TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
December 7, 2017

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Raymond Palacios, Chair
Blake Ingram, Vice Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Brett Graham
Kate Hardy
Gary Painter
Guillermo "Memo" Treviño
Johnny Walker
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RULE - ADOPTION
Title 43, Texas Administrative Code

ON THE RECORD REPORTING
(512) 450-0342
9. Chapter 219, Oversize and Overweight Vehicles and Loads
   New, §§219.34, 219.35, and 219.36
   (Relating to HB 2319, North Texas Intermodal Permit; SB 1383, Fluid Milk Transport Permit; and SB 1524, Intermodal Shipping Container Port Permit)
   (Proposal Published October 20, 2017 - 42 Tex. Reg. 5847)

RULES - PROPOSAL
Title 43, Texas Administrative Code

    Chapter 217, Vehicle Titles and Registration Amendments, §§217.71-217.73; and New, §217.74
    Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders Amendments, §221.72
    (Relating to document retention requirements for users of webDealer, including webSalvage)

11. Chapter 217, Vehicle Titles and Registration
    • Amendments, §217.2
      (Relating to clarification of definitions of All-Terrain Vehicle (ATV) and Recreational Off-highway Vehicle (ROV))
      • Amendments, §217.41
        (Relating to HB 1790 on application for new disabled placard following seizure of placard)
      • Amendments, §217.123 and §217.124
        (Relating to charges for motor vehicle records; waiving fees for governmental entities)

EXECUTIVE SESSION

12. 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:
    • Section 551.071
    • Section 551.074
    • Section 551.089

13. Action Items from Executive Session none

14. Public Comment

15. Adjournment
MR. PALACIOS: Good morning, everyone. It's a
great day in Austin, Texas. Welcome to this wonderful
city on this beautifully cloudy, chilly, cool day.

Good morning. My name is Raymond Palacios, and
I'm pleased to open the Board meeting of the Texas
Department of Motor Vehicles. It is 8:02 a.m., and I am
now calling the Board meeting for December 7, 2017 to
order.

I want to note for the record that public
notice of this meeting, containing all items on the
agenda, was filed with the Office of the Secretary of
State on November 29, 2017.

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

If you wish to address the Board to 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 are interested
in commenting on and indicate if you wish to appear before
the Board to present your comment or if you only wish to
have your written comment read into the record. If your
comment does not pertain to a specific agenda item, we will take your comment during the general public comment portion of this meeting.

In accordance with the department's 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 for other speakers. Comments should be pertinent to the issue 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 of the rules of conduct at our Board meetings, that is the Board chair is given authority to supervise the conduct of meetings. This includes the authority to determine when a speaker is being disruptive of a meeting or otherwise violating timing or presentation rules I just discussed.

With that, I will move on to our roll call, a roll call of members.

Board Member Barnwell?

MR. BARNWELL: Present.

MR. PALACIOS: Board Member Caraway?
Ms. Caraway: Present.

Mr. Palacios: Board Member Graham?

Mr. Graham: Present.

Mr. Palacios: Board Member Hardy?

Ms. Hardy: Present.

Mr. Palacios: Board Member Painter?

Mr. Painter: Present.

Mr. Palacios: Board Member Walker?

Mr. Walker: Present.

Mr. Palacios: And let the record reflect I, Raymond Palacios, am here too, we have a quorum. Also, let the record reflect that Board Members Ingram and Treviño are absent today.

I'll now move on to agenda item 2. I don't have anything with the exception of a couple of announcements. This day in history, as everyone knows, December 7, 1941 marks the anniversary of Pearl Harbor Day. You may recall this was a surprise attack from Japan on our Naval fleet in the Pacific. Over 2,400 American lives were lost, over 1,200 were wounded. The day after President Roosevelt made a joint address to Congress, and he declared this a day that will live in infamy. On that day we declared war in Japan. Subsequently, over four years America contributed to the war effort 400,000 lives.

In recognition of that day, the sacrifices that were made
during the war, before and subsequent, I would think if we could, please, all stand and honor our country with the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

MR. PALACIOS: Thank you.

I just want to make another announcement. This one is very, very bittersweet, but I would like to congratulate our Board liaison, Terri Tuttle -- where are you, Terri? -- on her decision to retire from state service. Terri's last day will be December 22.

Terri has served this Board and this agency with great distinction. I can tell you she has been invaluable to this Board in assisting us with not just the logistics and travel arrangements but also with communication, keeping us apprised as to what's going on, making sure that we're aligned our timing and everything with the agency here because there's so many things going on and it's difficult to keep track of nine Board members, travel schedules and everything, and she has done a fabulous job with that.

She's been with this agency for four years and altogether 20 years serving the State. Prior to being with DMV, she was with the Texas Indigent Defense Fund for 12 years, and she assisted the general counsel to the
chief of staff in the Governor's Office for over three years. She has been a great servant to the State of Texas, to this agency, to this Board, and we will definitely miss Terri. I can tell you personally, it won't be the same without you Terri.

After our meeting, we're going to have a little celebration for her, so if you'd like to join us, you're welcome to.

Thank you, Terri.

(Applause.)

MR. PALACIOS: With that, we will move on to agenda item number 3 and I will turn it over to our executive director, Ms. Whitney Brewster.

MS. BREWSTER: Thank you, Mr. Chairman.

Members of the Board, good morning. For the record, Whitney Brewster, executive director of the Texas Department of Motor Vehicles.

I want to first recognize the amazing efforts of our Motor Carrier and Information Technology Services divisions and announce the first phase launch of the electronic licensing, insurance and credentialing system, and that's going to happen this Sunday, December 10. We're calling it eLINK.

The Motor Carrier Division began this initiative to improve the Motor Carrier Credentialing
System, MCCS, in 2015, it was fall of 2015. This is a multi-division project with the Enforcement Division, the IT Division, Office of General Counsel and Motor Carrier Division. eLINK is the first major upgrade of the MCCS system which was launched in 2004, and it was the first of its kind online application. The initial launch of eLINK will offer online self-service to motor carriers who are applying for operating authority in Texas and will allow customers to handle all steps of the process of creating an account. Today this is very staff-intensive, so this will create not only efficiencies for the customer but for the agency as well.

MCCS will continue to serve customers for management of their accounts, both existing and those created in the new eLINK system. A status bar shows customers where there are in the eleven-step process, and eLINK is instructional and it tutors the customer through each step.

Just some of the features that it will add. There will be added security features and searches for chameleon carriers, and these are bad players. These are folks that have been put out of service for safety violations and they've tried to recreate themselves as a new business. There will be added security features so that we can catch those on the front and before something
more significant occurs on our roadways. It also cross-
checks their current US DOT number status, using realtime
information in the Federal Motor Carrier Management
Information System, also called MCMIS. And it will check
for whether household goods movers have the required rates
and charges on file.

And so just in closing, MCCS will continue to
be the official name. There will be additional
enhancements as we go along through 2018 but we will be
re-branding that at the end of 2018 as eLINK. So just
wanted to make sure that those in attendance here today as
well as our Board are aware of this new and exciting
improvement to MCCS.

The next item, if I may continue, Mr. Chairman.

MR. PALACIOS: Please do.

MS. BREWSTER: Is to talk about the Sunset
review process. I just wanted to give everybody a quick
update because this is something that is significant to
our agency as we're undergoing the Sunset review.

After we finished our first round of
introductory meetings, staff continued to meet with the
Sunset review team in small groups to discuss the work of
their divisions and answer specific questions from the
Sunset review team. The Sunset review team has visited
with our Austin Regional Service Center and has plans to
go and meet with our San Antonio Regional Service Center as well.

We have been gathering substantive information to provide to Sunset, and I know that the review team has also started reaching out to the various stakeholder groups to give them a more holistic view of what the agency does and its impact.

I would like to commend everybody on staff who has already assisted with this effort. This is a significant initiative, it is on top of the work that is already to be done at the agency, and so I do want to pause and thank staff for the time that they're taking to provide that information in a quality manner.

I also would like to provide you with an update on the legislative component here as well as it relates to the Sunset Advisory Commission process. The lieutenant governor appointed the Senate members to the commission in late October, on October 26. Senator Brian Birdwell of Granbury will chair the commission, and the other Senate members include Dawn Buckingham of Lakeway, Bob Hall of Greenville, Robert Nichols of Jacksonville -- who I know all of you are very familiar with as he is also the chair of Senate Transportation -- and Kirk Watson of Austin.

The speaker has not yet appointed the remaining House members to the commission, however, the terms of
Representatives Dan Flynn of Canton and Senfronia Thompson of Houston remain in effect, and they will continue to serve throughout this review cycle.

Further, the lieutenant governor and speaker each appoint one member from the public. The lieutenant governor appointed Emily Pataki of Cedar Park as the Senate's public member, and with the remaining House members, we're waiting to learn who the House public appointee will be.

Once that full commission is appointed, Chairman Birdwell will arrange for an organizational hearing to confirm the Sunset staff review schedule and public hearing dates, and we continue to look forward to the Sunset's report this spring, and I will certainly keep the Board up to date as we learn more.

Are there any questions on that, members?

(No response.)

MS. BREWSTER: All right. If I may just continue on?

MR. PALACIOS: Please proceed.

MS. BREWSTER: I wanted to provide the Board again with a hurricane relief response update. Certainly the impact of Hurricane Harvey was far-reaching and long-lingering, and we certainly are still feeling the impact of the hurricane in our agency.
As of November 28, there were 378 emergency relief permits issued to allow overweight vehicle carriers to deliver loads consisting entirely of relief supplies and allow transport of materials from the area, such as debris, in order to facilitate the delivery of those relief supplies. On October 16, Governor Abbot extended the suspension of certain statutes related to the enforcement of title and registration laws in the 48 counties. That suspension was extended through November 15, allowing for Texas residents from these counties additional time to take care of their expired registration. That ended November 15, so that is no longer in effect.

Wanted to also give you an update on the expenditures related to Hurricane Harvey. We had a significant amount of damage to an agency vehicle. All things considered, the agency did very well in terms of weathering the storm. Our offices held up, we only had one vehicle, and services were performed to remediate the damage which included windshield and upholstery replacement. Again, in the grand scheme of things we were very fortunate that that was the extent of the damage.

We did incur, obviously, additional expenses primarily related to salvage titles. As of November 30, we processed over 200,000 salvage and non-repairable

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titles. Just to give you an idea of what that means in terms of our usual workload there, for October that's a 220 percent increase in the titles processed, and for November it was 113 percent increase. We had a total of 21 temporary employees that were hired to assist with the volume. We do have a statutory five-day turnaround for issuance of titles. I want to commend our staff for staying within that statutory amount. I'll just give you an idea, applications were processed within an average of four days in October and three days in November.

And I would like to pause for a moment and thank our Finance and Administrative Services staff and our Vehicle Titles and Registration Division staff for really putting their shoulder to the wheel and getting these processed so that we can make sure that these vehicles are properly branded and that they don't end up in the hands of an unsuspecting consumer. So if you'll just take a moment, please, and give a round of applause for those two divisions, and also our Motor Carrier Division for really stepping up and helping with the relief efforts as it applies to motor carriers.

(Applause.)

MS. BREWSTER: I'm very, very proud of them. We obviously far exceeded the amount that we typically spend on efforts related to these items. We're
looking at a total of $366,998, that is our estimated expense. Some good news, we were able to request emergency relief funds from the American Association of Motor Vehicle Administrators. They did grant us $125,000 to assist with relief efforts specific to the National Motor Vehicle Title Information System, and that will certainly offset those excess dollars spent on these efforts.

So with that, Mr. Chairman, that is what I have on hurricane relief efforts. Are there any questions?

MR. WALKER: So we had $266,000 in additional costs. That's associated statewide and primarily that was in Houston and in Beaumont?

MS. BREWSTER: That is additional expense to the agency above and beyond what we normally would have paid or we would have budgeted.

MR. WALKER: So what created that additional expense?

MS. BREWSTER: That's primarily title paper for those salvage and non-repairable titles issued.

MR. WALKER: The paper?

MS. BREWSTER: Yes, sir, the paper, as well as the additional staff required to process them.

MR. WALKER: But wouldn't there have been additional income come in?
MS. BREWSTER: Yes, sir, there would be.

MR. WALKER: So how much is the additional income?

MS. BREWSTER: I do not have that information at this point, and I can certainly provide that to you at another time.

MR. WALKER: I mean, if we're going to report the additional expenses, we ought to report the additional income, I would think, because we charge for processing a salvage title.

MS. BREWSTER: Yes. We do anticipate an increase in the amount of money collected as a result of that. Yes, sir.

MR. WALKER: The $125,000 is some grant money we went and applied for?

MS. BREWSTER: Yes, sir.

MR. WALKER: Thank you.

MS. BREWSTER: And, Member Walker, the agency does go through the appropriation process, like other state agencies, and so because we collect those dollars does not mean we have the authority to spend those dollars, so we would have to go through the appropriation process to get any additional dollars associated with that.

MR. WALKER: So we would have gotten the
processing and handling -- well, we don't get a handling fee on that.

MS. BREWSTER: No, sir. That's only for registration; processing and handling fee is for registration only.

MR. WALKER: Okay. Thanks.

MR. PALACIOS: Are there any further questions for Ms. Brewster regarding the hurricane relief response?

(No response.)

MR. PALACIOS: If not, please proceed.

MS. BREWSTER: All right. Thank you.

Since the last time we met in October, we said goodbye to Eric Obermier, our chief information officer. He accepted the position of assistant director of information technology for the Texas Municipal Retirement System, and Eric's last day was November 9. We were very sad to see him go, but to assist the department during this transition period, I have appointed Deputy Chief Information Officer Jonathan O'Quinn to serve as the interim CIO while the position is vacant.

The job posting for the CIO position closed last Thursday, and I am pleased to say that we had 84 application for that very important position, so it's excellent that we had that kind of interest in the role and have confidence that we have a very good applicant
Jonathan, would you please stand to be recognized? Thank you.

In his role as the interim chief information officer, Jonathan oversees ITSD, consisting of 92 employees and additional contract staff, providing information technology services and support for all department staff, as well as maintenance and support of the TxDMV's major systems and technology serving our very expansive external customer base.

Jonathan has over 20 years of IT experience with three years in Texas state government at TxDMV. Prior to working in Texas, Jonathan served numerous roles in Alaska state government, including IT director for the Alaska Division of Motor Vehicles. He also has more than ten years in the private sector providing county and state government IT services for voter registration and election management. Roles have included software developer, database administrator, data architect, conversion program manager, project manager, and various titles for IT director. He has worn a number of hats. He attended the West Virginia Institute of Technology where he majored in electrical engineering.

Members, if you will please join me in welcoming Jonathan as our interim CIO.
MR. PALACIOS: Welcome, Jonathan.

(Applause.)

MS. BREWSTER: Mr. Chairman, last but certainly not least, this is the time we would like to recognize our recent retirees and employees who have reached a state service milestone. We celebrate these employees in show of our appreciation for their years of service to the citizens of this great state. I want to welcome the family and friends of our celebrants that are here today. We know that you have supported these employees who have worked with us, and thank you so much for sharing your loved ones with us.

Martha Yancey, with the Human Resources Division, will read the service announcements, and Chairman Palacios and members, if you would please join me at the front of the dais.

MR. PALACIOS: Certainly.

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

The following employee has reached a state service milestone of 20 years: Christina Flores. Would you please join Ms. Brewster and our Board members?

Christina has worked for the Vehicle Titles and Registration Division since November 9, 1997 and transferred to the DMV when the agency was created in
November 2009. During this 20-year period, Christina raised her son Diego, and he is here with us today. Three years ago she became an endurance swimmer and runner, completing a marathon every year for the last three years. Christina has worn many hats during her career. Since the inception of the specialty license program, she has been doing an exceptional job as the contract manager with the department's marketing vendor, MyPlates. Christina also provides excellent customer service to all our specialty plate stakeholders.

Congratulations on 20 years of state service, Christina.

(Applause; pause for presentation and photos.)

MS. YANCEY: And next, the following employee has reached a state service milestone of 25 years: Cristina Elorriaga. Please join Ms. Brewster and our Board members.

Cristina has worked for the DMV since November 1, 2009. She has served as an operations specialist in the Vehicle Titles and Registration Division since October 1, 2013. She does an exceptional job within vehicle data management where she handles many requests for motor vehicle information and consistently provides excellent customer service. Cristina is truly an asset to the division. It is a pleasure to congratulate her on this
state service milestone of 25 years.

(Applause; pause for presentation and photos.)

MS. YANCEY: And next we have an employee who has reached a state service milestone of 30 years: Allen Goolsby.

Allen started in the Vehicle Titles and Registration Division in 1987 at the State Department of Highways and Transportation. He transferred to the DMV when it was created on November 1, 2009. He works in the Finance and Administrative Services Division. He is a program specialist and liaisons between the agency and the Texas Department of Criminal Justice in the Huntsville office.

Congratulations on 30 years of service, Allen.

(Applause; pause for presentation and photos.)

MS. YANCEY: The following employees also reached a state service milestone but were unable to join us this morning: 20 years, Melissa Altman, Vehicle Titles and Registration Division and Brian Evans, Motor Carrier Division; 25 years, Sylvia Alvarado, Motor Carrier Division and Candy Southerland, Vehicle Titles and Registration Division; 30 years, Pat Barnes, Human Resources Division; 35 years, Debbie Nelson, Vehicle Titles and Registration Division.

And last, the employees who recently retired...
from the agency are Patricia Valdez and Miguel Gabon.

Thank you.

(Applause.)

MR. PALACIOS: Terri, you understand we're holding on to your retirement, yours is still to come, Terri.

MR. GRAHAM: I don't think it's been accepted.

MR. PALACIOS: I think there's a motion that you don't retire.

(General laughter.)

MR. PALACIOS: Moving right along, we'll now move on to hear briefing and action items. We will address agenda item number 4 regarding the Internal Audit update, to be given by Ms. Sandra Menjivar-Suddeath.

