that move. That was just a disputed fact, but that is correct.

MS. GILLMAN: So I guess my clarifying questions are in a regular allocation and month after month after month, there is 15 percent discretion at the regional level. Yes?

MR. YOUNG: Up to 15 percent, it's not always 15 percent.

MS. GILLMAN: Okay.

MR. YOUNG: And during this time period it wasn't actually 15 percent.
MS. GILLMAN: Okay. And also, participation in programs also have a discretionary allocation if you participate in programs, as in you may earn more cars if you participate. Yes?

MR. YOUNG: Yes. Again, I think there was some evidence of that, I would agree.

MS. GILLMAN: And if you achieve sales efficiency there's also discretionary allocation available, meaning you may earn more if you're sales efficient. Discretionary vehicles if you are meeting sales efficiency.

MR. YOUNG: That's actually not the evidence. That was not evidence in our trial.

MS. GILLMAN: I guess I read page 18 of the PFD: Mr. Hetrick rewarded discretionary allocation by looking at sales efficiency.

MR. YOUNG: But I believe Mr. Bennett read the actual portions from the record where those topics were discussed.

MS. GILLMAN: My contention is that in all three situations discretionary allocation was used rather than a formula that the dealer understands. And please understand, I'm not really disputing that Hyundai can't reward dealers for being efficient, sales efficient or participating in programs. I'm agreeing. However, I just
think the word discretionary lends itself to the whim of one guy, and that is what I think should -- that's why I think World Car has met the burden of proof because it is discriminatory. It is an unfair practice to allow discretion. That's what I have a major hang-up with because other manufacturers don't do it that way; they don't do it that way because it's unfair.

I go back to if it's not well-defined, then if you sell a hundred and I sell a hundred, he might get 90 and I might get 85. That up to the whim of a person is what I find a clear violation of the Texas Occupations Code. If the formula if you sell a hundred and I sell a hundred and the formula the next month gives us each an equal amount, that's something that's reasonable, but if it's up to the whim of a human being, that's when it's unreasonable.

Thank you for listening to me and confirming the discretion in all three areas, the discretionary ability of the regional manager. Thank you.

MR. TREVIÑO: Any questions for Mr. Young or Bennett?

MS. McRAE: Mr. Chairman.

MR. TREVIÑO: Yes, Member McRae.

MS. McRAE: I've been fairly quiet through this process because this is not the industry that I'm most
familiar with.

MR. TREVIÑO: Do you have a question for Mr. Bennett, or can he sit down?

MS. McRAE: No, no, no, I don't. Thank you.

MR. TREVIÑO: Thank you.

MS. McRAE: So I've been listening to the experts in this area, both our witnesses and other Board members, and I think that what's important to note, at least for me, is that regardless of what industry we may be in, there's guidelines and there's standards in all of these areas. And just based upon the findings of facts and the conclusions of law that are before us that we are allowed to consider, that for Hyundai -- and I don't know, to Board Member Gillman's comment that that's not the same standard for other manufacturers, I don't know that because I'm not in that industry -- but it appears to be Hyundai's standard that all Hyundai dealers understand and know that there's these incentives and the incentives and the sales efficiencies affect their allocation.

And I think that just looking at this case, at least for me -- and I relate these incentives even to my own industry -- incentives promote and help to improve our industry in some way usually, we're rewarding people for going that extra mile, taking that extra step to do whatever it is that the incentive is providing. And in
this case those incentives were offered to increase their allocations, and I agree with the comments that were made in the motion by Board Member Scott. And I appreciate all of the discussion, and I understand, Board Member Gillman, that having something clearly defined is always a better policy, but I think that based on what we have before us, it's hard to say, for me at least, that World car has met their burden of proof.

MR. TREVIÑO: Thank you very much, Member McRae.

MR. TREVIÑO: Member Bacarisse, did you have a point?

MR. BACARISSE: I call the question, Mr. Chairman.

MR. TREVIÑO: Great. Yeah, no, absolutely. Is there any further discussion?

MR. BACARISSE: I'm sorry. For the record, I call the question. Sorry, I didn't have my mic on. Thank you.

MR. TREVIÑO: Thank you very much.

So we have a motion by Member Scott and seconded by Member Richardson.

General Counsel, do we need to restate the motion, or is everybody comfortable with the motion that was made?:

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MS. BEAVER: You can always ask Member Scott to restate the motion, if you'd like.

MR. TREVIÑO: Okay. Member Scott.

MR. SCOTT: I move that the Board uphold SOAH's PFD and adopt the Findings of Fact 1 through 53 and conclusions of law as stated in the proposal for decision, with amendments to conclusions number 3 and 5 to correct the typographical errors.

MR. TREVIÑO: Great. Motion and a second by Member Richardson, and with that, all those in favor please signify by raising your hand.

(A show of hands: Members: Bacarisse, McRae, Prewitt, Richardson, Scott, Treviño, and Washburn.)

MR. TREVIÑO: Okay. Member Richardson, Scott, Washburn, Prewitt, McRae, Bacarisse, Treviño.

All those against?

(A show of hands: Members Gillman and Graham.)

MR. TREVIÑO: Member Gillman and Member Graham. Okay. Motion passes. Thank you very much.

Moving on to next we've got a lot of stuff to take care of.

MR. GRAHAM: Just a quick generic comment, if I may. Just tell the Board that I really appreciate -- this was a hard one.

MR. BACARISSE: Amen.
MR. GRAHAM: And I appreciate each of you taking the time. Obviously I can tell each of you spent a lot of time looking at it, and even though we disagreed, I respect your opinions greatly and thank you for doing what you did.

MR. TREVIÑO: Member Graham, thank you very much for bringing that up. I wanted to move into rules and kind of just keep the thing flowing, but I did want to thank the Board for the reasoned comments everyone at a level of discussion, the ability to kind of focus on issues, everybody allowing everyone else to talk, and the good culture that was evidenced by the way this was handled and the discussion.

And I also would like to thank staff for all their hard work.

Member Bacarisse, did you have anything?

MR. BACARISSE: No, just to echo your points, Mr. Chairman. I appreciate and respect the members of this Board and your opinions and what we learned together today from one another. Thank you.

MR. TREVIÑO: Great. So now we're into rules. I would now like to hear agenda item 7, rule adoption for Chapter 2 and 5. I will turn it over to Daniel Avitia.

Mr. Avitia.

MR. AVITIA: Chairman, thank you. Members, Ms.
Brewster, again good morning. Daniel Avitia for the
record.

Today I'm asking the Board's approval and
permission to publish adoption of rules as amended in the
Texas Register. These proposed rule changes are listed as
agenda item number 7. The details of these rule changes,
including the comments we received, may be found on pages
79 to 108 of your Board book.

These rules were first published in the Texas
Register on August 23, 2019 and public comment closed on
September 23, 2019. These rules implement three bills
from the 86th Legislature. House Bill 1667 allows
independent motor vehicle dealers to perform salvage
functions without also obtaining a salvage dealer's
license. House Bill 3842 clarifies that a dealer must
hold a general distinguishing number for a consignment
location. Senate Bill 604 contained provisions
authorizing licensing statutory changes recommended by the
Sunset Advisory Commission. These changes include
eliminating representative licenses and adding licensing
training for independent motor vehicle dealers.