MS. MENJIVAR-SUDDEATH: Good morning, Board members. For the record, Sandra Menjivar-Suddeath, Internal Audit director, and I'm presenting item 4 which is on page 7 of your board book, and it's a briefing item only.

This Internal Audit status update includes three components: first is the status of the fiscal year 2018 Internal Audit plan; second part is the external coordination; and third is personnel.

For the status of the fiscal year 2018 Internal Audit plan, there are five items listed. One of the items
is a travel and training audit. This audit is an upcoming audit and we will be sending out the engagement letter in the next week. The audit objective is to determine if training and travel requests have appropriate approvals and justifications.

Ongoing projects include the DMV Fund which is an audit to determine if appropriate revenue is being deposited into the Texas DMV Fund. We are finishing up field work this week and so we'll be interim reporting right after that. We anticipate the report will be released by the end of January.

Similarly, the open records audit is in reporting and so we're working on the report and we anticipate that will also be released in January.

The fraud, waste and abuse risk assessment advisor service is in planning, so we've been working with a couple of divisions to make sure we have a good system and process to identify our risks. We are finishing up planning this week and will be transitioning to field work and will provide you a more detailed update.

The next one is a fiscal year 2018 Internal Audit followup. This is a year-long engagement where we will be providing the status of all internal and external audit recommendations and what their status is at the end of the year. However, we have mentioned before that we'll
be providing quarterly updates on the audit recommendations we reviewed. We just closed out the first quarter, and so on page 9 you will find the memo that discusses the audit recommendations that we reviewed during the first quarter of the year.

In total we reviewed 25 audit recommendations. These were all internal audit recommendations. The 25 audit recommendations, 17 were fully implemented by the department, which is a 68 percent implementation rate, and eight had been started, so the divisions had taken action to complete the recommendation but did not necessarily finish it or there were some gaps that we identified that needed some work. For all the eight recommendations that were started, the divisions have provided us a new status, a new update and completion date, and we'll be following up with the divisions every six months until that is completed.

Any questions on the status for the fiscal year 2018?

(No response.)

MS. MENJIVAR-SUDDATH: For external coordination, we have two still ongoing external audits. The first one is the Texas Comptroller of Public Accounts. They're doing a post-payment audit on us for our expenditures related to payroll, purchasing, procurement
and travel. They are wrapping up their field work hopefully by the end of this week, and so we'll have a report shortly from them.

In addition, the State Office of Risk Management conducted a risk management program review in November. They closed out all previous audit recommendations that they had. They are issuing one new audit recommendation but we're waiting for the report to fully provide you that information.

And then finally, on personnel, we have two new auditors that have started: Frances Barker and Jacob Geray. Frances came from the State Auditor's Office, she's our Auditor III, and she's over there. And Jacob Geray was doing work for the Massachusetts Institute of Technology and he's our Auditor II. In addition, both Derek and Jason celebrated work anniversaries this year, so Derek has been with us for three years and Jason has been here with us for one year.

Are there any questions on my update?

MR. PALACIOS: Sandra, I just want to add I did have the opportunity yesterday to meet Frances and Jacob. They're sitting, where are you, over here. Welcome aboard. I can tell you their credentials, their character are outstanding, and they're going to be a great addition to this agency. These two positions, we've been talking
about this for years now, and congratulations, Sandra, for making this happen, as well as Whitney. As the agency expands, the needs throughout the state have greatly increased, and I know they will be invaluable to helping you and your staff, Jason and Derek, and all the work that you do. We look forward to having you on board.

You'll be happy to know that somehow we let another Aggie into this agency.

MR. WALKER: Whoop! So he's extremely qualified.

(General laughter.)

MR. PALACIOS: Welcome aboard, very glad to have you.

Any other questions for Sandra?

(No response.)

MS. MENJIVAR-SUDDEATH: That concludes the item. Thank you.

MR. PALACIOS: Thank you, Sandra.

Okay. Let's move on now to agenda item number 5, the legislative implementation. I'll turn it over now to Ms. Caroline Love.

MS. LOVE: Good morning. Again, my name is Caroline Love. I'm the director of the Government and Strategic Communications Division, and I'm here to provide a briefing this morning that starts on page 10, so no
Before I get into the department's implementation efforts for legislation that was passed by the 85th Legislature, I was going to give a quick update on an important deadline that's quickly approaching, which is Monday, December 11 is the last day for elected officials to file to run for office, and this year it seems very pertinent to what will happen in the 2019 session. It all kind of begins, I guess you could say, with the Texas congressional delegation with seven members so far saying that they're not planning to return, and that, of course, has a lot of effects on all the other public offices that are held throughout the state.

So we have a lot of seats that are looking at changes, including a couple of members that are now going to run for Congress as opposed to staying in the state legislature. And we have on the House side, while not everybody has filed just yet for reelection, there are at least, at this point, 40 primaries that are going to be pretty well contested. So it should be an interesting March and an interesting November.

And interestingly, as well, our governor has come out with 15 endorsements in the House races, which is pretty unusual, it's not a common thing to occur every other year. And we know for a fact that we will have a
new speaker in the House, so that will definitely see a lot of changes when it comes to committee chairmanships and things like that. So that's kind of just general setting the tone, I suppose you could say.

As you know, the next legislative session doesn't begin till January 2019, but for this last session our staff remains busy at work implementing all the things that were passed, and there were quite a few things that impacted our operations. One of the things that you'll hear later today, there's some rules that are up for proposal that do some of the updates related to cleanup language that we had in our rules related to unified carrier registration and things like that, so that will be something you'll consider. And at the last meeting there were some rules that were proposed that are still in the public comment through December 11, so we'll be looking at those for adoption in early 2018.

Some of the other things that are going on, there's another rule that will be proposed later this morning -- or maybe this afternoon, we'll see how long it goes -- that relates to having our rules reflecting the process that's followed when a disabled parking placard is revoked. And there was a letter that was associated with that that was determined not very helpful, it seemed, to both the people who had had their placards revoked and it
was a cost and time, quite a bit of that, for the agency, so the statute that was passed not requiring that letter anymore will be reflected in the rules process, so that will be coming later.

In addition, I did want to mention that House Bill 4102 that was passed this last session had two options for people when they renew their registration to provide for donation opportunities. One is for the evidence testing kits that DPS has a significant backlog, and the other one is an Ending Homelessness Fund, so those two options will be provided to people when they renew their registration for contribution. And the programming that will allow for that to go into place will go live on January 2, so we're on track with implementing that.

And then, of course, later this morning for adoption of rules we have the permits, some of the oversize/overweight permits that were passed by the legislature. Back on November 20, TxDOT, the Department of Transportation, coordinated with us to hold a stakeholder meeting and members from the communities that use these oversize/overweight permits as it relates to fluid milk permit and also the intermodal shipping containing permits on the coast. Those two permits we had the stakeholder meetings with the groups and went through a lot of the questions about the process. Also, those
people are very interested, obviously, in the routes that are associated with those permits, and so we're working with TxDOT to make sure those lines of communication remain open. They're aware that the permit rules are up for adoption today and it seems like they're in good shape.

There's a third permit that is included in the permits that passed this last session. House Bill 2319 included language to allow for a Northeast Texas Intermodal permit. And that one had some unique language as it related to the permit fee allowing this Board to set that fee, which isn't a common language that's in these permits, and so we've been coordinating pretty frequently with the stakeholder group as well as several legislative offices to ensure that when staff comes later, Mr. Archer will present a recommendation that we've come to after making all those meetings and trying to come to the right conclusion there from all the comments received.

So that's wraps up the implementation efforts that I have an update on, but I'm happy to answer any questions that you may have.

MR. WALKER: On Senate Bill 1524 by Nichols for the oversize containers out of the port, what's the weight restrictions and the length of those hauls? Do you know?

MS. LOVE: I would need to defer to Jimmy.
MR. PALACIOS: Come on up, Jimmy.

MS. LOVE: I just know they're big.

MR. ARCHER: For the record, I'm Jimmy Archer, director of the Motor Carrier Division.

You want to know what the weights were for the port container permits?

MR. WALKER: On Senate Bill 1524, the port container overweight deals.

MR. ARCHER: There's two options: you can run 93,000 pounds with six axles or 100,000 pounds with seven axles.

MR. WALKER: And that's an individual truck permit. Right?

MR. ARCHER: Yes, sir.

MR. WALKER: And the cost of that permit is how much?

MR. ARCHER: The permit for the intermodal container permit is $6,000.

MR. WALKER: So it's $6,000. How long is the route, roughly?

MR. ARCHER: It's restricted to 30 miles from the port.

MR. WALKER: Thirty miles? So it's 30 miles or less is the deal, and it's between 90,000 pounds and 100-?

MR. ARCHER: Yes, sir.
MR. WALKER: And it has to have more axles in order to do that?

MR. ARCHER: Yes, sir.

MR. WALKER: And we're being presented another one today on the container, similar bill, which is in the northeast part of the state to move some type of paper going to the state line, and that's for less than $2,000?

MR. ARCHER: Yes, sir.

MR. WALKER: For the same amount, 93,000 pounds?

MR. ARCHER: That's correct, sir. And the statute said the Board could set that permit fee up to $2,000.

MR. WALKER: Thank you.

MR. PAINTER: The 30-mile trip, that's one way?

MR. ARCHER: No, sir. That's an annual permit. They can use that back and forth to go to the port and back.

MR. PAINTER: As many times as they want?

MR. ARCHER: Yes, sir. Annual permit.

MR. PAINTER: Okay. Thank you.

MS. LOVE: Thank you.

MR. PALACIOS: Are there any other questions for Caroline or Jimmy before they leave?

(No response.)
MR. PALACIOS: Thank you very much.

Now we will move on to agenda item number 6, we'll address the Enterprise Project update. I'll turn it over to Ms. Judy Sandberg.

MS. BREWSTER: As Ms. Sandberg comes up to the table, I wanted to respond to Member Walker's inquiry earlier regarding the amount collected on salvage and non-repairable titles. Late breaking. Actually, as of yesterday we have collected $1.73 million associated with salvage and non-repairable titles, and that's just since the beginning of the fiscal year, so that's September 1, so since September 1 that's the amount that we've collected. For all of FY16 we collected roughly $3.1 million.

MR. WALKER: So it doubled our revenue.

MS. BREWSTER: If it continues, yes, sir.

MR. WALKER: And we've issued roughly -- well, it was 200,000 one month, 177- the other month.

MS. BREWSTER: As of yesterday, 216,516 salvage and non-repairable titles.

Thank you, Mr. Chairman.

MR. GRAHAM: I hate to revisit that, but just if you would, you mentioned that the funds, because of how they're handled, despite having the expense, you may not be able to utilize the funds?
MS. BREWSTER: We go through the appropriations process and we receive authority to spend TxDMV dollars for the items that we believe that we'll have expenses for. That has already been done, we went through the legislative session and we received that appropriation. We do not have authority to spend all of the dollars we collect, so if we were to need additional dollars -- which I do not believe that we do -- associated with this particular event, we would need to go to the legislature to ask for authority to use those dollars.

MR. GRAHAM: So there's no provision out of the ordinary, you've got to go back?

MS. BREWSTER: You can request special authority to spend, but that is in significant times when you absolutely have no dollars available to spend. We are not in that situation, we are able to draw from other areas of the agency to be able to cover those costs, in addition to the fact that we were able to get additional dollars through the American Association of Motor Vehicles for the National Motor Vehicle Title Information System, because that is the system that collects all of the branded information and that is the information that is share with other states so that when a consumer walks in through our doors or the doors of a DMV in another state, they're able to see that that vehicle was branded.
MR. GRAHAM: Perfect. Thank you.

MR. WALKER: So what you just said, to clarify for me -- and I understand going back for additional money if you have an exception or ran out of money -- you wouldn't go back to the legislature because they'd have to call a special session. Wouldn't you do that through the Governor's Office?

MS. BREWSTER: Ms. Flores, if you'd like to come on up. There is a process for requesting emergency supplemental. In those situations you have to have expended all of the dollars that you have available within the agency. Those are times of extreme measure, we are not in that situation. I'll let Ms. Flores respond to that.

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

There is a special provision called a budget execution process, however, as Ms. Brewster has stated, a state agency really has to have no available resources to cover unexpected or unforeseen expenses. Through our budget process, we do set aside a contingency budget to cover unforeseen events such as this. Our estimated expenditures for processing the additional salvage titles was approximately $300,000, we are getting $125- from
AAMV, so the net difference is approximately $200,000, we have that available within our budget.

MR. WALKER: So that's not my question. My question originally was what is the process if you were to bust your budget. She said we'd have to go back to the legislature.

MS. FLORES: No, sir. You would have to go through the Governor's Office.

MR. WALKER: That's what I thought.

MS. FLORES: It's a budget execution.

MR. WALKER: That was my question.

MR. PALACIOS: Are there any further questions regarding this topic?

(No response.)

MR. PALACIOS: Okay. If not, let's move on.

Ms. Sandberg.

MS. SANDBERG: Good morning. For the record, Judy Sandberg, director of the Enterprise Project Management Office.

MR. BARNWELL: You're so quiet.

MS. SANDBERG: Is this any better?

MR. BARNWELL: No, it's not.

MS. SANDBERG: Well, Jeremiah.

MR. BARNWELL: Get mad.

MS. SANDBERG: Get mad?
MR. BARNWELL: And let's hear you talk.

MS. SANDBERG: Oh, you don't want to see me get mad. That would not be a pretty picture.

(General laughter.)

MS. SANDBERG: I will do my best. I apologize, my voice is a little under the weather today. That's why my colleague, Mr. Kuntz, has joined me. In case my voice gives out, he's my second, he's going to take over for me. So I hope that doesn't happen today, I'll do my best.

I am giving you a briefing today on enterprise projects and I will not be seeking any decisions from you today. My briefing begins on page 21 of your briefing book, and the very first page, the memorandum explaining my briefing is already out of date, and I need to explain it to you.

I've also been practicing drinking water on camera.

(General laughter.)

MS. SANDBERG: So on the memorandum that I provided under background and discussion under Priority Group 1 projects, I stated that the RTS project end date is December 31, 2018. That is correct, and the refactored RTS project is still on target to complete by that date. It is also within budget and on schedule to complete within budget. However, the statements regarding the next
release being scheduled for December 17, while accurate at the time, that has now changed, and I will explain why it's changed when we move on to the webDealer update.

The webDealer project, now a multi-year project, was scheduled to end April 30, 2018. We are down to the final two remaining phases in the webDealer project, one being eTags replacement and centralized pay in one module, the final module of webDealer being eTitles. We had planned to release eTags and centralized pay, along with the RTS module in November. We had to extend that to two different release dates in December, both of which now we've realized through testing that the quality of eTags is not where we need it to be, it does not meet our standard of quality of what we want to put out for use outside our agency or even within our agency.

Consequently, we've taken some corrective action, and the first step that we took was to decide to separate the RTS release from the webDealer release. That is going to require a little bit of coding and some regression testing to ensure that that release works properly, and we're going to go ahead and release that portion of RTS so that it is in effect by January 2 of 2018. It's important for us to do that because it included some important items which are much anticipated, one being the House Bill 561 small package delivery,
others including voluntary contributions that Ms. Love mentioned earlier for ending homelessness and the rape kits. It also includes plates for antique truck and the package delivery plate.

Furtherance of the RTS project, it also includes changes that are necessary to fully implement search by owner, which you may recall has been on hold for quite some time. So we thought it was important, we made the decision to separate it out from the webDealer release so that we could move forward with that RTS deployment by the first of the year.

webDealer has required more analysis to determine exactly what the issues are. We have several issues, one being a high number of defects resulting from testing, a second issue being the data migration, we've identified some outliers as a result of testing and there are enough of those that we need to take the time to correct them and address them before we put it into production.

The final one is we really need to do robust load and stress testing on the eTags replacement system because what we're doing with this release is putting eTags into the webDealer framework and for the first time the number of users of the webDealer framework will increase to 30,000, so we really need to proceed with
caution and make sure that we thoroughly test it and that it works properly before we put it in production. The team is doing some very detailed analysis to look at exactly what tasks is it going to take and how long is it going to take. The team is projecting that probably by the end of the second quarter, meaning the end of February, we may be in a position to go ahead and implement.

That said, we have proceeded with developing the user guide. It is now published on the internet. We're also continuing with the training webinars that have been offered. We will offer additional training webinars as we get closer to the deployment date.

I should mention we have not published an implementation date, a specific date. We had in some announcements indicated that this new eTags and centralized pay might go live before the end of the calendar year but we never published a specific date, and it was because we had some concerns about our ability to really put a quality product out there. So once we have greater confidence in this recovery effort, then we will publish a more definitive implementation date for webDealer.

The unfortunate thing about all of this is it does have a potential downstream impact on the eTitles
phase, the last and final phase of the webDealer project, which according to our current schedule we should finish by April 30. That module is now at risk because to recover eTags, we are now eating into the schedule that we had planned for eTitles. We are also, candidly, eating through the budget that we had set aside for eTitles.

However, we will do our due diligence and revisit exactly where we are with the eTitles phase. Work has already begun on it but we need to assess how this recovery is going to impact eTitles and we will be able to report to you in the near future what the result of that analysis is.

I've provided you a great deal of information. I'll stop here and see if you have any questions. Yes, sir.

MR. WALKER: Going back to the dashboard, if I go back to RTS, it looks to me like, if I go to your bottom line, we've spent 81.4 percent of the money, 17.8 percent of it is encumbered for work that still has to be done, so there's a potential, if you add those two numbers together, that 99.2 percent of the money is either spent or encumbered, so the project could actually finish at a little below budget. Is that correct?

MS. SANDBERG: Yes, sir, that is correct.

MR. WALKER: Same way with webDealer, it's
about 2.1 percent, could finish up under budget on that?

MS. SANDBERG: As of the time this chart was done, that is true, but because of the information I just shared with you, I think we will likely spend the entire budget and that will be a huge factor in what we can realistically complete with eTitles.