The department received 15 comments on the
proposed rules. Thirteen were from count tax assessors,
one from the TAC Association of Texas and one from TIADA,
each in support of licensing education.
Members, I request your approval to proceed with adoption as amended and publication in the Texas Register. If the Board adopts these amendments, new sections and repeal, the staff anticipates publication in the February 28, 2020 issue of the Texas Registers, with an effective date of March 5, 2020.

Members, this concludes my remarks. I'm happy to answer any questions.

MR. TREVIÑO: Thank you, Mr. Avitia.

And I would ask staff and anyone else who is in the room to please try and speed things up. We're somewhat behind schedule because of the excellent discussion points.

Are there any questions for Mr. Avitia?

(No response.)

MR. TREVIÑO: No.

Are there any comments from the public? And yes, we have two, so I would ask that Michelle French, and then after that we've got Jeff Martin right after that, so if you could kind of maybe tee up so we get this thing moving, kind of stand on deck or something like that and warm up.

(General laughter.)

MS. FRENCH: Hello. Good morning, Board. My name is Michelle French. I serve as the Denton County Tax
Assessor-Collector and also the liaison to DMV for our Tax Assessor-Collector Association. I'll be very brief because I know there is very little time.

We are very much in support of the rule on the pre-licensing education. Just in my county alone, I think definitely having that licensing education before a dealer can get their license is going to be so important so they understand what is really the rules, what is really at stake, what they need to do.

We deal with so many dealers that they just don't understand and they don't get their reports in or they didn't know they even had to do reports, and they don't understand what the law requires. And while we do expect that they do education, they do review these things on their own, I think definitely having that requirement for that pre-licensing is going to be extremely valuable to everyone, to our constituents, to the dealership, to the department, to our offices, to help everyone be on the same page.

MR. TREVIÑO: Thank you, Ms. French. It's always a pleasure to have you before this Board. Thank you for your service to the citizens of Texas.

And we've got Mr. Martin next. Always a pleasure to see you as well, so please step on up.

MR. MARTIN: Thank you, Mr. Chairman, Board
members. For the record, my name is Jeff Martin and I represent the Texas Independent Automobile Dealers Association.

We support the proposed motion, and certainly want to thank Daniel Avitia and his team for all the work that they've done on this. I have a fantastic presentation that I'll pass on, unless you guys have any questions.

MR. TREVIÑO: Great. Questions?

(No response.)

MR. TREVIÑO: Thank you very much, Mr. Martin. Okay. Any further discussion, questions?

(No response.)

MR. TREVIÑO: With that, the chair would entertain a motion.

MR. BACARISSE: Mr. Chair, I move that we approve item 7, the adoption of the Motor Vehicle Distribution amendments, as proposed.

(Member Richardson raised his hand to second.)

MR. TREVIÑO: Great. We've got a motion from Member Bacarisse, and a second from Member Richardson. Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I'll call for the vote. All those in favor please raise your hand.
(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

MR. BACARISSE: I'm sorry I stepped on Member Graham.

MR. GRAHAM: You didn't step on me, I was asleep at the wheel.

MR. BACARISSE: You helped me with the pledge.

(General laughter.)

MR. TREVIÑO: That's right. We had the pledge issue and now we're resolved and we've all paid our dues back.

We're now going to move on to number 8 with Jeremiah Kuntz.

MR. KUNTZ: For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division. I'll talk as fast as I possibly can, slow me down if you want me to.

This agenda item before you is for the final adoption of rules to Chapter 217.2, 217.45 and 217.46. This is implementation of House Bill 1548, House Bill 1755, House Bill 3068, and House Bill 3171. We are adding new definitions for off-road vehicles, recreational vehicles, all-terrain vehicles, as well as implementing the adoption of a license plate for those vehicles. We are also defining a sand rail, which was required by House
Bill 1755. Amendments for House Bill 3068 allow for the issuance of disabled veteran embossed license plates on classic motor vehicles, and amendments for House Bill 3171 include updating our definition of a moped.

With that, that concludes my presentation.

MR. TREVIÑO: Thank you very much, Mr. Kuntz. There are no comments from the public.

Any comments? Oh, there is. Member Gillman.

MS. GILLMAN: No comment.

MR. TREVIÑO: No comment?

MS. GILLMAN: I move.

MR. TREVIÑO: Okay, great. Okay, we're jumping right into the motion. Member Gillman, please step right up to the mic.

MS. GILLMAN: I move that the Board approve the adoption of amendments to Section 217.2, 217.45, 217.456 as recommended by staff.

MR. TREVIÑO: Well done, Member Gillman.

Is there a second?

MR. PREWITT: Second.

MR. TREVIÑO: I've got a second from Member Prewitt over here.

Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I'll call for the
vote. All those in favor?

   (A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

   Great. Thank you very much, Mr. Kuntz. You're still here, so we're going to go to 9 then.

MR. KUNTZ: Again for the record, director of the Vehicle Titles and Registration Division.

   Before you is agenda item number 9. These are final adoption of rules amendments to Chapter 217.40 and New 217.16. Again, these are to implement legislation from the last legislative session relating to House Bill 3842. This relates to the issuance of titles and permits when a dealer goes out of business. These rules are intended to allow for the waiving of title and registration fees for customers when those dealerships go out of business and allows for the waiver of one 30-day permit as well as the title and registration fees. It also defines when a dealer is out of business as a dealer whose license has been closed or has expired or its operations have ceased at the licensed location as determined by the department.

   We did not receive any comments on this rule.

And with that, that concludes my presentation.

   MR. TREVIÑO: Great. Any further discussion, questions?
MR. TREVIÑO: Hearing none.

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

MR. TREVIÑO: Thank you, Member McRae.

MS. McRAE: Okay. I move that the Board approve the adoption of the new Section 217.16 and amendments to Section 217.40 as recommended by staff.

MR. TREVIÑO: Thank you very much.

Do we have a second?

MR. BACARISSE: Second.

MR. TREVIÑO: Second from Member Bacarisse.

Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I'll call for the vote. All those in favor please signify by raising your right hand.

(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

And I would also like to thank staff for taking action. This is a big issue and it's very important for consumer protection matters for the citizens of Texas, and I thank you very much for jumping on that quickly.

Okay. We'll now hear item 10. I'll turn it over to Mr. Kuntz again and now Mr. Menke is here with us.
as well.

MR. KUNTZ: We're going to speed on through these again.

MR. TREVIÑO: Great. Let 'er rip.

MR. KUNTZ: Before you is agenda item number 10. This is to adopt legislation from the last legislative session related to Senate Bill 604. These rules are New Chapter 217.76 through 217.78. They relate to the suspension or denial of access to the registration and title system.

These rules have been worked on quite a bit. They are to incorporate different processes and procedures related to turning off access of anybody who has permissions granted in the registration and titling system. This process is something that we had actually worked on and developed for full service deputies and then we took that as a structure in order to develop these rules so that there is a clearly defined process when we can actually terminate access to somebody who is utilizing the registration and titling system.

We did receive comments from the Tax Assessor-Collector Association of Texas. There were two pertinent comments that they made because in one letter they made comments to both this rule and the rule that's following this one, but the two comments related to this, the TACA
does not oppose the rule providing the county tax
assessor-collector maintains the ability to manage their
employees, full service deputies pursuant to both
department rules and county policies and provisions.
These rules do not supersede any authority that a county
tax assessor-collector has vested in them to terminate
access for their employees or anyone that they have
granted access to.

The way the system is set up, they have
administrative permissions to create new users and delete
users so when they get a new employee they can grant
access. They still have the ability to terminate that
access if the employee has been terminated, if they
believe that that employee needs more training before they
are given permissions, they still retain those rights to
be able to terminate those as well. These rules apply to
the department's authority to step in and terminate access
if a county tax assessor-collector has not already done
so.

The next point that was made is if a county tax
assessor-collector believes a violation has occurred, the
department may be notified and requested that the access
be denied. Again, if a county tax assessor-collector
wanted to take action or notify the department that action
should be taken to terminate access, these rules would
facilitate all of those actions taking place.

Based on that, there were no changes to the rule. I just wanted to make sure that we clarified for the record that, yes, that is still something that they could do.

MR. KUNTZ: And that's the end of my presentation.

MR. TREVIÑO: Great. Mr. Menke. No comments?

MR. KUNTZ: He's got another agenda item.

MR. TREVIÑO: Okay, very good.

So any comments, any discussion, questions?

(No response.)

MR. TREVIÑO: Hearing none, I would entertain a motion. I have a motion from Member Scott.

MR. SCOTT: I move the Board approve the adoption of Section 217.76 and 217.78 as recommended by staff.

MR. TREVIÑO: Great. Got a motion from Member Scott.

Do we have a second?

(Member Washburn raised her hand to second.)

MR. TREVIÑO: Second from Member Washburn.

Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I call for the
vote. All those in favor please raise your right hand.

(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

Thank you very much, Mr. Kuntz.

Mr. Menke, you're still here. Would you like to go ahead and get started on number 11?

MR. MENKE: Good morning. Tim Menke, director of Compliance and Investigations Division.

In front of you you have agenda item number 11, it's an action item, and it has to do with the adoption of the new Chapter 223, Compliance and Investigations Division related to county tax assessor-collector reporting suspected fraud, waste and abuse. It formalizes our red flag reporting process that we've had in place for years. It also provides an option for the county to request action for suspected fraud, waste and abuse.

We had two comments from the Tax Assessor-Collector Association regarding wording. One word they suggested "must" report rather than "may" report, but we chose the word "may" because we didn't want to mandate that they must report to TID. That leaves an avenue open for them to report directly to law enforcement. Reporting to CID would have a cooperative effort with the department and the tax assessor-collector that is reporting the information.
Secondly, they suggested that the reporting process and the investigation process communication mirror that of the Enforcement Division, but since CID is working with criminal investigations and we are non-commissioned, we are working in a liaison capacity with law enforcement, we are not at liberty to divulge active information regarding a criminal investigation, and that was addressed as well.

By adopting this proposal it moves us from issuing and investigating to more of a preventive role where our tax assessor-collectors are the front line and they can actually prevent fraud from taking place rather than reporting and then we investigating and it's in a partnership where we can help prevent.

So with that, if you have any questions I'd be happy to answer them.

MR. TREVIÑO: Great. Thank you, Mr. Menke.

Any questions for Mr. Menke?

(No response.)

MR. TREVIÑO: Hearing none, Mr. Menke, we don't have the option to may, we must call for a vote, I guess.

So with that, the chair would entertain a motion.

MR. GRAHAM: I move that the Board approve the adoption of New Chapter 223 rules as recommended by staff.

MR. TREVIÑO: Thank you, Member Graham.
Do we have a second?

MR. PREWITT: Second.

MR. TREVIÑO: Member Prewitt.

I'll call for the vote. All those in favor please raise your right hand.

(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

Thank you very much, Mr. Menke.

Okay. Mr. Kuntz, are we done or do you have anything else to cover?

MR. KUNTZ: I was just going to stand on deck for item number 13.

MR. TREVIÑO: Great. Thank you very much.

(General talking and laughter.)

MR. TREVIÑO: Okay. We're going to move to agenda item number 12.A. and those are Board committee appointments. Now that we have a full Board again, I would like to make a few changes. Member Richardson has agreed to join the Legislative and Public Affairs Committee as a member. Member McRae has also agreed to join the same committee, replacing John Prewitt, as he was on all three committees. He wanted to be on all committees, he actually wanted to start several other committees as well, which I think we all agree would be a little overwhelming.
MR. TREVIÑO:  But I would like to welcome Member Prewitt back, and also, I think I speak for the Board on this one that you look great.

MR. PREWITT:  Thank you.

MR. TREVIÑO:  We're very happy to have you back here at home.  

(Applause.)

MR. TREVIÑO:  This new structure provides for balance and diverse membership on the Legislative and Public Affairs Committee. It doesn't require any action. Okay. Now back to Mr. Kuntz.

MS. BREWSTER:  You skipped one.

MR. TREVIÑO:  12.B. Oh, I'm sorry. We will move to agenda item 12.B. I always want to get back to Mr. Kuntz, that guy is very interesting.

We'll move to agenda item 12.B. Advisory committee appointments. We're going to take up the appointment of members to the Consumer Protection Advisory Committee, presented by Executive Director Brewster.

MS. BREWSTER:  Thank you, Mr. Chairman, members. I'm addressing item number 12.B. which starts on page 192 of your Board books.

I am recommending that the Texas Department of Motor Vehicles Board appoint the individuals from the list
of those potential members to the Consumer Protection Advisory Committee. That list is on 193 of your Board materials.

The Board is required to appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director. The Board is required to look at various factors, including the balance of the advisory committee, to ensure representation of industry or occupations of the regulated committee or indirectly regulated by the Board, consumers of services provided by the Board, and then also geographical regions of the state.

And so I have reviewed approximately 24 applications for the Consumer Protection Advisory Committee. I considered the various eligibility standards, I looked at the applicants' knowledge and interests in the work of the committee, differing viewpoints, as well as the industry or occupation of the applicant. I also looked at the different geographical regions of the state, as well as whether the applicants were consumers of our services. A review was also done to ensure that these members are in good standing with the department, meaning that there are no outstanding sanctions by the department.

And so at this point I would recommend that the
Board appoint the members provided to you on page 193.

With that, I would be happy to answer any questions.

MR. TREVIÑO: Are there any questions for Ms. Brewster? Member Graham.

MR. GRAHAM: I'm just looking, does it show what their position is with their respective organization?

MS. BREWSTER: Yes, sir, it does. On page 193.

MR. GRAHAM: Area of expertise, but not the position within the organization. It seems like last time we saw, you know, titles.

MS. BREWSTER: It has the employer and underneath the employer it also shows the position.

MR. GRAHAM: Oh, there it is. Okay, I've got it. Thank you. I was looking at the location.

MR. TREVIÑO: Great. Does that answer your question, Member Graham?

MR. GRAHAM: Yes.

MR. TREVIÑO: Good.

Member Bacarisse, did you have a question?

MR. BACARISSE: Mr. Chairman, I'd be happy to make a motion if it's appropriate at this time.

MR. TREVIÑO: Any other comments or questions for Member Brewster?

(No response.)

MR. TREVIÑO: I was encouraged to see the
number of people who agreed to serve on this board. That speaks well for not only the department but the State of Texas.

Member Bacarisse, I would take your motion.

MR. BACARISSE: Thank you, Mr. Chairman.