MR. WALKER: Is there any potential that it could go over the budget?

MS. SANDBERG: There is that potential, but because this is a major information resources project, by statute we have to coordinate with the external Texas Quality Assurance Team to discuss with them if we -- we do not have to seek their permission but we have to coordinate with them if the Board were to authorize us to exceed the budget. And one of the factors that's really important here is the Texas Quality Assurance Team does an annual report in December, and that report goes to the members of the legislature and they rate each of the major information resources projects performed by all state agencies and they give them a color-coded rating. They have already given webDealer a yellow rating, the optimum is green, and it's a yellow rating because we've already extended the project end date once in the past.

We do not necessarily have to seek their permission to extend the end date, but they do have the
authority to report us as red. They look at how far we've exceeded an end date or a budget, that's how they rate state agencies and assign a color code. They really look at duration and budget.

MR. WALKER: So what is the real simple answer about how much potentially we could exceed budget and by how long a period of time?

MS. SANDBERG: I'm sorry, Mr. Walker, I don't have that answer for you today. I will certainly work on getting that answer for you. I would request that I have the time to assess exactly what is needed to complete webLien. One option is it may be possible still to finish eTitles, but I don't know that for certain. I can't say that with certainty today. The advantage we have is the design is complete. In order to be able to state exactly how much more time or how much more money would be needed, I need a little more time to analyze that.

MS. BREWSTER: Mr. Chairman, if I may in response to that. The first thing that the agency needs to do is determine the exact amount of time it's going to take to complete eTags and centralized pay. That's number one. We've got to figure out the amount of time and the amount of funding that will be required to complete that, knowing that we've had some issues. Then we can then determine what is the downstream effect of that as it
pertain to eTitles, because as Ms. Sandberg said, there is a downstream effect of a delay for eTags and centralized pay, not only a delay in time but certainly an issue with the budget. So once those things are determined on eTags and centralized pay, which we believe we'll have wrapped up in very, very short order, we will then be able to evaluate what is the impact on eTitles and the completion of the webDealer project.

I appreciate Ms. Sandberg's transparency, especially since this is something that is very, very timely, this just came to light last week, and so these are things that are still in the works. And I'm sorry that we don't have more information about definitive dates and amounts at this point, but we will very soon and we'll provide that information as soon as we have it.

MR. WALKER: So I guess Jonathan, I assume you're working with this. Correct?

MR. O'QUINN: (Speaking from audience.) Right, sir.

MR. WALKER: He's been on our team, so how familiar is he with stepping in and grabbing the bull by the horns and dealing with the problem here?

MS. BREWSTER: He has been the deputy CIO for quite some time, and I believe that he's very familiar with the project, as well as the project team and the
tasks that are associated with it.

MR. WALKER: So if we were just going to take a wild stab, what's the potential over budget on this thing? Have we got any idea? I know you said that we potentially could finish it within budget, but what's the potential downside of over the budget?

MS. SANDBERG: I hate taking wild stabs.

MR. WALKER: Well, somebody needs to.

MS. SANDBERG: If I were going to take a wild stab, I would say less than $200,000.

MR. WALKER: And what's the potential savings on the RTS project that maybe you could slide some of that over there? Because it's all in the same bucket, isn't it?

MS. BREWSTER: Finding additional funding is less of the issue. The fact that it is a QAT reported project and we had a set budget with the Quality Assurance Team, the fact of the matter it is possible that that budget amount may be exceeded. We likely could find additional funds to make up the amount necessary, but from a Quality Assurance Team perspective, regardless if we find savings in another project, it will still be viewed as being over budget.

MR. WALKER: Thank you.

MR. PALACIOS: Board members, I just want to
add we're all very disappointed at the delay in this project, particularly the timing of it. The deadline that we had set internally was November 30, that was then expanded to December 10. Obviously neither of those deadlines will be met. We have discussed at length the reasons why we, I guess, were apprised of these delays at what I believe is the last minute. I think we've done a good job now of identifying the issues that we've had so that we know much further ahead of time when we have issues before these deadlines come about.

What we did want to make clear is that we will not be expediting this process just for the sake of hitting a deadline that we set. What is more critical in this whole process is that we set a deadline that will give us enough time for us to ensure that the application has been thoroughly vetted, it's been thoroughly inspected, all of the details and so forth. The last thing we want to do is put this out for public use with defects, and that's the directive that staff has been given and I think that is the prudent way to go with this. As it stands now, I believe we're looking at first quarter of 2018 as our deadline?

MS. SANDBERG: Of the calendar year, yes; second quarter of the fiscal year.

MR. BARNWELL: So the eTitles, webDealer-
eTitles linkup -- or mash-up or crash-up might be the case -- when they want to pay, how do they pay for this? So I'm doing an eTitle, how do I pay for it?

MR. KUNTZ: For the record, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division. I would have to go back and actually look at the BRB to see that. One of the things that was in this phase was a centralized payment functionality for the system for two of the things that we have that are going out with it. One is the eTags, the actual buyer's tags that are issued, there is a payment functionality for folks that are purchasing a vehicle from out of state so that that money can be collected through the system and submitted to the county tax assessor-collector.

MR. BARNWELL: Now, that's done by credit card?

MR. KUNTZ: Correct, yes, there's a credit card payment option that's available there. The other payment option that is available is for salvage titles for the webSalvage application. Those applications that come in, even the high volume that we're seeing from those Harvey salvage applications, this centralized payment functionality would allow those applications to be paid for with a credit card as well. So this will be the first time that payment options are available for a transaction in webDealer.
MR. BARNWELL: Up until now it's been by taking a check in to the DMV?

MR. KUNTZ: Either taking a check, or some of the counties actually would set up electronic funds transfer agreements with the dealership community.

MR. BARNWELL: So ACH could be set up?

MR. KUNTZ: Yes, correct.

MR. BARNWELL: But that was set up on a county level.

MR. KUNTZ: And it was set up outside of the system. Yes. So this new release will have the first time the actual payment option for two types of transactions, it's just limited to those two at this time, and that was really a way for us to kind of dip our toe into this payment functionality within the system. We would then look later on if there are other types of transactions that we would want to allow payment options on.

So to answer your question, as we move forward with new functionality, as in eTitles, we would look to see if there are any fees that would need to be collected and whether or not a payment option would be needed on those at a future time.

MR. BARNWELL: So the eTitles-webDealer project has been an internal project of DMV. Is that right?
There's been no third party contractors involved?

MS. SANDBERG: Yes, sir, that is correct. We have hired contractors to augment the staff, but we did not hire a vendor, as we did with RTS.

MR. BARNWELL: At some point do you anticipate doing a review? I mean, we do this all the time in my business because we're always having something go wrong and we try to learn from it -- occasionally we actually do learn from it -- but we go back and analyze what went wrong, why it went wrong, what did we do that we could do different. I assume that's going to happen, and I'd like to see a report on that when we're done because this is not the kind of thing we want to have happen, certainly not very often.

MS. SANDBERG: Yes, sir, I understand, and we'll be happy to provide you that report. We do routinely do lessons learned. Sometimes we wait until the end of a project, but in this case we're already doing lessons learned on this particular incident and what we could do better in the future.

MR. BARNWELL: I would like to know what you're doing on that. I don't have any direct input and advice or guidance on it, but I'd like to know what you find and what you're doing about it.

MS. SANDBERG: Yes, sir.
MR. BARNWELL: Because certainly, as the chairman says, it's disappointing, and I know you're frustrated, disappointed, embarrassed, et cetera, let's just move on and get this thing done at this point. It's typical of software that it will bite you, and we need to bite it back, I guess.

MS. SANDBERG: I'm all for that.

(General laughter.)

MR. BARNWELL: All right. Well, sometime in maybe the first quarter of next year we can have some kind of a brief report on what you've identified?

MS. SANDBERG: Yes, sir, we will do that.

MR. BARNWELL: Okay. That would be super.

Thank you, Judy.

MS. SANDBERG: You're welcome.

MR. WALKER: But, Judy, weren't we running webDealer already in the dealerships and beta testing it for the last year and it wasn't having any problems?

MS. SANDBERG: Well, we've been running the earlier phases of webDealer, new cars, used cars, salvage has already been deployed, there have been some improvements made along the way in an effort to increase adoption. It's just eTags, the current eTags that is in use is completely outside of the webDealer framework, and what this particular phase was about not only implementing
centralized pay for salvage dealers and out-of-state tags, but also to move eTags into the webDealer framework. It's required an actual complete rewrite of eTags in order for it to work, and it's the rewrite of eTags where we've struggled some. So this portion of the project has actually not been put out in production or even in any kind of pilot yet. Because webDealer has been such a long project, we have done it over the years in phases, and as each phase was deemed production ready, and this particular phase is just not production ready.

MR. PALACIOS: Just to be clear, the webDealer application is currently functional. These are just two additional modules now that will be added to webDealer that are currently being used right now, they're just not part of the webDealer application itself.

MR. WALKER: So webDealer is actually still running okay?

MR. PALACIOS: Yes. We have no issues with webDealer, it's just the adoption of these two applications.

MR. WALKER: I just knew it was all tied together. I thought we had a problem now going back with what's already made it there.

MS. BREWSTER: Thank you, Mr. Chairman.

Piggybacking on your comment, sir, this was an effort to
put eTags into webDealer to allow dealers only one application to be able to process their transactions.

MR. WALKER: I thought it was affecting the whole system.

MS. BREWSTER: Hopefully, and the goal was to allow for greater ease for dealers when doing transactions, both eTags and webDealer transactions, so it's all in one application. webDealer, as you both have commented, is still going to function, there are no issues there. Same with eTags, dealers will still be able to get their eTags, service delivery is not stopping. These were enhancements, and these enhancements are unfortunately now delayed, but I guess the silver lining is service delivery will continue

MR. WALKER: Thank you.

MR. PALACIOS: Thank you.

MS. SANDBERG: Really, that pretty well concludes my remarks for today. The only other thing I would mention is within your briefing there is a list of the new projects for the current biennium. We are in the process of holding a series of executive sponsor workshop meetings to determine the start dates for those projects based on our resources, so more news to come on that as well.

Thank you.
MR. PALACIOS: Thank you, Ms. Sandberg. Hope you get to feeling better.

Let's move on now to agenda item number 7, a briefing on assembled vehicles, including dune buggies. I'll turn it over to the esteemed Jeremiah Kuntz and we'll then hear public comments for this agenda item.

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

I'll kind of cover the overview here. This briefing item is intended to provide the Board with an overview of the research the department has conducted thus far and allow petitioners an opportunity to provide public comment to the agency as we weigh our options for moving forward relating to assembled and reconstructed vehicles. We're not seeking a Board position on this, we're not looking for you to make any kind of decisions today on this, this is merely a Board briefing.

I'm going to encourage you to let the agency continue its research in this matter, that we don't try and come up with a solution today. We're just trying to get the information out and also allow the members of the public that have petitioned the Board for rulemaking an opportunity to voice their concerns and hear what issues they would like us to address.
This issue is an extremely complex issue, it does build upon itself as we go through. There are a lot of tentacles that kind of spring off of this issue. I think that will become apparent. We've attempted to organize this presentation in a fashion that will provide you with a baseline of information as we understand it today. I'll reiterate that we continue to learn more about this issue every single day. I know myself and David Duncan have been working on this probably for the last three weeks, and I don't think a day has gone by that we haven't figured out some new piece of the puzzle that helps us get an understanding of how to address this issue. That being said, we want to continue that opportunity to figure this issue out.

With that, I'll kick this off. So here are the topics we're going to talk about today. We're going to talk about the petition itself, the actual United States Code, Texas Transportation Code, the Occupations Code, the assembled vehicle rule history, and the assembled vehicle examples that we've got.

So this is the petition that came in. The department recently received over 180 petitions for rulemaking to allow for the titling and registration of dune buggies for operation on the public roadways. The agency has also received 21 legislative inquiries, we've
also received three requests from legislators to provide briefings on why dune buggies are not currently allowed to be titled or registered. During those legislative briefings we did commit to those members that we would research the issue and provide them with additional information related to the federal safety requirements and whether the state statute or administrative rule could be amended to allow for those vehicles to receive title and registration.

We also monitored various blogs, forums and social media to try and better understand the various issues that builders, people out in the public have experienced as it relates to the titling and registering of their vehicles.

So as you can see the petition itself is up here, here are some excerpts from the actual letter. I don't know if we've gotten anything other than a form letter, maybe some variations on it, but this captures the essence of the petition.

Here's a history of the rules, and I think there may be some misunderstanding from a lot of folks out there about what the history of these rules are. The rules that prohibit the titling of dune buggies are found in TAC 217.3. They were originally effective September 2 of 2012. That original rule required a body, motor and
frame to be from a motor vehicle manufacturer, so you
could not have a motor, body and frame put together from
somebody that was not a licensed manufacturer in the State
of Texas.

In April of 2014, those rules were further
amended to remove the requirement for the motor, body and
frame to be from a manufacturer but added specific
language that prohibited the titling of dune buggies, on-
track racing vehicles, off-road vehicles, and vehicles
with a body or frame from a non-repairable motor vehicle.

The current version of the rule was effective
March of 2016. The latest version of the rule made no
material changes to that original language but moved the
language to a separate section to make the vehicles not
eligible for title more prominent in the Administrative
Code. Under the current administrative rules, an
assembled vehicle must have a body, motor and frame and
all safety components required by federal law the year it
is assembled. There is an exception for custom vehicles
and street rods -- we will discuss that later as we go
through the presentation -- to that requirement that it
must meet FMVSS standards in the year that it was
assembled.

For all of these, the department received no
comments related to these rules, specifically to dune
buggies or assembled vehicles.

So here's a little bit of background on the different types of construction to give a better understanding of the terminology that we're talking about. So this slide lists the different types of manufacturer. We all know what an original manufactured vehicle is, a vehicle that's a 2017 model from your major manufacturers, Chevy, Ford, Toyota, all those major manufacturers.

The next group of vehicles are vehicles that have been rebuilt. Within this group there are also reconstructed vehicles. This is a very interesting provision right here. These vehicles are vehicles that take parts from originally manufactured vehicles to reconstruct a vehicle. This may include the mixing of parts from various years. For example, a person takes a 1950 Chevy body and mounts it to a modern Corvette chassis with a modern engine. Both of those vehicle body, chassis were both originally manufactured and then merged together. That is what we deem a reconstructed vehicle. That does not include vehicles that are merging parts that were not originally manufactured from a manufacturer.

Rebuilt salvage is just what the name implies, it's a vehicle that was involved in an accident and the vehicle is rebuilt to the original vehicle specifications. There's no change to the vehicle design or function.
The next group is where we start getting into the very interesting conversation we're going to have today, and these are vehicles that are assembled. This group of vehicles is where we focused our research to determine the proper standards that apply for their vehicle construction and the requirements that they must meet in order for them to be titled or registered. On this list only newly assembled or replica vehicles would qualify for title and registration.

A newly assembled vehicle would be basically a new manufacturer of a one-off vehicle but the vehicle does meet all FMVSS safety standards. This is not something that you would see regularly but there is an allowance for somebody that is doing one-off vehicles that do meet that safety standard. Replicas obviously resemble a previously manufactured vehicle. The state law allows for replica vehicles to be constructed and titled and registered.

We then get into the four below it: race cars, stripped down vehicles, dune buggies and merged vehicles, and none of these vehicles are eligible currently for title and registration on Texas roadways.

MR. WALKER: Can I ask you a question?

MR. KUNTZ: Yes, sir.

MR. WALKER: It says original manufactured, a licensed manufacturer. Does the State of Texas issue a
license for somebody to manufacture vehicles?

    MR. KUNTZ: Yes, we do. Ford, GM, Toyota are all licensed manufacturers in the State of Texas.

    MR. WALKER: And that's issued by the Department of Motor Vehicles?

    MR. KUNTZ: That is issued by Daniel's group for the Motor Vehicle Division.

    MS. CARAWAY: What is one-off?

    MR. KUNTZ: A one-off vehicle, it would be a unique vehicle. You could have a concept car, for example, that is constructed by somebody but they have constructed that vehicle to meet all of the new standards but it's not a mass produced vehicle, it's not rolling off an assembly line and you have thousands of them coming into the market.

    Assembled vehicles, so this is the current definition of an assembled vehicle. Another section of the Administrative Code specifically prohibits the titling and registration of those on-track stripped down vehicles, dune buggies and merged vehicles, and I will cover that later.

    An assembled vehicle is a vehicle assembled from three basic component parts, motor, body and frame, except that a motorcycle must have a frame and motor, a trailer or travel trailer will have no motor, obviously,
and that is assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer, altered or modified to the extent that it no longer reflects the original manufacturer's configuration, or assembled from a kit even if a manufacturer's certification of origin or a manufacturer's statement of origin is provided.

Here are some examples. These examples are vehicles that the department would determine to be for on-track racing. They are newly manufactured and do not meet the requirements in the Federal Motor Vehicle Safety Standards. In many instances, the manufacturer of track vehicles provides an MCO that specifically states that the vehicle is not built for on-road use. These vehicles may not be altered to make them street legal. Once a manufacturer has made a determination that the vehicle is not for on-road use, that it's for track use, the department will not allow that vehicle to be altered for on-road use.

MR. GRAHAM: If I could get clarification. If I want to become a licensed manufacturer in the State of Texas, is it simply send in a form to be a manufacturer, or are there stringent requirements? I just don't know. I mean, I know that manufacturers are registered.

MR. KUNTZ: I'm going to call Daniel Avitia up
here to answer the question as to what requirements there are for licensed motor vehicle manufacturers.

MR. BARNWELL: You've got no chance.

MR. GRAHAM: Well, I'm not telling you I want to build a manufacturer, I can't build anything, I break stuff.

(General laughter.)

MR. AVITIA: Member Graham, I'd be happy to give you a license for a manufacturer if you could meet the requirements under Occupations Code Chapter 2301. There's various requirements. For example, you have to manufacture self-propelled vehicles having two or more wheels, a fully self-propelled vehicle, has the primary purpose of transporting a person or persons and property, and the list goes on and on, but there are various requirements under the Occupations Code in order for you to be a manufacturer, such as Ms. Hardy's organization here.

MR. GRAHAM: So let me just ask this from 50,000 feet, if I'm going to make one vehicle, can I come get a license as a manufacturer if I make one, or does it really require more advanced, someone in the business?

MR. AVITIA: If you're going to be manufacturing one vehicle in the State of Texas and you plan to sell that vehicle in the State of Texas, yes, sir,
you would be required to have a manufacturer's license.

MR. WALKER: The question is how difficult
would be to go get that license.

MR. GRAHAM: That's what I'm asking.

MR. AVITIA: Well, much like Member Hardy's
organization, you would have to be a manufacturer of more
than one vehicle -- obviously GM manufactures thousands of
vehicles -- but you would also have to represent how
you're going to sell those vehicles in the State of Texas
through, for example, your dealer network as you are a
dealer for a manufacturer. So it would be the opposite of
the requirements, in essence, for you to be a dealer in
the State of Texas.

MR. WALKER: You didn't answer the question in
my mind.

MR. AVITIA: I'm sorry. What was your
question.

MR. WALKER: You didn't answer the question.

MR. AVITIA: How hard is it?

MR. WALKER: The question is how difficult is
it. We know General Motors, Ford and all those guys are
the big 50,000 pound gorillas out there that could go get
a license. How hard would it be for Brett and I to start
Walker & Graham Dune Buggies, or whatever, manufacturing.
What's the likelihood that we could go get a license?
MR. KUNTZ: I was going to say if you'll give me a second, we're going to get into a little bit more of this. I think that the issue is not necessarily the obtaining of the license but it is the requirements placed upon you for warranty performance, Lemon Law, and then there are other requirements at the federal level. I don't know that it's necessarily the application process that's going to be burdensome, it's all the things in order to continue operations as a manufacturer that are going to be burdensome, and I'm going to get into some of those here in just a second.

MR. PALACIOS: He's going to get much deeper.

MR. KUNTZ: We're just scratching the surface right now.

MR. GRAHAM: Very good. Let's go, I'm ready.

MR. WALKER: Good question.

MR. GRAHAM: Board Member Walker, we're going to have to hold our new project until we've worked through this a little more.

MR. WALKER: Well, we're going to have to get some of Barnwell's money to do it with.

(General laughter.)

MR. KUNTZ: This next class of vehicles is addressed in the Administrative Code. These would be stripped down vehicles, they are not eligible for title
and registration. As you can see, many of the major component parts have been removed from these vehicles and a lot of the safety components that were originally on the vehicle are no longer there, so these vehicles would not be eligible for title and registration in the State of Texas.

The next class of vehicles are dune buggies. This is where we have received many of these petitions and so this is where we will focus a lot of attention here as well. These are examples. As you can see, there is not an easy way to define a dune buggy. We do not currently have a defined definition in our administrative rules of what a dune buggy is. Some of these look more like a go-cart than they do an actual vehicle. I will point your attention to the green one down in the center. There are no doors, there's no body panels, there's nothing but a pipe constructed frame on a chassis, and so that is much different than the ones that are up above it that have some kind of body, they have windshields, those kinds of things. So there are various iterations of what people would consider a dune buggy which makes this a difficult vehicle class to try and identify.

Some of you may ask how this is different than a reconstructed vehicle like we were talking before. As you can see, in some of these instances these vehicles
took a body, a fiberglass body kit -- the orange and blue one specifically -- and they have been placed upon a manufactured VW chassis. Generally you see these chassis from like 1966 VW Beetles, they remove the body and then replace it with a fiberglass body. This would not meet the definition of a reconstructed vehicle as the body was not from an originally manufactured vehicle, it does not contain a VIN from an originally manufactured vehicle, and therefore, it does not meet that definition.

MR. WALKER: Can I ask you a question right there?

MR. KUNTZ: Yes, sir.

MR. WALKER: So let's talk about the blue car right there. It's a regular VW Volkswagen Bug. Right?

MR. KUNTZ: Underneath, the chassis, yes.

MR. WALKER: Okay. So I bought it from VW, I went out and registered it, I titled it so I can drive it on the road when I bought it. Right?

MR. KUNTZ: Yes, sir.

MR. WALKER: So I go into my garage and I do this and I just keep on registering my old car every year. How do you know that I've changed my body frame on there?

MR. KUNTZ: So you're bringing up an issue that is material to this discussion, and that is when law enforcement pulls somebody over roadside they will look at

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the record on that vehicle, and that record will reflect
the year, make, model and body style of that vehicle.
That vehicle, I think you would say, is no longer a VW
Beetle. If law enforcement was to pull that vehicle over,
the vehicle that is sitting before them is not the vehicle
that is being represented to them in the official record,
and there could very well be issues with that person
roadside because they do not have a vehicle that is
registered properly in our system.

MR. WALKER: Could be registered, but the key
word is not properly.

MR. KUNTZ: Correct. The make, model and year
of that vehicle in our system must reflect what is on the
road at that time. That is where we have in our title
manual requirements. If you make material changes to a
vehicle, you are required to go through the process to
retitle that vehicle as the appropriate make, model and
body style.

MR. WALKER: But where's the breaking point? I
changed the mirrors. Did I change it?

MR. KUNTZ: You are bringing up what makes this
issue so complicated. Just bear with me as we get through
this. I'm going to keep going.

MR. WALKER: I cut a hole in the roof because I
want to put a sunroof in there.
MR. KUNTZ: I know. Bear with me, we're getting to these points. You're right on track, you're tracking exactly with what we're looking at right now, and what you have just raised is the crux of the problem that we have which is at what point does it become a new vehicle, at what point have you departed from the original manufactured vehicle that we have on record. That's the crux of the problem we have before us.

MR. WALKER: Okay. I'm glad I'm on track.

MR. KUNTZ: You are right on track.

So here we go. Here is the different types of manufacturing or assembling of vehicles. So there are three licensed entities in the State of Texas for the manufacturing or assembling of vehicles as a licensed manufacturer, a licensed converter, or a licensed salvage rebuild. So you were asking questions about manufacturing, there are actually three different license types that you've got here before you.

The licensed manufacturers are assembling vehicles as new vehicles off the assembly line.

A licensed converter is somebody -- and we'll get into this in Texas statute here in just a second -- that actually takes a brand new vehicle that has not been titled or registered and makes changes to that vehicle prior to its first title and registration being issued.
The prime example of that are chassis that are reconfigured for ADA, like accessibility vans. A tow truck would also be another example of a vehicle. They take a truck chassis that rolls right off a licensed manufacturer's assembly line, a converter takes that chassis, affixes a cherry picker to it, and that is done by a licensed converter in the state.

MS. HARDY: Ambulances.

MR. KUNTZ: Ambulances are also prime examples of these. But the changes to that vehicle occur prior to its first title and registration event, and that's what is required by a licensed converter in the State of Texas.

MR. WALKER: So let me ask. You're opening a lot of doors for me here.

MR. KUNTZ: Yes, we are.

MR. WALKER: So I buy trucks that are just chassis and they don't have beds on them -- like we just bought three last week -- so we put beds on them. We send them to Morgan and they put a body on the back of that truck. Do they have a converter's license to add a body to it? I mean, I don't know.

MR. KUNTZ: Yes, those would be added by a licensed converter.

MR. WALKER: We buy trucks and they need beds on them. They don't come with a bed, they don't come with
a box, so I send it to Southwest Rigging, they rig my truck up to make it the way I need it to do my job.

MR. AVITIA: Member Walker, to answer your question, we would have to look at the very specific type of changes that you're going to be making to that chassis in order to determine if you were a converter. The examples that were given were tow trucks, cherry pickers and the ambulances. But we would work very closely with VTR to determine what type of license you would require based on the modifications that you're making to that chassis.

MR. KUNTZ: And I'm going to make one other very subtle distinction. If you are purchasing that from a dealer --

MR. WALKER: I'm buying it from Kate.

MR. KUNTZ: If you're buying it directly from the manufacturer --

MR. WALKER: I buy a cab and chassis all the time, and then they send it to a shop. We make the specifications on what kind of bed we want on there, whether we want a 24-foot flatbed with a lift gate on it with side rails. My question is is that a converter, does that guy need a converter's license?

MS. HARDY: Chances are, yes, if we're shipping directly to.
MR. KUNTZ: If it has not been subject to a first sale and somebody is making modifications to that chassis, yes, they must be done by a licensed converter in the State of Texas. If you have purchased the chassis and then you're sending it to your mechanic to add something to it, that is after the first sale and a mechanic is not required to have a converter's license if they're working on used vehicles, a vehicle that has already been subject to a first sale.

We're going to get into the definition of a converter here in just a second.

MR. PALACIOS: Is it crystal clear now?

MR. WALKER: No. I'm treading lightly, I don't want to open up the door on something I'm doing illegal here.

MR. GRAHAM: Your buddy that puts those bodies on is probably not real happy with you right now.

MR. BARNWELL: I think there's an investigation coming on here.

MR. WALKER: I bought the trucks from you guys and I just told you what I needed to do my job.

(General talking and laughter.)

MR. KUNTZ: The next two groups of manufacturers or assemblers are not currently licensed in the State of Texas. So vehicles assembled in these
methods may not be titled and registered currently depending on the vehicle that they're assembling. So a manufacturer of on-track vehicles. On-track vehicles are not required to be titled and registered, therefore, the manufacturers of those vehicles are not required to be licensed manufacturers in the state. So if they are making a declaration that I'm not manufacturing on-road motor vehicles, then they do not have to comply with the manufacturing requirements.

Individuals that are home building, we do not currently license home builders, and I'm going to get into this in a little bit here. Then we have parts manufacturers, kit car part manufacturers, and then other parts manufacturers are not currently licensed. I will throw out one caveat on that, and that is for engines, and I believe Member Graham is probably aware of this. When you have engines that are manufactured for vehicles over 16,000 pounds, then the motor is then considered a motor vehicle and it's produced by a manufacturer and sold through a licensed dealer in the State of Texas.

MR. WALKER: 16,000 pounds?

MR. KUNTZ: 16,000 pounds is the threshold at which if you are selling motors for vehicles, for 16,000 pound vehicles, those have to be —

MR. WALKER: Wait a minute, hold on, you said
two different things now.

MR. KUNTZ: I'm sorry. Gross vehicle weight.

MR. WALKER: There's a difference between

16,000 pound motor.

MR. KUNTZ: Gross vehicle weight rating vehicle

engines.

MR. WALKER: I was going to say that's an awful

big engine.

MR. KUNTZ: Not the engine itself, no. Sorry.

So here's the different categories of

manufacturers.

MR. BARNWELL: Are you having fun up there?

MR. KUNTZ: I'm having a lot of fun. Are you

having fun?

MR. BARNWELL: I think you're enjoying this and

I just want to let you know I'm not.

MR. PALACIOS: He's just getting warmed up.

MR. KUNTZ: Just wait, it gets better and

better.

MS. HARDY: This show is getting better and

better here.

MR. BARNWELL: You're just having too much fun,

I can tell.

(General laughter.)

MR. KUNTZ: All right. Texas statutes, we're

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going to deal with Texas statutes first. Here's that
definition of a converter. It means a person before the
retail sale of a motor vehicle assembles, installs or
affixes a body, cab or special equipment to a chassis, or
substantially adds, subtracts from or modifies a
previously assembled or manufactured motor vehicle other
than a motor home, ambulance or firefighting vehicle. So
here's the definition under Occupations Code 2301.002

MR. WALKER: Stop right there.

MR. KUNTZ: Sir.

MR. WALKER: So now I'm at the red light,
there's one of these guys sitting next to me with one of
these cars that's got these jacks on it, up and down, up
and down, he modified with special equipment to the
chassis that lifts the chassis up and down.

MR. KUNTZ: Remember the first condition: he's
a person before the first retail sale.

MR. WALKER: Before the retail sale.

MR. KUNTZ: Before the retail sale.

MR. WALKER: So if I did it in my garage, I put
these air lifters on everybody else's cars.

MR. KUNTZ: You're taking a 1980 vehicle and
you're changing that vehicle, you're not a converter. If
you take a 2017 vehicle that has never had a title or
registration on it and you do that to it, then, yes, you
would have to be a converter.

MR. WALKER: But not if I bought it and then took it home and did it in my garage.

MR. KUNTZ: Buy it first, then it's already been subject to a first retail sale.

Manufacturers. So as we were talking about manufacturer, this is the definition under Occupations Code 2301: a manufacturer means a person who manufactures or assembles new motor vehicles -- there is an S at the end of that, that would mean more than one. That's going to be very important as we start looking at the federal definitions here in just a second.

Transportation Code 501, so these are some other codes that we're going to have to be aware of as we start dealing with this issue. This is the title chapter of code, Chapter 501. The first sale means a vehicle that has been transferred and has never been titled or registered, so this is the very first time that that vehicle is sold to somebody else, it's never been titled or registered before and is being sold.

A manufacturer's certificate of origin is required under 501.025 for that first sale. So the first time it's under retail sale, a manufacturer's certificate of origin is required. This is the birth certificate of a vehicle and it contains information about the make, model,
year, body style of that vehicle and whether it is intended for on- or off-road use. That's where many of these vehicle manufacturers make that declaration that a vehicle is for on- or off-road use.

The last section is 501.038 which defines a custom vehicle or street rod. It requires that a vehicle resemble a vehicle manufactured at least 25 years ago, and we'll get into that definition right now.

MR. BARNWELL: What does resemble mean?

MR. KUNTZ: You have hit the nail on the head. We're going to have a lot of fun with that one.

MR. BARNWELL: As Larry said, or Curley in The Three Stooges: I resemble that remark. I just don't have any idea about some of these words.

MR. KUNTZ: That is a very subjective word that is not currently defined. So a custom vehicle is at least 25 years old and of a model year after 1948, or manufactured to resemble a vehicle that is at least 25 years old and of a model year after 1948, and that has been altered from the manufacturer's original design or has a body constructed from materials not original to the vehicle.

Now, this is where it gets interesting. This is the Transportation Code 504.501, this is relating to the license plate for either a custom vehicle or street
rod license plate. The previous definition does not contain, so under 501 in the title it does not contain the language about it has been altered from the manufacturer's original design. The only language in 501 has language that it was manufactured to resemble a vehicle at least 25 years old. So currently under statute, the two sections of statute do not comport with one another. We have a section that allows for a license plate for a vehicle that has been materially altered but 501 does not allow for a title unless it resembles something. That's where that subjectivity of resembles starts to come into play.

MR. WALKER: So do we define the difference between a street rod and a custom vehicle?

MR. KUNTZ: A street rod is manufactured before 1949 or after 1948 to resemble a vehicle manufactured before 1949.

MR. WALKER: After 1948 but before 1949.

MR. KUNTZ: You've got one year.

MR. WALKER: That's correct. So you can only have a street rod for that one year?

MR. KUNTZ: That one year is the definition of a street rod.

MR. WALKER: So why do we say before and after, why wouldn't we just say manufactured in 1948?

MR. KUNTZ: Because it could be manufactured
after 1948 to resemble a vehicle that is from 1948.

MR. WALKER: I need another cup of coffee.

(General laughter.)

MR. KUNTZ: You could have manufactured it in 1984 to resemble a 1948 vehicle.

MR. PAINTER: So are you going to get into the situation of coming from out of state?

MR. KUNTZ: Yes, we're going to talk about that here in a second.

MR. PAINTER: Okay.

MR. KUNTZ: The United States Code, this is where it gets real fun. This is where we have spent an extensive amount of research. Manufacturer under United States Code. The United States Code is the actual federal statute, not the rulemaking, I just want to clarify that. We don't generally deal in the United States Code, but when we talk about Texas Administrative Code, we're talking about our rules. When you look at the United States level, the United States Code is actually their statute, then you get into their rulemaking after that, so this is actual law at the federal level. A manufacturer means a person manufacturing or assembling motor vehicles or motor vehicle equipment or importing motor vehicles or motor vehicle equipment for resale. Motor vehicle means a vehicle driven or drawn by mechanical power and
manufactured primarily for on public streets, roads and highways but does not include a vehicle operated on a rail line.

MR. BARNWELL: So a vehicle powered by a jet engine would not qualify. Is that right?

MR. KUNTZ: It's driven or drawn by mechanical power.

MR. WALKER: That's a race car.

MR. BARNWELL: Well, not necessarily.

MR. WALKER: They used to put those in race cars but they outlawed them.

MR. KUNTZ: The part that I would go to on that is manufactured primarily for use on public roads and streets. I don't believe there are too many manufacturers manufacturing vehicles with jet engines for on-roadway use.

MR. BARNWELL: Have you done any research into that? Are you sure? It could happen.

(General laughter.)

MR. KUNTZ: As far as my research has taken me so far, I've not found any manufactured jet engine cars.

MR. BARNWELL: I hate to make light of it, but this is way out there, all this stuff. So excuse me, I just can't help myself.

MR. KUNTZ: All right. Motor vehicle equipment
means any system, part or component of a motor vehicle as 
originally manufactured, any similar part or component 
manufactured or sold for replacement or improvement of a 
system, part or component, or as necessary or addition to 
a motor vehicle. This one is going to be very interesting 
here. If you are manufacturing components to be sold as 
replacements for original components, you are a motor 
vehicle manufacturer. I will rewind, a manufacturer 
includes manufacturing not just the motor vehicle but also 
motor vehicle equipment. So if you're making equipment, 
you are a manufacturer under the federal definition; your 
equipment must comply.

MR. PALACIOS: Let me go back to the previous 
slide. You had a parts assembler and you said they did 
not need to be licensed.

MR. KUNTZ: In Texas.

MR. PALACIOS: In Texas. So if they are a 
manufacture under federal, would they not then meet the 
same criteria for state?