I move that the Board appoint the following individuals to serve on the Consumer Protection Advisory Committee: Melissa Ann Colvin of Midlothian, Texas; Laird McGraw Doran of Houston, Texas; Donna Ferguson of Belton, Texas; Ruben P. Gonzalez of El Paso, Texas; Cheryl E. Johnson of Friendswood, Texas; Will D. Johnson of Arlington, Texas; Raymond "Ray" George Olah of Austin, Texas; Robert E. Raney of Converse, Texas; Jeanette A. Rash of New Caney, Texas; Michael S. Rigsby of Austin, Texas; James Robert Snell of Dallas, Texas; and Juan Alfredo Solis of Brownsville, Texas.

MR. TREVIÑO: Great. Thank you very much, Member Bacarisse.

Do we have a second?

MS. GILLMAN: Second.

MR. TREVIÑO: Member Gillman.

Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I call for the vote. All those in favor please raise your right hand.
(A show of hands.)

MR. TREVIÑO: Motion carries unanimously, and we have new members for that committee.

MS. BREWSTER: Thank you very much.

MR. TREVIÑO: Thank you very much, Director Brewster.

And now back to Jeremiah Kuntz, crowd favorite.

Let 'er rip, number 13.

MR. KUNTZ: Which crowd?

(General talking and laughter.)

MR. TREVIÑO: With that, we'll go to Jeremiah Kuntz, item number 13

MR. KUNTZ: All right, members. For the record, I'm Jeremiah Kuntz, director of the Vehicle Titles and Registration Division, member favorite of the tough crowd.

(General laughter.)

MR. KUNTZ: Members, I'm opening up agenda item number 13, the VTRAC recommendations regarding the digital license plates.

The Vehicle Titles and Registration Advisory Committee met on November 19, 2019, as well as December 19 of 2019. The committee's first meeting was organizational, they got together, appointed their chair and vice chair, and then the committee also met a second
time to take up and consider questions the agency had
regarding the implementation of Senate Bill 604, Article
3, related to digital license plates. So this was the
first advisory committee that we have set before them
questions for them to take up and consider and then bring
back recommendations to the Board.

The agency presented the document you can find
in page 194 of your Board book. Those were the questions
as well as staff recommendations that were made to the
advisory committee. The committee deliberated on the
items in that document, made recommendations consistent
with staff recommendations. They did have some slight
variations that they made to the specific language for the
recommendations but everything was consistent with the
staff's position related to those questions.

And today Shay Luedecke, the Bell County tax
assessor-collector and the VTRAC committee vice chair, is
here to present their recommendations to the Board.

MR. TREVIÑO: Great. Vice Chair Luedecke, welcome.

MR. LUEDECKE: Thank you, Board. Good morning.
My name is Shay Luedecke. I serve as first vice chair of
the Vehicle Titles and Registration Advisory Committee,
also known as VTRAC.

So the VTRAC committee would like to take a
moment to thank you for giving us the opportunity to voice our group advice. We understand that VTRAC is a new part of the process and each of us is excited to take part in it. Our committee met in December to discuss the rules on the digital license plates and I would like to present our recommendations to you.

MR. TREVIÑO: Please do.

MR. LUEDECKE: In the packet we received there were several questions with possible solutions that we also reviewed and discussed as a committee. The first question we discussed was concerning what is a reasonable administration fee for obtaining a digital license plate and when should the administration fee be collected. We looked at the formulas given for the development costs to integrate digital license plates in the DMV systems and we also took some advice from California, mostly how many customers they have for digital license plates.

The department's recommendation was to charge a $95 administration fee. VTRAC agrees with this fee. It was also recommended that the department collect the administration fee for the initial registration and at the time of the renewal. VTRAC also agreed with this recommendation from the department.

The next question we received for digital license plates was should a customer be able to opt out of
digital license plate advertising that is proposed by the
digital plate provider and approved by the department.
There are four types of advertising options: emergency
alerts and public safety alerts; vehicle manufacturing
recalls; static logos; and advertising approved by the
department.

Our recommendation is to allow the customer the
option to opt in for any advertising. The customer will
not have these advertising options displayed unless they
expressly say yes, I do choose to opt in for advertising,
with the following two exceptions which would
automatically display when the vehicle is stopped and
that's manufacturing safety recall notices and emergency
alerts and public safety alerts issued by a governmental
entity that will be displayed regardless if the customer
would opt in.

The final question we discussed was should the
department adopt a rule on what a digital plate provider
may do with the global positioning system, the GPS data,
collected from a customer's digital license plate. We
recommended administrative code should be proposed to
protect a person's personal information, as well as GPS
data retrieved from the digital license plate. If the
vendor discloses to the customer the manner that data will
be used, a customer may allow for disclosure for personal
information and GPS data by the digital license plate provider.

This concludes VTRAC's recommendations for digital license plates, and I'd like to thank each one of you for the opportunity to share them with you today.

MR. TREVIÑO: Any questions? Member Gillman.

MS. GILLMAN: Forgive me. I don't know about digital license plates. Can you tell me what it is?

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

During the last legislative session included in the Senate Bill 604, the Sunset bill for the department, there were provisions that required the department to allow for digital license plates to be utilized in the State of Texas.

As you all are aware today, we have metal license plates that are affixed to the front and rear of a vehicle. This legislation would allow for a digital display to display the alphanumeric pattern that is currently on a metal plate on that digital display and have that serve as a license plate in the State of Texas.

MS. GILLMAN: I've just never seen one.

MR. KUNTZ: That's because they've never been available.

MS. GILLMAN: And there's 1,800 of them in
MR. KUNTZ: There are a couple of plates that have started to utilize digital license plates. California is one of those. I believe that they have been offer digital license plates for approximately four years and that number has now grown over four years to about 3,000, so they're slowly growing in number in California.

MS. GILLMAN: In addition to the numbers and letters, they would also be advertising, and also GPS tracking, and how many miles?

MR. TREVIÑO: I think all of those are being taken up by VTRAC. Right? I mean, there's recommendations.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

The department is currently looking into options to draft rules and also a possible procurement to implement this legislation, and so our first step was to get some input on our very beginning opening questions from this VTRAC committee to help us formulate those policy statements within the rule. So the idea is for the VTRAC committee to provide us expertise both from folks in the industry as well as consumers of our services as we are drafting these rules as provided by Sunset and the legislature.
MR. KUNTZ: This agenda item is not for any action. There would still be a future rule package that would come before the Board for proposal, but VTRAC was advising the department on how to build those rules, what provisions should be included in that rulemaking.

MS. GILLMAN: And you all think that we should continue and work towards adoption of a digital license plate? Are you recommending that, yes, we proceed forward and keep looking at it, that it's a good idea for Texas.

MR. KUNTZ: So Senate Bill 604 put the charge before the department to take up and consider digital license plate rules for those to be put into place on Texas roadways.

MR. TREVIÑO: So the legislature has opined on this.

MR. KUNTZ: Correct.

MR. TREVIÑO: So it's not for us to decide.

MS. GILLMAN: It's to be considered?

MR. KUNTZ: The legislation required the department to adopt rules to facilitate the issuance of digital license plates in Texas.

MR. TREVIÑO: So it's coming. We have to decide the best way to do it. Is that pretty much it?

MR. KUNTZ: Yes.

MR. TREVIÑO: Thank you.
MS. GILLMAN: Can we see what one looks like?

MR. KUNTZ: Yes.

MS. GILLMAN: Okay.

MR. TREVIÑO: Okay. We have Member Graham as well has a question.

MR. GRAHAM: Did the legislation -- was there anything in the legislation regarding the advertising aspect of digital license plates?

MR. KUNTZ: Yes, sir.