MR. KUNTZ: If you are only manufacturing 
parts, under the State of Texas definition of a 
manufacturer, you are not licensed in the State of Texas 
if you are purely manufacturing parts. However, at the 
federal level your parts must be certified with NHTSA and 
comply with the safety standards.
MR. PALACIOS: Okay. So as I understand it then, if they meet the federal guidelines for a manufacturer, they do not need to be licensed necessarily in Texas as a manufacturer.

MR. KUNTZ: One does not necessarily lead to the other, they are two different standards, and there is not a license at the federal level, there is a self-certification. You must certify to the National Highway Traffic Safety Administration that your vehicle or its parts comply with the Federal Motor Vehicle Safety Standards.

MR. GRAHAM: So it's go to meet those standards and we don't license them.

MR. KUNTZ: Must meet the standards and you must comply. Now, there are other things, and we're going to get into those here in just a second, that you must them comply with.

MR. WALKER: What is a part? A mirror.

MR. KUNTZ: I cut this definition off. It actually continues to go on to include apparel, and you would ask yourself why is apparel, helmets and jackets for motorcycle riders are required to meet FMVSS safety standards for helmets and other safety equipment that is apparel.

MR. WALKER: An air freshener that goes into an
air conditioning vent that clips.

MR. KUNTZ: There is not a standard for air fresheners. So we're going to get into this.

MR. WALKER: Well, it attaches to the car.

MR. KUNTZ: Again, I want to make sure that we're very clear. You must only meet the standard for which a standard is applicable. So airbags, if you're manufacturing airbags you must meet the standard for airbags; if you are manufacturing tires you must meet the standard for tires; if you are manufacturing vehicles you must meet crash test ratings. So there is specific equipment that is covered by the federal safety standards. Not every single piece of equipment is covered by the standards. So carpeting in a motor vehicle, there is no standard for carpeting, so if you're manufacturing carpeting you would not have to comply with any safety standards. But if you are manufacturing a part covered or you are manufacturing a vehicle, you must meet those certification requirements.

I anticipate a question from Mr. Barnwell.

MR. BARNWELL: Well, I see that this is a labyrinth, this is a maze, and it's amazing. What I'm wondering is how does a state like Utah, which around Moab they've got all these off-road trails, they're less than 40 miles an hour, I think they've got some exceptions to
things.

MR. KUNTZ: We're going to talk about the other states here too.

MR. BARNWELL: But are they FMVSS?

MR. KUNTZ: We're going to talk about the other states in just a second. It depends, some of those vehicles are, some of those vehicles are not.

MR. BARNWELL: To me, it sounds like I'm a kid, you're a parent and you're trying to tell me about Santa Claus. Well, it depends, may be, we'll talk about it later. Just don't be the Grinch.

(General laughter.)

MR. KUNTZ: And I'm going to go back to the very first thing that I said, there are tentacles spreading off of this.

MR. BARNWELL: I knew you were having fun with this, I knew you were.

MR. KUNTZ: And it really depends on the every single specific vehicle and how it was assembled, and in our discussions with NHTSA that is exactly the response we have gotten from them. Each and every case must be taken on its own merit. You can't paint this with a broad brush and say all of these meet or all of these don't, you have to look at each and every vehicle and how it was manufactured and when it was manufactured.
MR. BARNWELL: Okay.

MR. KUNTZ: Prohibition on manufacturing and selling: a person may not manufacture for the sale, sell, offer for sale, introduce or deliver for introduction into interstate commerce or import into the United States any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard covered at that time.

Prohibition on manufacturing and selling: this section does not apply to motor vehicles or equipment after the first sale. So once it's been sold, you don't have to reapply and the new standard does not then cover. This is essentially a grandfathering clause.

Exported vehicles do not have to comply. If you are manufacturing in the United States for export only, those vehicles do not have to meet the standard at the time and you do not have to be certified with NHTSA. There are import vehicles that meet the standard, so if you have a manufacturer that already meets the standard or exceeds it, many of the vehicles from Canada already meet or exceed the standard in the United States, those vehicles do not have to meet the standard. Or imported vehicles that meet other certain exemptions. There is a
laundry list of other exemptions, I'm not going to get all the way into those. And then there's another exemption for motor vehicles that are at least 25 years old.

General exemption: a manufacturer may apply for an exemption under motor vehicle safety standards, so you can at any time apply to the Secretary of Transportation for an exemption from the standard. That exemption generally is due to economic hardship from having to comply with the standard. If granted, the manufacturer must affix a permanent label to the motor vehicle. The exemption is only good for three years, so you have three years to get into compliance and the exemption will expire.

There are also special exemptions. I'm going to caveat this with these special exemptions are currently in the United States Code. There is a rulemaking requirement and that rulemaking has not taken place as of this date. So this special exemption for low volume manufacturers is not currently in the rulemaking and so it is not currently in effect but it is in the federal statute; therefore, there is no such low volume manufacturer exemption today.

Low volume manufacturers can apply for an exemption if they do not produce more than 325 replica motor vehicles per year. Replica is intended to
resemble -- here's that word again -- the body of another vehicle manufactured at least 25 years ago before the manufacture of the replica, and it must be manufactured under a license from the original manufacturer. So if you come in and you're going to claim an exemption under the low volume manufacturer license, you must show that you have received trademark authorization from the original manufacturer to produce that replica.

MR. BARNWELL: If I want to make a replica Duesenberg, who the duce do I call?

MR. KUNTZ: Whoever holds that current trademark.

MR. BARNWELL: But nobody holds it.

MR. KUNTZ: If there's nobody, then it wouldn't apply.

MR. BARNWELL: What wouldn't apply?

MR. KUNTZ: That condition wouldn't apply.

MR. BARNWELL: It doesn't apply if you can't find somebody to license it.

MR. KUNTZ: If there is a current trademark or some kind of patent, any of those kinds of things under the federal law, for copyright infringement, trademark infringement, any of those kinds of things, you must show that you have received permission from the person holding that trademark before you can start producing that replica.
vehicle. That is actually a condition of a low volume manufacturer.

MR. BARNWELL: Okay.

MR. KUNTZ: If granted, low volume manufacturers must affix a permanent label to the motor vehicle. The Secretary of Transportation may require written notification of an exemption be delivered to the dealer and first purchaser of that vehicle. So once you sell that replica, you must provide that purchaser the exemption. Low volume manufacturers shall submit an annual report on the number of vehicles that they have provided the exemption to.

MR. PALACIOS: Jeremiah, can you explain again the status of these exemptions? Where are they? You're saying they're not enforced?

MR. KUNTZ: There's no rulemaking. The federal statute required rulemaking from NHTSA, and that rulemaking has not taken place yet.

MR. PALACIOS: Okay. So we're waiting on a board or something?

MR. KUNTZ: More to come.

MR. PALACIOS: All right.

MR. KUNTZ: So if we were to summarize the federal and state law, this is the way it works: under U.S. Code, if you manufacture the first vehicle, so
greater than or equal to one, you are a manufacturer under the federal guidelines and that vehicle must meet FMVSS in the year that it is manufactured; low volume manufacturer there is a threshold of less than or equal to 5,000; replica manufacturers less than or equal to 325; vehicle equipment is the same as a manufacturer, so it is at one part, if you will, so if you build one body, one chassis, you are an equipment manufacturer.

And then you go into Texas Code which is anything greater than one, so at two vehicles you would then be required to be a licensed manufacturer in the State of Texas. There is no threshold on when those vehicles are manufactured, that is a lifetime threshold. There's no condition that says one per year, it is one vehicle.

This is where it gets stringent so these were the questions about what if you're a licensed manufacturer. Well, if you are certified under the federal guidelines, these are the things that you must do once you produce a vehicle: designate an agent for service process; certify compliance with FMVSS; affix certification labels; submit identifying information within 30 days of manufacturing commencing; assign a VIN to a motor vehicle; provide tire information labeling; notify NHTSA of non-compliance or defects; notify owners
and dealers and provide remedy for defects, so this is when you have recalls; submit quarterly reports under early warning reporting, that's if you suspect there may be a defect, you must submit that under the early warning reporting; you must maintain all records of owners and purchasers; and you must comply with the average fuel economy standards.

MR. GRAHAM: Was that for Texas or federal?

MR. KUNTZ: That's federal. That's the first vehicle.

MR. GRAHAM: Okay.

MR. KUNTZ: So you manufacture one in 2017, all new parts, you must comply.

MR. PALACIOS: Does that also include the safety requirements, airbags, stabilitrack, backup cameras, and so forth

MR. KUNTZ: Federal Motor Vehicle Safety Standards, this is what we refer to as FMVSS safety equipment. These standards are what are in rule at NHTSA. This is a sampling of standards, there are other standards and these are ones that I picked out that are specific to actual passenger vehicles. There are specific standards for motorcycles, trailers, other things.

So controls and displays, Standard 101, controls and displays must be within the reach driver,
windshield wiping and washing systems must be present;
lamp reflective devices and associated equipment; rearview
mirrors must be present; hood latch systems must be
present; warning devices must be present; occupant
protection on interior impact, airbags.

MR. PALACIOS: Pardon the interruption,
Jeremiah. Just let the record reflect that Board Member
Walker has stepped out.

MR. KUNTZ: Impact protection for driver from
steering system -- again, these are standards for the
driver's airbags; seatbelt assemblies and anchorage must
be there; windshield mounting; side impact protection. I
have not put the applicable years in which these standards
would apply but they vary, so even though we have all
these standards, these are the present standards for 2017.
You must then go back and look at the older standards
because other standards applied during various years. So
the original standard for airbags did not come about until
1996, you then go back for seatbelts. Each standard has a
different year in which it was applied, so then you would
have to look at the year in which a vehicle was assembled
and manufactured to apply those different standards.

MR. GRAHAM: And that's all federal.

MR. KUNTZ: Yes.

MR. GRAHAM: But if I want to get a license in
Texas to manufacture a vehicle, I have to meet those standards too.

MR. KUNTZ: Yes.

MR. GRAHAM: And so the answer to my question earlier is it's very complicated to be licensed to be a manufacturer.

MR. KUNTZ: Yes. There are lots and lots of reporting requirements.

MR. GRAHAM: Now that I'm thinking back to when I asked the question, I was looking at a little pathway there as I think about trying to license vehicles that maybe if I just get a license to be a manufacturer it kind of gave me another route, but the answer is no, that's not happening.

MR. KUNTZ: And at the federal level, I go back to as soon as you manufacture one vehicle, you must meet this standard.

MR. PALACIOS: Is that the end of your business plan now?

MR. GRAHAM: Yeah. The Walker-Graham Vehicle Company lasted 17 minutes and it's dead.

MR. PALACIOS: Nice while it lasted.

MR. GRAHAM: Sorry, Johnny, it's over.

MR. WALKER: They shut us down already?

MR. GRAHAM: Yep, we're done.
(General laughter.)

MR. PALACIOS: Let the record reflect that Board Member Walker has returned, it's 10:04 a.m.

MR. KUNTZ: The other thing, obviously, as we discussed earlier too, once you are a licensed manufacturer in the State of Texas you can no longer sell direct to the public, you must use a dealer network in order to sell those vehicles. So then those other state standards then start to apply on top of the federal standards for the vehicle itself.

MR. GRAHAM: Got it. Thank you.

MR. KUNTZ: So all that being said, here are some excerpts, and this is not an extensive list of excerpts, so one of the things that we discovered as we started doing research is that NHTSA publishes letters in response to inquiries that they have received over the years from various individuals who are attempting to title and register different vehicles at that time. So we went back and researched, the oldest letter that we have is from 1968 with an interpretation specific to dune buggies at that time. The most recent ones are in the '90s and 2000s. There are lots and lots of opinions out there that have been put out by NHTSA; I've got a sampling of at least eight or nine in the back of my binder. They all build upon themselves, obviously, as the standards change,
the interpretations also, therefore, change, and so it is not an easy thing.

When we called and talked to NHTSA they basically said you have to look at each individual vehicle and then you also then have to take each one of these interpretation letters and take them all into context and apply them all together. So these interpretation letters start to build upon each other and they start to paint a picture and bounds around what can be done to a motor vehicle.

So this particular one there was a question about whether or not a dune buggy is street legal. The vehicle that is street legal, which is manufactured for use on public roads, is required to comply with all applicable Federal Motor Vehicle Safety Standards. These standards include the requirement for airbags. This was a 1990-something requirement; this letter came, I believe, in 1999. There was a person that had requested information, I guess they were from Hawaii, and as best we can tell, they were manufacturing new dune buggies, and there's a lot of folks that would refer to these as sand rails, the things that are more pipe constructed, and they were asking if that specific vehicle needed to meet all the current FMVSS standards. NHTSA's response was: Yes, they do if they are intended for on-road use; if they were
for off-road use, then, no, they would not. They also said that the manufacturer would be required to apply VINs to those vehicles to identify the specifics of that vehicle and how it was manufactured.

MR. GRAHAM: So street legal, we have some exceptions for UTVs, I believe, that they are street legal. Right?

MR. KUNTZ: So we have some exceptions in state law for particularly golf carts, ATVs, ROVs. Those specific exemptions to allow them to be operated on the roadways are limited in use and where they can be operated and they are limited in the speed limits in which they can be operated. Many times what you'll see in these federal interpretations is vehicles that are able to attain a speed of greater than 25 miles per hour, and anything less than that would be considered a low speed vehicle, and therefore, they have different requirements. Our state law allows those low speed vehicles to be operated only in limited instances. Obviously, you cannot take a golf cart out on Interstate 35 and operate it because it's not able to be operated at those speeds or be safe for operation in that instance.

MR. GRAHAM: Gotcha.

MR. WALKER: Well, they just passed a bill in the last legislative session for UPS and package delivery
people to use vehicles on city streets.

MR. KUNTZ: Those have limited conditions on where they may be operated and the use in which they can be operated.

MR. WALKER: They can go more than 25 miles an hour.

MR. KUNTZ: Again, they can only be operated on certain roadways that have a speed limit less than 35 miles an hour.

MR. GRAHAM: Got it.

MR. WALKER: So let me ask another question to dirty it up some more. What about trailer manufacturers?

MR. KUNTZ: What's the question?

MR. WALKER: Do they fall under these same guidelines?

MR. KUNTZ: There are specific standards for the manufacture of a trailer. Generally what you see is tires, brakes, so if it's a trailer that's going to have electronic brake controllers on it, those brakes would have to meet the standard for breaks.

MR. WALKER: Do I have to have a license to make trailers?

MR. KUNTZ: If it has brakes, and if you are manufacturing trailers in the State of Texas and you manufacture more than one trailer, yes.
MR. WALKER: So if I manufacture more than one trailer in the State of Texas, or it doesn't matter where you manufacture them because we can go back to the Warren Buffett deal, but what is the requirement on dealer versus selling them yourself? Do I need to be a --

MR. DUNCAN: David Duncan, general counsel. If you're a manufacturer in Texas, you must have a dealer network, whether you're here or not.

MR. KUNTZ: Even for trailers.

MR. WALKER: So a gooseneck trailer manufactures trailers in Bryan, Texas, and they have a dealer network, but I can still go to the factory and buy a Gooseneck Trailer in Bryan, Texas directly from them.

MR. BARNWELL: That's right.

MR. WALKER: I know that.

MR. BARNWELL: Me too. And that's not just them.

MR. WALKER: Well, they all sell them that way.

MR. BARNWELL: All of them are that way.

MR. WALKER: If they are a licensed manufacturer, they should not be selling direct to the public.

MR. GRAHAM: So now you don't have anybody to get your truck bodies from, nor are you getting any trailers anymore. I mean, you're just doing good down
there.

MR. BARNWELL: You've pretty much screwed this up.

MR. WALKER: I need to leave Texas.

(General laughter.)

MR. DUNCAN: And that is the case with RV manufacturers as well. We have one very rare exception in Texas that there is an RV manufacturer that sold way back when and there's a specific exception for them in 2301.476, but absent that, no. No trailer manufacturer or RV manufacturer can sell direct.

MR. BARNWELL: So what the trailer manufacturers are probably doing is they have an in-house dealer, and they sell to the dealer and the dealer then sells it to you. It just happens to be adjacent to the plant where it's manufactured. Would that be legal? We'll ask Daniel.

MS. HARDY: Somehow they're probably reporting using a dealer.

MR. BARNWELL: Yeah, they're using a dealer because they're manufacturing thousands of trailers a year.

MS. HARDY: Even though it looks like they're selling direct to you.

MR. BARNWELL: Yeah, you think it's direct.
MR. PALACIOS: Let's try to stay on focus here, if we could.

MR. AVITIA: Member Barnwell, to answer your question, if there is a manufacturer of trailers -- and hopefully, Johnny, this answers your question as well.

I'm sorry. For the record, Daniel Avitia. If you are manufacturing trailers in Texas, yes, you are required to have a license. Can you co-locate with a manufacturer, meaning a dealer co-locate with a manufacturer, I'm not sure that they can co-locate but they might be right next to each other, and that dealer that is authorized to sell those manufactured trailers could be right next door, and that may be the situation.

MR. WALKER: Okay. I can dirty the water for you real good.

MR. PALACIOS: You already have.

MR. WALKER: I'm just going to tell you that I bought trailers, and so Lufkin Industries -- which is no longer in business today -- manufactured trailers in Lufkin, Texas. I bought trailers directly for 25-30 years directly from Lufkin Trailers without going through a dealer network, you buy directly from the factory.

MR. AVITIA: Are they still in business?

MR. WALKER: No. But they didn't shut down
because of that. That's the reason I'm using them as an example.

MR. AVITIA: So technically they are not allowed to sell direct unless they have, as Mr. Duncan, our general counsel, specified, a legislative exemption to sell direct, such as the RV manufacturer. That would be an enforcement review through Director Thompson's office.

MR. WALKER: That's why I used somebody that's not in business anymore, and they're not in business because they got shut down, they just shut that plant down.

MR. PALACIOS: Okay. If we could, can we get back on track. This is a very complicated issue and we have public comment here, and I want to give all attention to the pertinent matter.

MR. KUNTZ: So the next excerpt that we took from a NHTSA letter specifically discusses the issue of kit cars, and I know that there's a lot of folks that talk about kit cars, and so this, I think, is very relevant to the discussion that we'll be having here. There was a question as to whether or not putting a motor and transmission into a kit car that was purchased from a kit car manufacturer would require that person to be a certified manufacturer at the federal level. It's very clear: We would regard the person installing the engine
and transmission of a kit car, whether the kit car purchaser or commercial entity as a manufacturer of the vehicle and responsible for its compliance with Federal Motor Vehicle Safety Standards, and the assembler of a single kit car is a manufacturer. They explicitly opined on that issue.

A person who assembles a kit car which did not comply with the Federal Motor Vehicle Safety Standards and then drove the vehicle on public roads would be in violation of that section. In addition to facing federal enforcement action in the event of a crash, there could potentially be liability issues both for the assembler of the kit car and for the kit car manufacturer. This letter ended basically with: I would suggest that you seek legal counsel. This is a more recent letter that was received, so this is not an old one from 1968, this is a more relevant and new one.

This is where the problem starts to get murky. If you take all parts from a kit manufacturer and you assemble them in your garage, you are now a manufacturer under the federal guidelines and liable for that vehicle for the life of that vehicle.

MR. WALKER: As long as you've got a license.

MR. KUNTZ: Whether you have a license or not, you're liable for that vehicle and its operation on the
roadway. You built it and put it on the roadway, you put it into interstate commerce, you are liable for anything that happens with that vehicle there forth.

MR. PALACIOS: Do we title vehicles like that, these kit cars?

MR. KUNTZ: This is where the custom vehicle and street rod discussion gets very interesting. Our state law allows somebody to title and register this vehicle; our state law does not exempt you from your liability as a manufacturer under federal law. So our law says, yes, you can assemble a kit car that resembles a 1965 Shelby Cobra. There are kit car manufacturers that will sell you the rolling chassis and body, all you have to do is drop an engine and transmission in it. Our state law will allow you to title and register that vehicle. You are still a certified manufacturer under the federal guidelines and you must comply. If you assemble it in 2017, it has to have airbags.

MR. PALACIOS: Now, under that scenario, we would not have licensed this person to manufacture the vehicle, however --

MR. KUNTZ: There is a difference in the number of vehicles, and that's why I was trying to be very clear. In state law it's more than one vehicle, at the federal level it's the first vehicle. So if you build one, under
state law you're not required to be a licensed manufacturer. Our state law also allows you to title and register that vehicle as long as it resembles a vehicle older than 25 years. But under the federal law you are still required for that first vehicle to certify it met FMVSS in the year in which it was assembled. There's two dates that FMVSS applies: the year in which you purchased all of the parts to assemble it, or the year in which you completed assembly. Those are the only two dates that you may use to determine whether FMVSS applies.

So if you manage to prove that you purchased the kit in 1968 but you didn't finish completion until 2017, then FMVSS would not apply. But if you purchased a full kit with all new parts in 2017 and you completed assembly in 2017, the standards of 2017 apply, therefore, you must have airbags, all the brake controllers, everything that is required of a current model year vehicle must be in that kit vehicle.

MR. PALACIOS: However, the issue is we will title and license that vehicle. Is there any, I guess, provision that there's verification that that kit car has met these standards? Again, we don't have a licensed manufacturer.

MR. KUNTZ: That is where it gets murky. The specific state law muddied that water and put in a
provision that said that the state will only deem that it was required to meet the standards in the year which it resembles. So our state law is not in tune with the federal law on that aspect, so it allows it to get on the road.

MR. GRAHAM: So tomorrow I order one of those kits, I build a car, the state will title it and license it and I can drive it on the road legally in Texas, and then any issue I have with the federal government is between me and the federal government, it doesn't involve licensing and registration.

MR. KUNTZ: That's correct.

MR. WALKER: Only one, though, and you're liable for it for the life of it.

MR. GRAHAM: Sure. Understood. So that's how it works today?

MR. KUNTZ: That's the way it works today for custom vehicles and street rods. I'm being very specific: for custom vehicles and street rods which have that little provision you must resemble something.

MR. BARNWELL: You know, Jeremiah, there's a television show on now where they have all these hot rod guys, some in Austin, some all over the place, and they're building these hot rods. Are these people in flagrant violation of the federal law?
MR. KUNTZ: Most of those shows, and I watch many of them --

MR. WALKER: Jessie James.

MR. BARNWELL: That's one of them.

MR. KUNTZ: Gas Monkey Garage, watch all these shows. In most of those cases what they are doing is reconstructing a vehicle. They are taking a previously manufactured vehicle and they are making modifications to the body, they may be making modifications to the chassis, adding better brakes, better suspension, those kinds of things, but ultimately, at the end of the day they are reconstructing a previously manufactured vehicle.

And even when we start to look -- and we'll get into this a little bit -- there are other letters of interpretation here -- and this is where the water gets real murky -- on when you start merging old and new parts. And that's where we're having a lot of trouble because there's not clear direction on at what point does it cross that threshold -- Member Walker, to your earlier point -- is it when I cut the top off of it and make it a convertible, is it when I have stripped it down to the chassis, is it that I've actually made changes to the chassis.

We have one letter that seems to indicate that NHTSA is very concerned with the chassis, braking system
and component parts that were originally manufactured on that vehicle and less concerned with the original body. However, on some of these instances, what they've done is they take the chassis, chop it in half and shorten the wheelbase, at which case NHTSA then says you've materially altered the original configuration and design. One of the interpretation letters says that if the chassis is taken away from the body but the original body could be easily reassembled to that chassis at a later date and time, they would not consider that chassis to have been materially altered, and therefore, it would still be a used vehicle subject to only the provisions that applied at the time that that chassis was manufactured.

But again, I'm trying to be very clear here, we have many instances of different types of vehicles. I think we've got folks that are going to come up and testify to their assemblage of different used manufactured parts. It is very different in the federal guidelines, as far as we can tell, if you are taking, and many of these are 1966 VW Bug chassis, very few standards applied in 1966, however, if you take a Chevy Cobalt from 1999 and you take the chassis from a Chevy Cobalt, the standards of 1999 still apply to that chassis. Just because you've taken used parts doesn't mean that that vehicle is somehow alleviated of its safety requirements, and what NHTSA is
saying is if you materially change the component parts
that were applicable in 1999, then you have now assembled
a new vehicle, whether you've used used parts or not.

And so that's where each and every vehicle has
to be looked at individually to make that determination
because it depends on what parts you've used, what vehicle
those parts originally came from, was there a standard in
place for that year, and then did you change, did you take
something away from that vehicle that would have applied
in that year that you're taking the parts from.

MS. HARDY: And any parts that's modified.
Right? If it's a GM Genuine Part, we wouldn't be liable
for that either. Right?

MR. KUNTZ: Or if you have a manufacturer of
aftermarket GM parts, that new manufacturer is now liable
for the parts because they certify those parts comply as a
replacement part to that vehicle. So if you change that
part, the person that changes that part must certify that
that part meets the standard for the year in which that
vehicle was developed.

MR. WALKER: So Jeremiah, and Raymond, let me
ask a question. I know what you're doing is FYI and
there's no vote here. What's the end goal today? Are we
trying to say that there's issues that we need to address,
that the Board needs to create a committee to look at.
MR. PALACIOS: I'll address part of it and let Jeremiah. This whole issue came up, there was a request to title and register dune buggies and it seemed like a simple premise, but as we dug deeper into this we saw that this is much, much more complicated than the initial question as it presented itself. The purpose of this briefing, if you will, is that, to brief Board members as to what the issues are. As you can see, it is very, very complicated. Once we answered one question, we got into various other elements of the federal requirements, manufacturing requirements.

MR. WALKER: It's like a cancer spreading everywhere.

MR. PALACIOS: It's very, very complicated. And we will hear public comment, as well, to get the viewpoints of people from the community.

MR. WALKER: What I'm also hearing, though, is that this is a lot of statutory issues.

MR. PALACIOS: And federal as well. It's all complicated. My premise, I think our guiding principle in decisions we make regarding these types of vehicles -- and again, I'm speaking as chairman -- is that our guiding principle should always be the safety for the citizens of Texas when we look at this. Again, it's complicated. I can't even give you a simple summary of this, but as I see
it, once we title and register vehicles, what we are saying, in essence, is these vehicles are street safe, and that for me is what we need to look at as our guiding principle behind all of these discussions is are these vehicles street safe, do we comply with federal requirements, manufacturer requirements and so forth.

But again, that is as simple as I can put it, and again, we are not making decisions today. There's no way we're going to be able to resolve anything. This is primarily to give the Board a briefing. Yes, to answer your question, Board Member Walker, we will move forward with this with a work group which we've discussed. We haven't really gotten into the details as to who will be on this work group and so forth, but that is the plan going forward.

MR. WALKER: It's a pretty complex issue.

MR. PALACIOS: Yes.

MR. KUNTZ: So I'll continue through, I'll try and move rapidly.

MR. PALACIOS: Again, I hate to interrupt again. In four minutes, at 10:30 we'll take a break, but Kate has left the room at 10:24 a.m.

MR. KUNTZ: I'll try and move through this quickly to try and wrap this up. There's a lot of questions about what do other states do, so is there some
other state that could provide us kind of the answer to this. David wanted me to do this joke: It's all over the map.

(General laughter.)

MR. PALACIOS: Let the record reflect it is 10:26 and Board Member Hardy has returned.

MR. KUNTZ: So there are six states that allow for titling and registration of dune buggies, four states allowing for titling of dune buggies for off-highway use, two states will title and not register dune buggies, 13 state that they will title a dune buggy if it meets FMVSS standards, three states will not title or register dune buggies, Texas being one of those, and then 22 states did not respond. I want to address this very clearly for the audience as well. This was a survey that was done in 2015 of all the states and asked them does your state title and register vehicles. We did not go out and look at their statutes. We relied upon what they told us at the time.

So there are a lot of people in the public that are saying, well, hey, I've got a title in this state, or hey, I've been able to do something in this state. These are the responses that we received from those other states. I'm not going to state to you that I have researched every single law in all 50 states. I'm relying upon the DMVs in those states to give us the answers as to
what they do in their state.

And I will tell you this, this is part of what has caused this issue, just because somebody has been able to obtain a title and registration in a state does not necessarily mean that that state is authorized to do that. I will tell you right now that we have dune buggies that have title and registration in our system today. That is what caused this issue. There was a title that was revoked that then caused a lot of these folks that are here today to petition the agency to stop that practice. We are not currently revoking those titles today, but clearly, under our administrative rule a dune buggy is not allowed to be titled in the State of Texas, but people have been able to get through the system by various methods. And by various methods I mean that they may not disclosed that they had made material alterations to their vehicle in order to obtain title.

MR. WALKER: So the reason you have a title is to prove ownership. Right?

MR. KUNTZ: Correct.

MR. WALKER: Well, tell me the difference between number two and number three, it says title for off-highway only, and it shows one, two, three, four states on that.

MR. KUNTZ: I will give you an example.
MR. WALKER: And then title only. What's the difference between the two?

MR. KUNTZ: Very little. In the State of Texas we specifically brand titles as off-highway use only, so like an ATV or an ROV that is titled in Texas, that person will get a title and on that title it will say: This vehicle is for off-highway use only. We brand it as such. Other states may title it but they don't brand it, but they also will not issue registration to that specific vehicle. So it's just a matter of whether that state applies a brand or that they responded to us that they provide a brand.

MR. WALKER: So what's the downfall of issuing a title?

MR. PALACIOS: Board members, we've been going at this for two hours, so if it's your pleasure for us to take a break or let Jeremiah finish.

MR. WALKER: How much longer are you going to be?

MR. KUNTZ: I've got a few more slides that I can try and crank through here.

MR. BARNWELL: That's about an hour and a half.

MR. KUNTZ: I won't take an hour and a half.

(General laughter.)

MR. PALACIOS: Okay.
MR. WALKER: But my question is wouldn't it be beneficial for the state to have a title because every time they transfer the title we collect sales tax?

MR. KUNTZ: That is potentially one solution that could be offered. Yes. Again, I want to caution against us trying to come up with solutions at this point in time because I want to come up with a recommendation, getting input from the community here, because I want to make sure we're not doing something that does not meet their objective. If it's not going to provide them benefit to title it without registration, I don't want to burden these people with having to get titles to something that can't be operated on the roadway. So they may not see a title as beneficial, they might, I don't know yet until we go and talk to all of them.

MR. WALKER: How do you prove it's yours?

MR. KUNTZ: Again, you will have to go through some kind of process to obtain a title. There will be requirements that have to be met in order to obtain a title, and so if the ultimate goal is to operate them on the roadway and the title doesn't get them to that ultimate goal, why subject them to those requirements and have them go jump through a bunch of hoops to obtain title that doesn't do them any good?

So again, this just rehashes vehicles that are
not eligible for titles under our rules: vehicles that are
missing or stripped of their motor vehicle frame or body;
determined by the department to be a dune buggy;
determined by the department to be for on-track racing;
determined by the department to be for off-road use; or
vehicles that are constructed from non-repairable motor
vehicles.

The last section I'm going to go over is best
practices from the American Association of Motor Vehicle
Administrators. I'm going to zip through this as to not
take up a bunch of time. Most of these best practices we
already adhere to. There are a few, and I'll highlight
those.

Assigning the model year as a year of
inspection. So today we assign a model year on the model
year that it was manufactured, not when it was inspected.

There's a best practice for specially constructed
vehicles, which a lot of these would fall into, the best
practice is to assign the model year. They would say go
get, in our instance, an ASE certified master mechanic
inspection. The standard at the federal level is put the
year in which that vehicle is inspected; we don't do that,
we put the year in which the person says it was
manufactured, the manufacturing was completed.

The next one for reconstructed vehicles is to
require and maintain file of certification by a professional engineer. We don't require a professional engineer, we require an ASE certified master mechanic inspection, so we are slightly different than the standard from AAMVA, we still have an inspection that's looking at the roadworthiness of the vehicle, it's just not by a licensed engineer.

The next one is a continuation of reconstructed vehicles, and it is to designate on the title record that an engineer's report is on file. Obviously we don't have an engineer's report, but we also do not put that into the title record. We have the actual certification report in our FileNet system but if you were to just look up in the record on our system, it's not going to have an indicator that says there's an inspection on file with the department. So we do not do that standard.

The next is the best practice for replica vehicles. These are those vehicles that resemble another one. Require an inspection based on on-road use. The standard contemplates that you would have certain vehicles that are only for parade use versus vehicles that are going to be operated as a daily driver or be operated outside of parades and exhibitions. We don't do that at the title level, we do have antique vehicle license plates but that is after the title has already been issued and
then that vehicle has been deemed for antique use only. They receive a special license plate and a discounted registration of $10 per year, but that is not related to the mechanical roadworthiness or whether or not it's in the title. We don't do that at the time of title.

This is also a continuation of replica vehicles. We do not put the year, make and model of the vehicle of primary designation on the title. So if you replicated a 1965 Shelby Cobra, we would put 2017 as the year of manufacture, we would have ASVE as the vehicle make, so that would be an assembled vehicle make, and then in the remarks it would be branded 1965 Shelby Cobra Replica, so that remark is down below the actual indicators in our system. That is a differentiation from the standard from AAMVA. Designate on the title that the engineer's report is on file. Again, we've covered that already.

MR. PALACIOS: How do you define the make and model of that vehicle? Is it replica?

MR. KUNTZ: Yes. It's going to be ASVE which would be assembled vehicle is the designation in our terminology, and so if it's a Ford replica, then it would be 2017 Ford ASVE as the make, and then in the remarks we would actually put the year that it resembles, 1965 Ford Shelby Cobra Replica.
MR. PALACIOS: Okay.

MR. KUNTZ: And then establish a procedure for owner to certify the vehicle is for shows and parades. We've gone over that, we don't do that at the time of title, we do that for license plates, and so therefore, we differentiate from the standard on that.

So this brings us to the recommendation, and we've already discussed this recommendation. At this time our recommendation would be to convene a working group. The working group would be charged with evaluating state and federal regulations relating to the assembled and reconstructed vehicles, and then make recommendations for possible statutory and administrative rule changes.

With that, we're done. It didn't take me an hour and a half to get through those last slides.

(General talking and laughter.)

MR. PALACIOS: Before we get into public comment, let's go ahead and take a break, come back around 10:45.

(Whereupon, at 10:37 a.m., a brief recess was taken.)

MR. PALACIOS: Okay. Let's reconvene, folks, and get this show moving forward.

We will now take comments on agenda item number 7. I'd like to remind everyone who signed up to speak
that you'll have a total of three minutes to comment on this item. Our timekeeper will remind each speaker when they have one minute left and when their time is up, as well with signals on our timekeeping device. And I just want to welcome you here. Your input is greatly appreciated. As you can see, it's a very, very complicated issue, and we certainly welcome your input and feedback on this topic.

First let me call up -- we have, I believe, four speakers on this issue, and let me begin with Mr. Justin Sullivan.

MR. SULLIVAN: Thank you for the opportunity to speak today. I'm going to try and go very quickly.

MR. PALACIOS: Let the record reflect Board Member Barnwell has stepped out.

I'm sorry, sir. Please proceed.

MR. SULLIVAN: We provided packets to each of the Board members. They're very simple; I will be referencing a couple of pages.

My name is Justin Sullivan. I have recently completed construction on an assembled vehicle.

January 2015 to August 2017, these dates refer respectively to the issuance and subsequent revocation of our titles and registration. I'd like to explain briefly just what happened in those 31 months.
First, due specifically to the successful registration of these vehicles, a brand new Texas small business was created. Next, that small business went on to ship dozens of these new chassis kits all over America. As can be expected, many of these kits went to customers right here in Texas, and I was one of them. The ability to be street-legalized in Texas was the single biggest consideration in my search for a kit vehicle. I found one that was legal, sold off all my other projects, and purchased it.