MR. GRAHAM: And so just to make sure I have this clear, the legislature basically approved electronic license plates to run not just license plates but advertisements and other things, but have yet to pass legislation to remove a front license plate that essentially on some vehicles dismantles the entire safety aspect of collision avoidance. Would that be accurate?

MR. TREVIÑO: Is that a question?

MR. GRAHAM: Yes.

MR. KUNTZ: Senate Bill 604 relating to digital license plates allows for the placement of a digital license plate in the rear of the vehicle while still maintaining a metal license plate in the front of the vehicle.

MR. GRAHAM: Okay. I just wanted to make sure I was clear on that. Thank you.
MR. TREVIÑO: Any other questions on digital license plates at this point?

(No response.)

MR. TREVIÑO: I would like to thank Vice Chair Luedecke for taking up this important job, this charge given to us by our elected officials, the legislature, and thanks for doing this. We have some tight timelines that we have to submit to, and thank you very much.

I think we have another member of the VTRAC committee here as well, if you could stand and be recognized. Anybody else here from VTRAC? There you go. Thanks a lot for your service to the State of Texas.

(Applause.)

MR. TREVIÑO: And I'm sure we're going to be hearing a lot more about digital license plates. They make great Christmas gifts, by the way.

(General laughter.)

MR. TREVIÑO: So now we're going to go -- Mr. Kuntz, are you done?

MS. McRAE: Mr. Chairman.

MR. TREVIÑO: Yes. I'm sorry, Member McRae.

MS. McRAE: I have a motion.

MR. TREVIÑO: You have a motion. I'm sorry.

Okay, we have a motion on this. We do have a motion. I apologize, Mr. Luedecke.
MS. McRAE: That's okay.

MR. TREVIÑO: We have to accept. I call for a motion.

MS. McRAE: Yes. I would like to make that motion.

MR. TREVIÑO: Member McRae, thank you for keeping me on track.

MS. McRAE: And I like that name VTRAC.

MR. TREVIÑO: Yes.

MS. McRAE: I move that the Board adopt the Vehicle Titles and Registration Advisory Committee recommendations for the department to incorporate into the development of their proposed rules.

MR. TREVIÑO: Great. Thank you, Member McRae. Do we have a second?

(Member Scott raised his hand to second.)

MR. TREVIÑO: Member Scott. Any further discussion?

(No response.)

MR. TREVIÑO: Hearing none, I would like to ask all members in favor to please raise your right hand.

(A show of hands.)

MR. TREVIÑO: Motion passes unanimously. And thank you very much for reminding me that we needed to accept those recommendations from VTRAC.
MR. BACARISSE: Mr. Chairman, if I may.

MR. TREVIÑO: Member Bacarisse.

MR. KUNTZ: Mr. Kuntz, when you bring this back to us, would you also -- I'm not going to ask you a question, I'm just going to ask you for a favor -- would you also provide examples of the digital plate, what it looks like, how it functions in California, perhaps, just for our understanding, knowing that ours may end up different, but I can't get my mind around what that looks like or how it functions.

MR. KUNTZ: I would be more than happy to provide the Board with any kind of briefings related to digital license plates that you need.

MR. BACARISSE: Great. Thank you.

MR. TREVIÑO: Thank you, Jeremiah Kuntz.

And let me remind, before I move on to the next item, why Jeremiah Kuntz is a crowd favorite. We were behind, we're not back on schedule. You may actually get to eat some lunch, Member Bacarisse.

MR. KUNTZ: Mission accomplished.

MR. TREVIÑO: A round for Jeremiah Kuntz, hear, hear. He is a favorite.

(Applause.)

MR. TREVIÑO: And you have time now, Ms. Menjivar-Suddeath.
We'll now be taking up agenda item 14.A. today, and the next item is 14.B. So both 14.A. and 14.B. from Sandra Menjivar-Suddeath. Thank you very much for being here.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

I just wanted to note that agenda item 14.A. will not be taken up today, so we'll be moving straight to 14.B.

MR. GRAHAM: So how's that for driving efficiency?

MR. TREVIÑO: Thank you, Member Graham.

MR. GRAHAM: I'll just say we were scheduled to have a meeting yesterday, Finance and Audit Committee meeting, and we had some folks that had some things come up and we were unable to due to a lack of a quorum. It was a very short meeting, it was riveting. I did get to hammer the gavel one time. That's pretty much it. That's the full extent.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

I just wanted to note that there was no meeting, it was canceled. Thank you.

MR. GRAHAM: It was canceled. I still hit the gavel but it was canceled.
MR. TREVIÑO: This Board would like to thank Member Graham for his lack of contribution to today's proceedings only in the interest of time.

MR. GRAHAM: Absolutely.

(General laughter.)

MR. TREVIÑO: So we will now move into agenda item 14.B. as presented by Sandra Menjivar-Suddeath.

MS. MENJIVAR-SUDDEATH: Good morning, Board members. Like the chairman said, my name is Sandra Menjivar-Suddeath. I'm the Internal Audit director. I'm presenting item 14.B. which is the fiscal year 2020 second six-month audit plan. It's on page 199 of your Board book and it is an action item.

The second six-month audit plan covers the work being done by the Internal Audit function from February to August 31. It includes four engagements, two which are risk-based, two that are required, division initiatives, added value services, and a contingency audit, as well as a discussion on two deferred engagements that we were planning to do in the first half that we did not do.

With that, I'm open to any questions.

MR. TREVIÑO: Great. Does anybody have any questions?

MS. McRAE: I just have a comment I'd like to make.
MR. TREVIÑO: Member McRae.

MS. McRAE: I just want to tell Sandra what an outstanding job I think you and your department do. You obviously put so much time and effort into all these assessments and audits, and it's very much appreciated. So thank you.

MS. MENJIVAR-SUDDEATH: Thank you. I'll convey that to the team.

MR. TREVIÑO: Hear, hear. Well, said, well said.

Any other comments? Member Graham.

MR. GRAHAM: I'll just make a motion if you so desire.

MR. TREVIÑO: Great. So if there are no further questions, the chair would entertain a motion.

MR. GRAHAM: I move the Board approve the fiscal year 2020 second six-month Internal Audit Plan.

MR. TREVIÑO: W have motion.

MR. BACARISSE: Second.

MR. TREVIÑO: Second from Member Bacarisse. All those in favor please raise your right hand.

(A show of hands.)

MR. TREVIÑO: Motion carries unanimously.

And just a question, how do you feel about the
six-month cadence? Is that working well for you?

MS. MENJIVAR-SUDDEATH: Yeah. Even with the six months we still had to defer some projects, so there's some lessons learned from that, but I think it definitely has helped us stabilize a little bit more and not have my staff working a lot of hours.

MR. TREVIÑO: Great. Well, thank you very much. I would like to echo Member McRae's compliments of the work that you do. We're all very proud of what you and your staff are doing. You guys are doing great work with limited resources, and we appreciate that.

Do you have sufficient resources to ensure the safety and soundness of this institution?

MS. BEAVER: Tracey Beaver, general counsel, for the record.

For the record, I'm sorry to interject, but the personnel and resources weren't posted on the agenda for today's meeting for discussion.

MR. TREVIÑO: I'm sorry. What?

MS. BEAVER: Personnel resources for Internal Audit were not posted on the agenda for discussion at this meeting.

MR. TREVIÑO: I'm sorry. Great. Okay. Thank you very much.

MS. MENJIVAR-SUDDEATH: Can I just comment and
say Ms. Flores probably loves you right now.