I took delivery of multiple boxes of parts and pieces, I spent hundreds of hours and thousands of dollars making it exactly the way I wanted it, which is why anyone would ever attempt to build their own vehicle. Finally, finished I headed to my local DMV office.

MR. PALACIOS: Sorry. Let the record reflect that Board Member Barnwell has returned. And I will add some time to your presentation.

MR. SULLIVAN: No problem.

I finished and I headed to my local DMV office with a large binder of supporting material. The fees were paid and the paperwork was filed. I left feel ecstatic, which may be the first time that has ever been said about a trip to the DMV office. Many months passed, it was successfully insured, no problems whatsoever.
Then out of nowhere revoked. I vividly remember getting that letter from this department. Everything I had worked so hard on was now worthless. Surely this is a mistake, I thought. Why me, and more importantly, why now.

In the packet provided, if you'd please turn to tab number 5 you'll see a copy of the letter that I received. I'd like to address two of the concerns specifically in that letter. One, "The department has determined that the DF Goblin does not meet Federal Motor Vehicle Safety Standards." We've heard a lot about that today. While this is not entirely true, it is entirely irrelevant. The majority of the parts installed in the Goblin are removed from Chevrolet Cobalt sedans.

NHTSA has said on multiple occasions that since these kit cars are built from used components, that current Federal Motor Vehicle Safety Standards do not apply. And I want to stress the following point, this is not a federal problem. Many, many other states are currently registering these exact vehicles. That's something Mr. Kuntz touched on. But as it stands right now, this is a Texas DMV issue.

Second, the department has concluded that your vehicle is not an actual replica of a 1958 Lotus, which is what the title and paperwork reflect. If you'll turn to
tab number 6, please. You've read this today already: a custom vehicle is a vehicle that --

(Timer buzzed.)

MR. SULLIVAN: 60 seconds, please?

MR. PALACIOS: You have time. Please.

MR. SULLIVAN: A custom vehicle that is manufactured to resemble a vehicle or that has been altered from the manufacturer's original design.

Let's examine this use of the word "resemble" as we've based all of our work and registration off of it. Miriam Webster: to be like or similar to. "He resembles his father" is the given explanation. Google's example sentence takes it a step further writing "Some people resemble their dog."

I find the next clause even more interesting: that has been altered. In fact, it seems the manual is requiring alteration, exacting distinguishable replicas would not be legal under these specifications.

Number 6 you'll see three photos. The first is a Caterham 7. It is probably the most popular kit vehicle ever produced. Apparently it does resemble a Lotus roadster. The immediate next picture is my vehicle, the DF Goblin. Lastly you'll see a picture of the original Lotus vehicle.

Are there differences? Yes, of course there
are. We've had many, many upgrades that have happened in the last 60 years, we don't use drum brakes, we use disc brakes all the way around, a factory General Motors fuel system is used, as well as engine and transmission. There are some additional safety roll bars, chassis modifications that have been made as well. Again, fuel system is all factory GM, and there have been some changes, however, I don't believe you'll find any person alive who more closely resembles their dog than my vehicle resembles the Lotus it was registered as.

The entire set of rules deals with the visual appearance of something. I don't understand this. There's really no law, statute or legislation dealing with modifying the appearance of something, so that is a question that we've brought up multiple times.

I spent well over a year working till 3:00 a.m. building this vehicle, I did over $20,000, and to have all of that stripped away is pretty frustrating. So we really want to come and we want to work with each person in this room to get a common understandable set of standards. There are many VTR Form 64s, the safety standard for assembled vehicles. My vehicle completely passed that and passed all individual requirements in that, therefore, it is a safe vehicle. So as you touched on previously, what else do we need to worry about?

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MR. PALACIOS: Thank you for your time, Mr. Sullivan. We certainly share your desire to come up with common standards, standards that are transparent that we can all adhere to, and I can assure you we’ll work with all the stakeholders towards that end.

MR. SULLIVAN: I'll be happy to answer any questions you might have.

MR. WALKER: I've got two questions.

MR. SULLIVAN: Yes, sir.

MR. WALKER: Where are you from?

MR. SULLIVAN: I am from South Austin.

MR. WALKER: From where?

MR. SULLIVAN: South Austin.

MR. WALKER: Oh, so you're from here local. And I'm trying to follow you, did you put this together, this whole deal?

MR. SULLIVAN: Our group did. Yes, sir.

MR. WALKER: And so this 7, this car right here, this is your car?

MR. SULLIVAN: No, sir. That is the original we are attempting to replicate.

MR. WALKER: And which car is your car?

MR. SULLIVAN: The second photo.

MR. WALKER: The blue car right here?

MR. SULLIVAN: Yes, sir.
MR. WALKER: So that's your car. And so your comments to us, I guess, are that you built the car and you can't get it on the street. Right?

MR. SULLIVAN: Except I had it on the street for several months and then I didn't.

MR. WALKER: Did you get a ticket?

MR. SULLIVAN: No, sir. I got my license and registration revoked.

MR. WALKER: Your license? Not your driver's license.

MR. SULLIVAN: No, sir.

MR. PALACIOS: Did you have a second question?

MR. WALKER: Well, that was my question.

MR. PALACIOS: Okay. Just one point of clarification, Mr. Sullivan. The frustration that you had discussed regarding your visit to what you said was the DMV office, that was actually a county office.

MR. SULLIVAN: My license plate did come from the county office. I didn't have any frustrations in that office, that went fantastically well.

MR. PALACIOS: Great. Thank you for that.

Jeremiah, for my benefit, what was the specific reason we revoked the title and registration on Mr. Sullivan's vehicle?

MR. KUNTZ: I would have to go back and
actually look at that record and pull the history on that.

MR. SULLIVAN: The photo is in the packet.

There were two specific reasons, which I'd be happy to readdress, if you'd like.

MR. KUNTZ: I know that there has been reviews of different titles, looking through our system, and certain vehicles -- we regularly get new vehicles that are coming into the system, and I say that in that the counties will regularly title and register vehicles, the system is not locked down so tight that you cannot enter a vehicle into the system that was not produced by a manufacturer, so it will allow a county to enter that vehicle in. Through normal reviews of those transactions, we will identify at times vehicles that have made their way into the system that are not currently authorized under our rules or under our statutes to have that title and registration.

I can think of a prime example which is a vehicle known as the Ariel Atom. It is a track vehicle, it is produced by a manufacturer, they are a turnkey track vehicles, they are only operated on racetracks. There have been times where individuals have managed to get those titled and registered. When we see those come across as an Ariel Atom and we find them in the system, we go in and revoke them because we know them to be an on-
track vehicle, not a street legal vehicle.

MR. PALACIOS: Okay.

MR. KUNTZ: There's always instances where we are reviewing and revoking titles. It is regular course of business, unfortunately, up in our title section to review transactions and revoke transactions that do not meet our standards.

MR. BARNWELL: What is the recourse for a person in this gentleman's position?

MR. KUNTZ: David, would you like to speak to recourse for title determinations?

MR. DUNCAN: He could bring a title suit, he could request that a court review that. You can always petition us and ask us to revisit a decision that's made at the staff level. Obviously, at least it doesn't appear that Jeremiah was made aware of this one. We like to review things internally before we tell people to go file a lawsuit. I had not heard of this specific example, and I'm sure Ms. Brewster had not either, since Jeremiah had not. So we prefer to do internal reviews of agency actions first, and then if worse comes to worst, you can always appeal an agency action to district court.

MR. BARNWELL: Have you done that?

MR. SULLIVAN: No, sir. I hope to solve it here first.
MR. BARNWELL: Well, we can't solve anything with a comment here today, we can't take that action.

MR. SULLIVAN: I understand.

MR. BARNWELL: I would recommend that you talk to staff who are professional and they're going to try to do what they can.

MR. SULLIVAN: This is nowhere near the first discussion. I want to thank Mr. Kuntz, Ms. Love and Ms. Brewster for the past six months of discussions we've had.

MR. PALACIOS: Thank you for that.

On other point, the county that you had the bad experience, it was not Hays County. Is that correct?

MS. CARAWAY: If it was a good experience, it was Hays County.

MR. PALACIOS: Right.

(General talking and laughter.)

MR. WALKER: Do you have seatbelts in this car?

MR. SULLIVAN: Yes, sir. We have factory General Motors seats and seat restraints in the car.

MR. WALKER: When you say we, you don't own this car individually?

MR. SULLIVAN: There are many members that have the exact same vehicle that I do.

MR. WALKER: I'm asking about your car.

MR. SULLIVAN: Oh, yes, sir.
MR. WALKER: You own your car. Right?

MR. SULLIVAN: Yes, sir.

MR. WALKER: And so let me ask -- and I can
sure appreciate your frustration with building something
and you can't use it -- where would you drive that car
right now?

MR. SULLIVAN: It is insured as an occasional
use vehicle, just like a few of my other historic vehicles
are.

MR. WALKER: Where could you drive that car
right now?

MR. SULLIVAN: Previously to getting my title
revoked, I could drive it on any street in Texas.

MR. WALKER: Where can you drive that car
today? I'm asking the question today.

MR. SULLIVAN: Right now it cannot leave my
garage.

MR. WALKER: You can't drive the car today
anywhere.

MR. SULLIVAN: It will be impounded if seen on
public roads.

MR. WALKER: Unless you took it to HEB parking
lot and did loops in the parking lot.

MR. KUNTZ: It could be operated on a track at
this point, private property, not on public roadways.
MR. SULLIVAN: Which involves trailers. I don't race.

MR. WALKER: I mean, I see your frustration, but I also get we don't want cars on the road impeding safety with other cars out there where you could hurt somebody.

MR. SULLIVAN: The safety you have now in Form VTR-64 and one other 58-something -- I'm sorry, I don't have that note in front of me -- that does a very good job at checking each of the requirements on the vehicle and providing a very solid baseline of safety. It checks everything from the headlights being DOT approved, my wheels and my tires are DOT approved, and then the vast majority of running components, brakes, engine, transmission, all of this was removed from a General Motors vehicle, a common Chevy Cobalt.

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

MR. SULLIVAN: Thank you.

MR. PALACIOS: Our next speaker is Mr. Lonny Doyle. Will you please come forward?

MR. DOYLE: Good morning.

MR. PALACIOS: Good morning.

MR. DOYLE: For the record, I'm Lonny Doyle. I'm from Red Oak, Texas.
MR. WALKER: Where?

MR. DOYLE: Red Oak, close to Waxahachie.

My wife and my oldest son and I own DF Kit Car, we manufacture the Goblin kit.

I've got some packets here, if you would like to see them.

MR. PALACIOS: Sure.

MR. DOYLE: Three and a half years ago, my son and I started spending our nights and weekends working on a street legal car for our personal use. We were inspired by a kit car builder that used to manufacture a modern Lotus 7. After eight months of design and fabrication work, the first Goblin was finished. Just like a Lotus 7, our car was an open top, open wheel, exposed front suspension, and it was lightweight with minimal body work. Unlike the Lotus 7, it uses modern engine, power steering, power brakes, with all-wheel disc brakes, cruise control, air conditioning and a lot of other modern amenities.

During the construction of our first car, we shared our progress on an online forum with many hobbyists and they were interested in building their own Goblin kit car. After successfully registering our first car in January of 2015, following the Texas assembled vehicle manual, we felt confident that we could sell our kit and have customers build their own street legal cars.
We decided to go all in. We sold rental property and pooled our savings and developed our second prototype and all the tooling, and got some financial assistance from some machine shops and laser cutting places, and we opened for sales in 2015. Orders came in from all over the U.S. and quite a large percent was from here in Texas. Over the next two years, four Texas Goblins were successfully titled and registered. The past summer one of our customers was unable to register his Goblin for reasons for refusal that bounced between it was determined to be a dune buggy first and then it was determined to be not safe, despite it passing the ASE master mechanic inspection, and then it was determined by the department to be for on-track racing.

At this point when we receive calls from potential customers from Texas, we warn them that registration was questionable, we did not want them to be blind-sided when they found out that it wasn't able to be registered. Most of these callers have not contacted us again. In August we received two letters telling us that the titles for our Goblins were being revoked because the department concluded that our cars were not actual replicas of the Lotus 7. Before August, 21 percent of our sales were here in Texas; since August we have not sold a single car in Texas. No one wants to buy a kit car that
can't be registered. Those customers that have bought kits from us in Texas are now left with a kit car that they can't register.

I'm sure all of you know that margins for a startup company are thin. This hit in our sales has already had a large impact on us. We're scaling back orders and we have nine or so customers and some of those are small customers like us. Like M&H Metal Specialities, they set up programming and everything to do our parts and we're really having to scale back to them. And there's a powder coating place in Mesquite that made fixtures and stuff to do our powder coating and we're no longer able to take our cars over there because they were just Texas-based. There's a chance we can survive without having sales in Texas but we're afraid the effects are much larger than the 21 percent hit in orders.

The number one question we are asked from potential customers all over the country is whether or not the Goblin is street legal. This used to be an easy question, but now with our home state revoking our titles, it makes them wonder if they will eventually have the same situation in their state. This also leaves us with selling a product that we can no longer demonstrate. We have potential customers that visit our shop from all over the U.S., wanting to go for a test drive. It does not
give them much buying confidence when we tell them that we are not allowed to drive our own cars.

That's about it. Do you have any questions?

MR. WALKER: I do. So this Goblin, you own this company that's Goblin, it belongs to you?

MR. DOYLE: Yes.

MR. WALKER: You started this. I'm just reading your deal here. And so you didn't buy -- you initially bought some kind of kit, you liked doing that with your son, and then you created your own chassis and framework.

MR. DOYLE: We'd actually made parts for a guy who used to build the Lotus 7 kit and we saw that he was doing it, and then my son found an assembly vehicle manual and we went through all of it and said, hey, we can do this. I actually have an aircraft machine shop, a small business, and we used some of the machining from that and solid works and designed the chassis and everything and built our first prototype. We put all this stuff on a forum and there were other people like, well, that's really neat, I'd like to have one of those. So then we started considering making this a business.

MR. WALKER: I'm not trying to get nosy, but did you quit your regular job in order to do this for a living?
MR. DOYLE: No. Actually, one of my sons runs that now. I've got a second son -- I actually have four boys.

MR. WALKER: I've got four boys too, I sympathize with you.

(General laughter.)

MR. WALKER: So you started a company basically to make these and you were hoping to one day become Ford Motor Company or GM.

MR. DOYLE: No, not really. We don't actually produce a car, we just make a frame and we buy radiators and sell some of the hardware. That's all we sell. We don't assemble anything. On the second page.

MR. WALKER: I saw the picture of the frame.

MR. DOYLE: That's what we send out.

MR. WALKER: So you sell the framework and then somebody would want to take and go get a wrecked car, there's a picture here of a Chevrolet Cobalt.

MR. DOYLE: Right, you get a wrecked Chevy Cobalt.

MR. WALKER: So you get this wrecked Chevy Cobalt and you take all the framing off, you take the engine.

MR. DOYLE: You take the engine and transmission out of that and put into our frame and the
MR. WALKER: So how many different car models will fit inside of your Goblin framework?

MR. DOYLE: Just the one.

MR. WALKER: Only a Cobalt works.

MR. DOYLE: Only the Chevy Cobalt from 2005 to 2010.

MR. WALKER: So primarily the prime parts that are being used are pretty much all ASE certified because they came from General Motors.

MR. DOYLE: Right.

MR. WALKER: So the only thing that is not ASE certified would be your chassis frame. Is that correct?

MR. DOYLE: Yes, that's correct.

MR. PALACIOS: I don't think that's a given that they're ASE certified just because they came from General Motors.

MR. DOYLE: Well, one thing that confused us is we have a letter that came from -- it was between a Todd Motsumoto and NHTSA, and they said if the vehicle was manufactured incorporating a number of previously used parts, particularly involving the chassis and/or drive train, we generally have considered this vehicle to be a used one and none of the FMVSS that apply to new completed vehicles apply to it. So the federal government is not
interested in it if you use used parts.

MR. PALACIOS: Is that accurate, to your knowledge, Mr. Kuntz?

MR. KUNTZ: Not from the reading of the interpretations that we've seen. And that's the problem is that NHTSA has not opined that the mere presence of a used part would qualify that vehicle as a used vehicle. What they are clearly getting at is if the chassis has been materially changed from the original manufacturer design that that statement would not apply. And that is supported by other interpretations that we are seeing. I'm trying to find one right now.

MR. WALKER: But whose chassis do you use in a Cobalt, in your car?

MR. DOYLE: We sell the frame and we put all the pieces in the frame.

MR. WALKER: The chassis is the rails. Whose chassis are you using?

MR. DOYLE: We fabricate a steel chassis.

MR. WALKER: So you're using your chassis.

MR. DOYLE: Correct. It's equivalent to somebody, I guess, having a jeep and putting a lift kit on it. I'm the person that makes the lift kit, I'm the person that makes the tube chassis.

MR. WALKER: And then the next problem he has
is he can't sell that because he's a manufacturer.

    MR. DOYLE: Well, we followed the guidelines, the same way you do with a Cobra, like you can build a Cobra kit car. You buy a Cobra kit, you assemble all you pieces into it, and then go through the assembly vehicle manual, and that's something we did here. We're just the fabricator of the kit.

    MR. WALKER: Can you sell kits without being -- we're not the smartest people today in here because we found out that the trailer people are not manufacturers, they're agents today, so when you make these kits, does that make him a manufacturer or does that make him a retailer?

    MR. KUNTZ: I can't make a definitive determination. All I can tell you is my reading of the definition of a manufacturer includes manufacturers of motor vehicle parts, and so if you are making parts that are regulated by NHTSA, then you would be a manufacturer. But again, I can't get into all of that because I don't know all of the parts that he's manufacturing and whether or not he's using some other part that may have been or may meet the criteria. That's why I say each individual vehicle becomes a challenge when you start merging new and used parts.