(General laughter.)

MR. TREVIÑO:  Great.  Thank you very much.
All right.  So General Counsel.

MS. BEAVER:  Sure.  Tracey Beaver, for the record.

Since we have some extra time, there is the option to also take public comment earlier if you would like to take that earlier in the agenda. We can have a second one after the public meeting as well. I wanted to provide that option.

MR. TREVIÑO:  Sure. Okay. Great. We can definitely do that so we'll skip to that.

So public comment. Okay. And we do have somebody here. Is see we have a comment sheet from the public, so we'll now hear the public comment. I see we have comment sheets from the public so now we'll hear the public comments.

I'm sorry, General Counsel.

MS. BEAVER:  While you're looking through that, I can go ahead and make an opening statement for the public comment period.

MR. TREVIÑO:  Sure.

MS. BEAVER:  Tracey Beaver, general counsel, for the record.
I'd like to remind the Board that under the Texas Open Meetings Act the Board can't comment or deliberate on a public comment that doesn't relate to an item on the posted agenda. This is because the public would not have been on notice that the Board might discuss that subject. If the Board desires, we can always schedule any aspect of commenters' remarks for a future agenda with approval from the chairman at a later date.

Thank you.

MR. TREVIÑO: Great. Thank you, General Counsel.

So we will now hear public comment. As a reminder, please state your name for the record, and if you are representing or affiliated with a group, please state that as well. You will have three minutes.

Our first speaker is Pheng Khov.

Welcome, Mr. Khov. Good morning.

MR. KHOV: Good morning, sir. Sorry for being short.

Good morning, Board members. Thank you for taking the time to allow me to address some of the topics regarding my unjust removal from the position as a network manager.

I was removed from my position as of January 15, 2000 -- of this year. I don't have 40 years of
experience or 52 years of experience but I do come from three executive branch of the United States: Department of Justice, Department of Defense, and Department of Homeland Security. My goal when I accepted this position was to bring a legacy and help the agency grow to meet the highest standards, but yet I was unable to complete that. During a six-months period I have accomplished many things, activities, as well as projects that the agency has not yet seen. But yet that goal has been shattered.

In front of you I gave the package to the Office of General Counsel for the Board to review and hopefully conduct a full investigation on my unjust firing and removal from my position.

With that, thank you.

MR. TREVIÑO: Thank you very much, Mr. Khov, for coming to speak before us.

MS. BEAVER: Tracey Beaver, general counsel, for the record.

I just wanted to note that the personnel actions are under the direction of the executive director, not the Board, but folks are welcome to come and provide public comment.

So thank you.

MR. TREVIÑO: Thank you very much for coming to speak, Mr. Khov.
MR. KHOV: Thank you, sir.

MR. BACARISSE: Thank you.

MR. TREVIÑO: Okay. We now have R. Bill Crocker.

Mr. Crocker, welcome.

MR. CROCKER: Thank you, Mr. Chairman and members of the committee. You were trying to read my writing and I apologize for that. That's William R. (Bill) Crocker.


Thank you, Mr. Crocker.

MR. CROCKER: No problem.

I want to make you aware of a circumstance that hasn't developed a disaster yet but it's like ignoring the shortcomings in the Challenger launch vehicle before it exploded. Your Rule of Practice and Procedure, Rule 215.305 requires that all complaints, protests and petitions required or allowed to be filed under the Occupations Code, Chapter 2301 or this chapter -- meaning this chapter of rules -- must be delivered to the department in person by first class mail or by electronic document transfer at a destination designated by the department.

Currently the practice is -- and this is what I have to do as a lawyer. Some of you may know me as way
back in the dim and distant past, the first executive
director of the Texas Motor Vehicle Commission. Some of
you may know me as a longtime -- and I did not say old --
lawyer representing car dealers, truck dealers, RV
dealers, motorcycle dealers, and what I have to do to file
a protest on behalf of a client who wants to protest a
proposed termination or the encroachment of another
dealership is draft a document, give it to the client, who
must then submit it to the agency under the eLICENSING
system.

Now, most big city dealers cannot do that but
they've got somebody in an office somewhere who can, but
you ask some mom-and-pop dealership to do that and it's
like asking them to play Chinese sheet music. They have
no clue how to do that.

I've got one minute left. I would urge you --
and if you want to talk about little dealerships, try an
ambulance dealers dealership or a little RV dealership, or
a mom-and-pop this, that or motorcycle dealership. They
can't do that with any certainty at all.

I'm terrified that we're going to find somebody
who tried to file through the eLICENSING system and didn't
get it done and the time expired for their protest to be
filed, and that's going to be a disaster because there's
on fixing it. Your staff that I have complained to about
this all do not condemn or defend the system, they just say we can't fix it. I hope I'm talking to the people who can fix it because it does need to be fixed, your rule needs to be observed in person or by any other means has got to be allowed.

MR. TREVIÑO: Great. Thank you very much, Mr. Crocker.

MR. CROCKER: If you have any questions, I'll be happy to respond to them.

MR. TREVIÑO: We're not allowed to; since it's not on the agenda, we can't ask any questions.

MR. CROCKER: Okay. I'm sorry.

MR. TREVIÑO: Mr. Crocker, thank you very much for coming to speak with us today.

MR. CROCKER: My pleasure, and my name and contacts are online. If you want to talk about it, I'll be happy to do that. Thank you.


MR. CROCKER: This is not pertinent to what I have to say, but I have watched you people work through a very difficult case this morning under paragraph 6 and give it a lot of time and attention and your very best efforts. I know what you get paid. The good news is they're going to double that pay this year, the bad news is it will still be zero. And so thank you for your
service. You render a huge service to the people of this state.

    Thank you.

    MR. TREVIÑO: Thank you, Mr. Crocker.

Appreciate you coming to talk with us today.

    MS. GILLMAN: Mr. Chairman.

    MR. TREVIÑO: Member Gillman, yes, ma'am.

    MS. GILLMAN: Relating to Mr. Crocker's problem, but I want to understand a better solution, can we --

    MR. TREVIÑO: I don't know if we can discuss it, since General Counsel Beaver, and this is a comment from a member of the public.

    MS. GILLMAN: I'm talking about for a future agenda item.

    MR. TREVIÑO: Okay.

    MS. GILLMAN: Can we have Mr. Crocker's solution or options available to us. If we did add it to an agenda item next meeting, can we see or can you investigate with Mr. Crocker other options instead of submitting under the eLICENSING system? Will you consider that?

    MR. TREVIÑO: That question would be to Director Brewster.

    MS. BREWSTER: For the record, Whitney
Brewster.

If it is the will of the Board to have an update on that item that Mr. Crocker just spoke about, that's certainly within your purview, Mr. Chairman, to put that on the agenda and we certainly would be able to address that.

**MR. TREVIÑO:** Member Prewitt.

**MR. PREWITT:** Do you need a motion for that?

**MS. BEAVER:** Tracey Beaver, general counsel.

No motion needed. We can make a note for a future agenda.

**MR. BACARISSE:** Mr. Chairman, I'd appreciate it as well. I've had experiences as district clerk in this world and the state is vast and size and technological capabilities and we need to find a solution that will work for all Texans.

So thank you.

**MR. TREVIÑO:** Whether we make a motion or not, I think staff understands the general feelings of this Board at this point and would like to hear more about it as we move forward.

So we're now moving on to agenda item number 19, so unless there's any further business, I would like to entertain a motion -- no, we're not going to adjourn. I'm hoping we were going to adjourn.
(General talking and laughter.)

MR. TREVIÑO: We're going into executive session. I apologize, everything is out of order here.

Okay. We will now take agenda item 16 out of order, and the hearing, agenda item 15, will begin at 1:00 p.m.

We're going to go into closed session. It is now 11:26 a.m. on February 6, 2020. We will go into closed session under Texas Government Code Sections 551.071, 551.074, 551.076, and 551.089.

For those of you in the audience, I anticipate being in executive for approximately an hour and a half, and we will reconvene in open session after that. With that, we are recessed from the public meeting and we're going into executive session.

(Whereupon, at 11:26 a.m., the meeting was recessed, to reconvene this same day, Thursday, February 6, 2020, following conclusion of the executive session.)

MR. TREVIÑO: It is now 1:00 p.m., and the Board of the Texas DMV is now back in open session.

The Board will now take up item 17. Action items from executive session. There are no actions arising from the executive session that the Board must act upon in open session pursuant to Section 551.102 of the Texas Government Code.
MR. TREVIÑO: We'll now move to agenda item 15 and we will now begin the public hearing on the department's proposed rules regarding the titling and registration of assembled vehicles and other matters, published in the December 20, 2019 issue of the Texas Register. It is approximately 1:01 p.m.

Today's hearing was requested by the Assembled Vehicle Coalition of Texas on January 19, 2020. Notice of today's hearing was posted on the Texas DMV website on January 24, 2020, posted in the Open Meetings Notice on the Office of the Secretary of State's website on January 29, 2020, and published in the Texas Register on January 31, 2020.

Jeremiah Kuntz will now address agenda item 15.

Mr. Kuntz.

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

The hearing today concerns the department's rule proposals to implement House Bill 1755 regarding assembled vehicles. The proposal, as was just mentioned, was presented to the Board for permission to publish the
proposal for public comment at its December 5, 2019 meeting. The proposal was published on December 20, 2019 and the public comment period notice in the proposal ended on January 21, 2020. We have received some comments during that comment period and those are being reviewed and the purpose of this is to hear additional comments from the public regarding those proposed rules.

MR. TREVIÑO: Great.

As a reminder, it is not necessary to speak to have your comments in the record. Emailed comments will be accepted if received between 8:00 a.m. and 5:00 p.m. today, February 6, 2020. Comments can be mailed to Rules@txdmv.gov. You may also provide a copy of your comments to Texas DMV staff at the registration table.

A person speaking before the Board today is limited to three minutes and time allotted to one speaker may not be reassigned to another speaker. Organizations, associations or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

We will now hear from the speakers registered to speak on this item.

General Counsel Beaver, did you have any other comments to add to that?

MS. BEAVER: Tracey Beaver, general counsel,
for the record.

No, thank you. Mr. Kuntz and the chairman covered everything. Thank you.

MR. TREVINO: Great. Thank you very much.

Okay. We're now going to hear from our first speaker, and it would be Faron Smith.

Mr. Smith, welcome.

MR. SMITH: Thank you.

MR. TREVINO: Yes, sir.

MR. SMITH: Hi. My name is Faron Smith, and I'm going to ask you to forgive me if I stutter or something like that. There's nothing I can do about it, I just do it once in a while.

MR. BACARISSE: That's all right. I forgot the pledge of allegiance, so don't worry about it.

(General talking and laughter.)

MR. TREVINO: Good to have you here, Mr. Smith.

MR. SMITH: Well, here's where we're at. My name is Faron Smith, for the record, and I represent the Assembled Vehicle Coalition and the Save the Texas Dune Buggy initiative. I'm kind of the guy that started off the conversation, if you will, and I run the Facebook page that kind of helps move it along, if you will.

There's been countless hours that have gone into this and I appreciate it, and getting our cars back
on the road, I think there's a pretty good chance that we're going to get them back on the road in a way that is reasonable, that works for both the DMV and car owners, people that are building them and wanting to enjoy them, or hobbyists, as we call them in the rule. And the amount of time that has been put into this is a huge amount, and not just from myself and my team but from Jeremiah Kuntz, you guys, and I just can't thank you enough.

That's pretty much all I have to say, and the reason being is because I spoke to Mr. Kuntz a little bit earlier and he answered all of my questions.

I do appreciate everything that you guys are doing. Thank you.

MR. TREVIÑO: Thank you, Mr. Smith. Thank you very much for coming to speak with us today.

Great. Next is Bruce Leveque.

(General talking and laughter.)

MR. LEVEQUE: Chairman and Board members, my name is Bruce Leveque. I'm here from Euless. I drove up this morning on the icy overpasses where there were a couple of wrecks, so a little bit delayed getting here. I'm, again, talking about the assembled vehicles.

I bought one in 2010, toward the end of 2010. It was called a SL-C Superlite Coupe. It was built by a company in Detroit that sells you all the components to
assemble your car. And I went to a couple of other guys that had cars in the North Texas area, looked at their cars, rode in them, and they had all had no problems getting registered and titled in the state, that I know of, and there's only four of them up there other than me. There's ten in the state, I believe, approximately.

Some of these guys build them just to race and some build them as street cars, and they can do both. So mine is basically a street car, not a race car. Now, I don't know if someone saw race car. In the title of the company is called Race Car Replicas, they build the kit, or components, as they call them, and they have other cars that are replicas, they build a GT-40 and a couple of other ones, Cobras and some other ones also.

I completed my car in December 2018, eight years of piddling around with it in a shop doing a lot of the work because a lot of it had to be fabricated, exhaust systems, things like that were all fabrication type duties. I did have it inspected by an ASE master mechanic, as required by the rules at the time that I thought were all that I needed, and I had a safety inspection. I got a temporary for a month so I could drive it to at least get it inspected by the safety inspection place, and then submitted all the records to Tarrant County Tax Assessor.
They turned everything in. That was in January 18 of 2019. Got my plates and a sticker, I was very happy, thought everything was great. Six months later I go, you know, my title hasn't shown up. So I went in and asked them. Your registration was rejected. I said, Really? Why? And nobody could tell me. I called down here, talked to Kyle Kirk, I believe I talked to in Title Services and they just said it was rejected.

So continuing on, they say we've been waiting for the rules to change, I'm now talking with Kimberly Jasso in the department up there. I'm sorry, I've run out of time.

MR. TREVIÑO: Your time is up but I'll give you 30 seconds, just kind of wrap it up.

MR. LEVEQUE: Yeah, I did talk with her and she said the rules were being changed, and I've read the rules and it looks like it's okay. Now I'm just wondering how long the process is going to take to get me a car I can drive that's been sitting in my garage for the last month and a half since the registration ran out.

MR. TREVIÑO: Thank you very much, Mr. Leveque. Thank you very much for coming to speak with us today.

MR. LEVEQUE: Thank you.

MR. TREVIÑO: Okay. This is our last speaker?

MS. BREWSTER: Yes.
MR. TREVIÑO: Okay. We've got Karen Phillips.

Ms. Phillips, welcome. It's good to see you.


First of all, I did file, on behalf of TADA, written comments with respect to the proposed rules, and I certainly appreciate Jeremiah and y'all's work on this, this has been a long process.

Just a couple of things that I wanted to reiterate with respect to what I filed. One, of course, is that now a replica vehicle is going to be able to be traded in to a dealer, and since a replica can now be traded in to a dealer, there are several things that I would request that the staff and the Board consider.

First of all, I noticed that the master technician's inspection is going to be on a form which hasn't been promulgated but which I would request that on that form that that master technician verify that there has not been any use of any non-repairable vehicle, body or frame in the assembly of that vehicle.

In addition to that, I would request that the master technician verify that there's not been any use of any water-damaged engines or electrical parts that have been incorporated into the building of that assembled vehicle for purposes of safety.
In addition that, that the parts that are used are required and requested and capable of meeting the Federal Motor Vehicle Safety Standards, that the master technician also verify that those parts do meet FMVSS standards.

In addition, I would like for that master technician's report to be a public record so it's available to any further purchaser, whether that's a dealer or an individual, so that they understand what has been incorporated on that unit.

Finally, when an applicant for title is registering and titling that unit, I would suggest that we make certain that it was a hobbyist who was the builder of that unit because the statute requires that an assembled vehicle be built by a hobbyist, and so we need to verify who that hobbyist so that we are in compliance with Chapter 731 because a hobbyist is defined as someone who builds or assembles for personal use, not engaging in continuous sale of vehicles, and is not a maker of a kit or a manufacturer.

So those are the suggestions that I would like for this Board and the agency to consider. And I know that there's a rule that's going through NHTSA right now and there's going to be incorporated, it looks like, and adopted a label for certain manufacturers.
And I would just like for those suggestions to be incorporated and looked at for purposes of the replica vehicle.

MR. TREVIÑO: Great.

MS. PHILLIPS: Any questions?

MS. GILLMAN: I have a question.

MR. TREVIÑO: Can we accept questions?

MS. BEAVER: Yes, it's fine to ask questions.

MR. TREVIÑO: Great. Okay. Member Gillman.

MS. GILLMAN: So is the reason you're requesting the verifications from the ASE master tech, is that because it's comparable to what a manufacturer has to certify when they are assembling a vehicle, that there's no water damage, that the body and frame hasn't been previously non-repairable, and that their parts meet certain standards? It sounds similar to what a manufacturer would have to certify.

MS. PHILLIPS: I don't think any manufacturer wants to put non-repairable pieces on a unit, nor do they want to use non-FMVSS parts, nor do they want to use water-damaged parts, especially if we're talking a new motor vehicle. That just would not be something I think we would have an issue of.

The concern I have is that these replica vehicles, if they are going to be traded in to you as a
dealer and something occurs later on in the electrical system and you find out that it had water damage, then the customer is going to come back to you, they're not going to go look for that builder, they're going to come back to you. So that's why we'd like for the master technician to verify these things and incorporate that into their form and to the report so that not only do you have some level of comfort but that the public has a level of comfort with respect to that unit. Otherwise, we don't know exactly what we're going to be getting.

MS. GILLMAN: So it's kind of like -- this is maybe not a correct statement -- kind of like a CARFAX/history of its origin.

MS. PHILLIPS: Sort of. However, I'm concerned with respect to deceptive trade. That's the primary concern that I've got because these vehicles are going to be coming in to you. And of course, I think it's best practices for us to protect the public also so that they know that these units don't have these water-damaged, non-repairable and non-FMVSS use of parts.

MS. GILLMAN: So, Jeremiah, if there was this form -- I'll back up -- if the vehicle is traded in to a dealer, where do I go to see this form, where would I go?

MR. KUNTZ: For the record, Jeremiah Kuntz, director of Vehicle Titles and Registration Division.
We have been reviewing the comments that were submitted by TADA to evaluate different administrative processes that could be utilized. I don't know that I've got an answer for you today on the feasibility of where that would go. And the reason I say that is our standard process for title paperwork is when a vehicle comes in to be titled, all paperwork is submitted to a count tax assessor-collector, whether that's the MCO, whether that's a blue Texas title, any supporting documentation if it's a rebuilt salvage vehicle or something like that, is submitted.

All of that paperwork is electronically scanned and stored in our records in our database and retained for ten years. We have a ten-year retention on all title paperwork. After the ten-year period that electronic record is purged according to our retention schedule. So this is something that would potentially be outside of the norm. If a vehicle was assembled prior to ten years ago, we would have to have a different retention for that documentation in order to retain that certification or anything like it in our title records.

MS. GILLMAN: And one last question. Karen, are you suggesting that on the title that's issued to the hobbyist that it just be labeled a hobbyist assembled vehicle, kind of a brand of some kind, differentiating it
from others?

MS. PHILLIPS: Well, what you might do -- and I'm happy to talk with Jeremiah and Tracey and whomever about this -- is on the manufacturer section on that application for title or on the model or whatever you name whoever the hobbyist is who actually built the unit so that it becomes part of that title record. That way you know it was an individual and then the agency can also verify that that hobbyist is an actual hobbyist, i.e. they meet the definition under Chapter 731 of a hobbyist.

Does that make sense?

MS. GILLMAN: Thank you.

MS. PHILLIPS: Any other questions?

MR. TREVIÑO: Any other questions? Member McRae.

MS. McRAE: Hi, Karen. It's more of, I think, a comment for Jeremiah just as a follow-up to what you were saying, though, and to Stacey.

Right now the department, as a tax assessor as we submit these titles to the department and they are being scanned and stored, the department doesn't review each of those titles before they're issued, so I'm not sure how you would be able to validate unless we did something along the lines of red flag, or I don't know. There would have to be a process for separating those out
for the department to be able to verify, I think.

        MR. TREVIÑO: So you're just making a
suggestion. We're not going to decide this here today,
this is just to hear comment.

        MS. McRAE: Right, right.

        MR. TREVIÑO: But your comment is that it would
be difficult to implement in some way, shape or form.

        MS. McRAE: Well, it would require a process.

        MR. TREVIÑO: A process. Okay.

        MR. KUNTZ: To address that, the rules as
proposed contemplate that the application for an assembled
vehicle is reviewed by the department prior to going to
the county tax assessor-collector for processing, so that
is already built into the current proposed rules as
proposed.

        MR. TREVIÑO: All right. Great. Very good.

Question answered.

Okay. Any other questions?

(No response.)

        MS. PHILLIPS: Okay. Thank you.

        MR. TREVIÑO: Thank you, Ms. Phillips.

So I think those are all our -- Melanie, is
that everybody, we don't have any other speakers? Good.

So I would like to thank everyone who provided
written and verbal comments regarding the department's
proposed assembled vehicles rules during the comment period and at today's public hearing.

After consideration of the verbal and written comments, the department will prepare a draft adoption to be presented to the Board for consideration at a future meeting.

Thank you all for participating in this hearing.

(The public hearing concluded at 1:20 p.m.)

MR. TREVIÑO: Unless there is any further business, I would like to entertain a motion to adjourn.

MR. BACARISSE: I move we adjourn this meeting.

MS. McRAE: Second.

MR. TREVIÑO: I've got a motion and a second by Member McRae. Thank you.

All in favor?

(A chorus of ayes.)

MR. TREVIÑO: Let the record reflect the vote is unanimous. It is now 1:21 p.m. We are adjourned.

(Whereupon, at 1:21 p.m., the meeting was adjourned.)

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MEETING OF:    TxDMV Board
LOCATION:      Austin, Texas
DATE:          February 6, 2020

I do hereby certify that the foregoing pages, numbers 1 through 163, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

DATE: February 14, 2020

/s/ Nancy H. King
(Transcriber)

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