    I'll read this one right here -- well, that's
probably another one, never mind.

MR. BARNWELL: Do you manufacture anything besides a tube frame and a little skin on it?

MR. DOYLE: That's it.

MR. BARNWELL: That's all you manufacture.

MR. DOYLE: That's the parts we make.

MR. BARNWELL: And then we throw the chassis from the Cobalt, engine, transmission.

MR. DOYLE: You take the engine, transmission and suspension, brakes, the steering components, steering rack, the tire pressure monitor and all the other things, seatbelts, seats all come out of the Chevy Cobalt. And we don't actually assemble a vehicle, we sell the parts.

MR. BARNWELL: So all you sell is the tube frame.

MR. DOYLE: Right.

MR. BARNWELL: And a manual.

MR. DOYLE: Yeah, and a manual.

MR. WALKER: Well, the rails apparently come with it because all the chassis is the rails also.

MR. DOYLE: The tube frame is the chassis. Our kit was to replicate a Lotus 7.

MR. WALKER: I don't know what a Lotus 7 is, but I do know trucks and cars are made to have a chassis and they've got a rail system that goes through there and
it gets attached to your axles, the engine sits in the frame.

MR. DOYLE: It's all kind of a unibody type construction. That's how the Lotus 7 was, it didn't have like a frame member going through.

MR. WALKER: So the engine is hanging off those tubes?

MR. DOYLE: It's a structure, a lattice. What we did is we designed it and you put it into a constrained condition on the computer and you push it in different directions and stuff and it shows you all of the structural integrity to it. There's a lot to it, it's a pretty complex thing.

MR. WALKER: So can your components be licensed in each state outside of Texas?

MR. DOYLE: Yes. A lot of states outside of Texas, I'm not going to say all of them. We have them getting registered all over.

MR. WALKER: So you can still make your product and just ship it outside of Texas. Well, you can still sell in Texas, I assume, you just can't use it in Texas.

MR. DOYLE: Like I say, 21 percent of our sales was in Texas until this letter went out, and we haven't sold any more since then, nobody is really interested in it. And of course, we don't demonstrate our cars. We
have a person that just flew in from New York last
Wednesday, I think -- Thursday, and of course, we showed
him the car, we cranked it up, but we couldn't give him a
ride in it because it's illegal.

MR. WALKER: No place to go.
MR. DOYLE: Yeah.
MR. PALACIOS: Any other questions for Mr. Doyle?

(No response.)

MR. PALACIOS: Thank you.
MR. KUNTZ: Mr. Walker, I'll read, there's a letter here, I don't have a date on this one. This
probably speaks to it a little bit.

"The question is whether the addition of a new
or newer used body on an existing 1967-1975 chassis
affects the exclusion afforded by Section 30112. Under
the longstanding line of interpretations of this agency,
the substitution of a new body on a used chassis alone
does not result in the creation of a new motor vehicle."
That's a new body on a used chassis. "Thus, under the
scheme you outlined, a 1967-75 Land Rover with a different
body and unmodified chassis could be imported without the
need to conform with FMVSS. We contrast this with the
situation where refurbishment of a 1967-1975 chassis
occurs before importation. The substitution of new
chassis parts for the original ones -- and this is where it gets very interesting -- may reach a point where the combination with newer vehicle parts, the overall vehicle itself could be regarded as newly manufactured rather than one manufactured in 1967 to 1975."

MR. WALKER: But the key word being may.

MR. KUNTZ: And again, that's why I say I don't have clear determination from NHTSA at what point that is. Is it 50 percent of that original chassis, is it at 10 percent? What I would see here is that the chassis itself in this instance seems to be wholly new, but the suspension and the drive train appear to be from the used vehicle. Again, I'm struggling with trying with how to determine that. I think that it would really be a specific request to NHTSA. But that's really speaking to whether to not he would be required to be a manufacturer in NHTSA's eyes, as well, because he's manufacturing parts to replace existing parts.

MR. PALACIOS: Thank you, Mr. Doyle.

Let's move on to our next speaker -- I can't read this -- Mr. Frank --

MR. WALKER: How many do we have?

MR. PALACIOS: Two more.

MR. SMITH: My name is Faron Smith. I am here to represent the dune buggy and sandrail owners in Texas.
I'm going to apologize for being a little bit nervous, I might stutter a little bit.

When it comes to dune buggies, dune buggies were started by Bruce Meyers in California in 1964. Those are the little fiberglass looking cars, speed buggy from the cartoons when we were kids. Many of us use it as a hobby, it's something that we do in our garage, not manufacture. We're hobbyists, we're basically the same thing as every other guy that's out there that's wanting to build something, their dream, something that they've wanted to do since they were little kids.

Old Red, which is the original Meyers Manx, was inducted into the Historic Vehicle Association, I believe it was last year. The hobby that we do has been passed down from generation to generation. At my house, my daughters have actually come out and helped me work on my car. It's my pride and joy, it's something that I love, it's something fun. It's not something that I'm going to go out and cruise and try to break speed limits or anything like that. My friend Scott, over here, helps me put together events and we spend money going to hotels, we go through cruises. The dream is to just sit there, have my wife with me, and we're just cruising. We're not hurting anybody, we're wanting to spend money on taxes and everything with it.
There's hours of research that goes into it, hours and hours of time in building, and we don't want Franken-cars out on the road either, Mr. Kuntz, we want to basically work with you just like you said. We want to make sure that there's safety guidelines because I don't want to put my wife in a car that there's a possibility that she might fly out of. And I'm not going to get into how much I spent on it, because she may be watching, to be quite honest with you, and I'm already bald, I don't need knuckle bumps.

(General laughter.)

MR. SMITH: I guess the thing is that before I came up here, Mr. Kuntz already said that he was going to work with us, and I really appreciate it, it means a lot and this is going to be a lot of fun. Hopefully we get to fix this and make it an opportunity to make a set of comprehensive rules for everybody and we can all enjoy it.

That's pretty much all I have. Do you have any questions?

MR. PALACIOS: Thank you very much, Mr. Smith. Appreciate your time.

The next speaker we have is Mr. Ron Hinkle.

Please come forward, sir.

MR. HINKLE: Good morning. My name is Ron Hinkle, I'm representing the Assembled Vehicle Coalition
of Texas, and thank you so much for your time. All of my
presentation has already been talked about, so I get to
shorten this and I hope that's a good thing for you guys.

You have heard there's a lot of concerns and a
lot of consternation and confusion about the how and the
why of why these titles and registrations were revoked.
And because there's a lot of significant downside to this,
you've already heard already there's a loss of private
sector investment that you've heard, loss of personal
freedoms, supply chain disruptions, lost jobs and wages --
that's going to certainly occur to some of the folks thatassemble these things -- and of course, the loss of state
and local revenues from the titles and registration fees.

This has gained so much attention that there's
actually a number of states and a number of international
countries that are actually listening to this broadcast
live right now. We have folks in Pennsylvania,
California, Hawaii, Michigan, New York, Georgia, North
Carolina and Canada who are actually listening to this
broadcast to see where Texas goes on this kind of stuff,
because as you guys know, once Texas goes, so goes the
nation in a lot of ways. So even though there may be
rules and policies in place, we're a big state and a lot
of people maybe want to sell supplies in this state, and
so this is a big business decision for a lot of people
knowing whether they've lost a huge market like this.

And of course, there are several Texas legislators that have had a lot of concerns about this. I've been contacted, I understand that you have as well. A lot of them have been contacted by their constituents realizing that these vehicles that they invested in, some of them for many years, have been essentially shut down. So they want to work with us, want to work with you on trying to make something right again.

We do want to offer some short-term and long-term solutions, and this has been talked about, Mr. Kuntz has talked about this a lot, but the first short-term solution would be for the reinstatement of those titles and registrations that have been revoked, and not just the ones that are existing today because you do have this strange situation where dune buggies that were titled and licensed at one point are on the road driving, yet the very same dune buggy the year after 2014 were not able to.

So you have those very same vehicles on the road, so they can't be necessarily unsafe, so we need to get everything all put together and make everything match as much as possible.

And also for those folks who have bought dune buggies from other states and brought it, thinking they could be titled and registered, not knowing that this rule
had taken place, they have now lost their investment, it's worthless. You can sell it out of state but someone is going to give you pennies on the dollar knowing that you have a vehicle that's worthless to you, and so they're at that advantage.

Likewise, people have already bought these kits and they're in their driveways or in their garages or warehouses, they may be not assembled yet or partially assembled, but yet that investment is lost as well. And so once they get those vehicles assembled, we would like to have in the short term those titles and registrations also be applicable as well.

We've already talked about, Mr. Kuntz brought this up -- and I appreciate that he did -- that we want to get a private sector working group together with key DMV staff and sit down and start talking about and defining better what types of vehicles should or should not be on the road. Like Mr. Smith said, we don't want unsafe vehicles driving around, we're all driving, we're families that are driving as well.

We want to look at best practices in other states. Hawaii just passed legislation a few days ago that now allows dune buggies to be licensed and registered and be legal on the streets now. And we want to look at associations, like Mr. Kuntz brought up. The American
Association of Motor Vehicle Administrators has a lot of really, really good ideas and maybe some really, really good best practices that we can incorporate.

And I think Mr. Smith brought it up, but Mr. Kuntz and I had a chance to talk on the phone, as Ms. Love and I have, and they're very helpful in trying to kind of work through this situation. But Mr. Kuntz is right, we don't want Franken-cars and these monstrosities, as he calls them, on the road that someone went from one junkyard to another and put something together and they expect it to be titled and licensed, and that's not what anybody wants. And so we want to kind of help better define these kind of vehicles on exactly what should and should not be on the road, what is safe and not safe, and put a set of criteria on there, and lastly bring that feedback to the Board for your consideration.

And then in the long term work with some of those legislators that want to put together some legislation and let the DMV and this private sector working group craft some draft legislation and work with these legislators to get something on the books that makes sense. Right now there's custom vehicles that anyone could say it's an assembled vehicle or a kit car, they have almost the same definitions.

So we need clarity, we need better definitions,
and I think we can then finally get all this behind us.
Happy to answer any questions.

MR. GRAHAM: I have one quick question. I know we're trying to move on, but just real briefly, one of the things I keep hearing is the issue of safety, and I presume we're concerned with the safety of other drivers on the road, that somebody doesn't build a vehicle that creates an unsafe environment for other people on the road, and certainly for themselves too. But you know, I don't drive a motorcycle, it's legal for me to drive a motorcycle, I choose not to because I have kids and I like to go fast and it's probably not a good idea because I could be injured in that vehicle or on a motorcycle.

So as I think about safety -- and I actually got online and looked at a couple of these while we were working through this -- shouldn't I be entitled to get in a vehicle that may or may not be perfectly safe in the eyes of everyone and put myself at risk as long as I don't put other people at risk? I mean, how do we define safety? And I think that's going to be an important question as we move forward is does the vehicle not put other people at risk.

MR. HINKLE: That's a great question. I think there should be a set of criteria that what is deemed safe, and that's a broad category, I realize that.
Sometimes safety is about the driver. There's a thing called an autocycle now that you're aware of, the Polaris Slingshot. It's titled and licensed, it's not a motorcycle, it's not a car, it's an autocycle. But you can watch lots of videos where it gets turned over and drivers get thrown out. Is it a driver problem or is the vehicle problem?

MR. GRAHAM: I don't know. I just wanted to bring that forward because that's a struggle is how we define that and how do other states define. I know you will work through that and dig into it.

MR. HINKLE: We definitely want to partner with DMV staff. They know what they're talking about, and frankly, so do we, but I think we can put great minds together and figure exactly what needs to be done.

But the most important thing I think I want to leave with you is to reinstate those titles and registrations that got revoked on cars that are certainly safe.

MR. GRAHAM: Thank you.

MR. HINKLE: Thank you very much.

MR. PALACIOS: Thank you, Mr. Hinkle.

MR. WALKER: Jeremiah, did we revoke the titles or just the registration?

MR. KUNTZ: The titles.
MR. WALKER: The titles. How many are there?

MR. KUNTZ: How many were revoked?

MR. WALKER: Yes.

MR. KUNTZ: I don't know how many titles have been revoked, I'd have to go and pull numbers to see what titles have been revoked. I hazard to go down that road because we revoke titles every day for a myriad of different reasons. There may be legal disputes over the title. That is a regular and normal practice for the agency to revoke titles, and when a title is revoked, the registration is as well. But on this specific issue, I don't believe that we have an exhaustive list of every title that was revoked for this specific reason because we don't have a tracking list that says a revoked title for being a dune buggy, a revoked title for being this. We issue those letters and they're revoked from the system.

MR. WALKER: So what motivated us, the agency, to go out -- I mean, it would seem to me like I have a title for my F250 Ford pickup truck, and when I go down here to register it every year or mail my registration in, nobody says, well, let's go look at it to see if it's been modified, or let's change it and cancellation my registration and title. I mean, what stimulated the agency to cancel titles?

MR. KUNTZ: I would have to go back on the
first one that was revoked. Like I said, we revoke titles on an ongoing basis every day for a myriad of different reasons.

MR. WALKER: But I think that's pretty critical here as to what caused us to go out and cancel titles.

MR. KUNTZ: And again, I can go back and do the research on that. But again, ultimately, those titles that were revoked do not currently meet the statutory or administrative rules for a vehicle that is allowed to be titled and operated on the roadway. Whether it was previously authorized or not, we've got statutes and rules in place today that say.

MR. WALKER: Who in our agency made that determination?

MR. KUNTZ: It would have been made in the title section so it would have been made by the chief of titles.

MR. WALKER: So did the chief of titles say I'm going to go look at that vehicle to see if it's registered or not, legal or meets the standards?

MR. KUNTZ: I'm not going to speak for what the chief of titles did or didn't do when he looked at that title. The letter is signed by his section administrator that oversees that, Tracy Godfrey is the one that actually signed that letter -- I just looked at it. He's the one
that handles those revocations.

MR. WALKER: He's not in Enforcement?

MR. KUNTZ: No. But again, we regularly review our records and we look through our database and we make determinations in those reviews of the database as to whether or not things are properly and appropriately titled and registered in the State of Texas. I don't know if this came in from somebody that was complaining, I don't know if it was through a normal review. I don't know what specifically precipitated the revocation of the vehicle that's in this packet, but from what I'm hearing, it sounds like the time between the initial title and the revocation was not a very long period of time, it wasn't like it had been titled and registered for 20 years in this specific instance.

MR. PALACIOS: Mr. Kuntz, I think part of the concern would be if the title was revoked, the issue would be why was it issued in the first place.

MR. KUNTZ: And I'm going to, unfortunately, point the finger at our county tax assessor-collectors.

MR. WALKER: She's got a big stick over here.

(General laughter.)

MR. KUNTZ: There are thousands of title clerks across the state that struggle with making these determinations at their office on a daily basis. In fact,
I was just talking to one here just a little while ago that they struggle with these because a vehicle comes up, they are trying to make a determination at that time, they go ahead, they look at the paperwork and they say I think that it looks good, and they title it. That does not necessarily mean that it did actually comport with the law.

And a lot of times when we see a specific vehicle class that our title chief has made a determination on -- Ariel Atom is the prime example I can give you -- question came in: Can an Ariel Atom be licensed and registered on the roadway? We reviewed that specific vehicle, we looked at the class of vehicle, we did research on it, we made a determination, no, it does not meet the standards to be titled and registered on the roadway. We look in our system to see if we have any that are titled and registered, we find five, we say they weren't supposed to be titled and registered to begin with, and we revoke those titles.

So it could come in from a myriad of different ways. Somebody may have sent in a request that says: Hey, I want to be able to title and register a DF Goblin. We went out, we did a title determination on it, we looked at that vehicle. We said, No, it does not meet our current definitions, it would not be allowed for under our
rules. We then search our database, we find them, and they are subsequently revoked. That's just different scenarios that you may see in our going back and reviewing these titles and making a determination did something slip through, because I'm not going to tell you that the system is so tight that you cannot slip a vehicle through, you can.

Polaris is a prime example. The whole issue of Polaris started because we revoked Polaris titles, and we had a determination that was requested by Polaris, can this vehicle be titled and registered, and we made the determination, no, they could not under the current definition at that time in statute. That was subsequently changed and we then allowed them.

MS. BREWSTER: Mr. Chairman, if I may?
MR. PALACIOS: Yes.
MS. BREWSTER: Mr. Kuntz is referring very specifically to the Polaris Slingshot.
MR. KUNTZ: Slingshot.
MS. BREWSTER: Which was referred to earlier in testimony.
MR. PALACIOS: Okay.
Board Member Walker asked a question previously as to how many titles were revoked. Mr. Hinkle, do you have any information on that?
MR. HINKLE: Thank you. This is Ron Hinkle.

Unofficially it's probably in the hundreds because there's a Facebook group of all these folks who were talking and everyone is kind of telling I got revoked as well, I received my letter. The only ones we have letters that we put in there are just the two that are represented here, but there could be hundreds that have been revoked.

MR. PALACIOS: Okay. Thank you.

MR. HINKLE: And the Polaris Slingshot, I think that they were being sold in other states because they were not defined here in the state so they couldn't be sold in the state. You could buy them but you couldn't bring them in, you couldn't be titled and licensed because they were not defined. They were a thing, so they weren't issued anything, they just didn't exist in the minds of the DMV -- understandably so -- so that's the reason why they weren't able to get their title and registration until they legislatively became something and then you could apply for it.

And I think there's another question that someone raised that -- do you want to come to the mic just for record purposes -- you raised a question that was interesting, as well, about how long it took.

MR. SULLIVAN: My name is Justin Sullivan
again.

As he mentioned, I guess revoking these titles is a fairly standard practice. What I want to know is it fairly standard to take 2-1/2 years to revoke a title?

MR. WALKER: Between the time you find out about it?

MR. SULLIVAN: From the time it was issued to the time it was revoked.

MR. HINKLE: That's his timeline, essentially.

MR. WALKER: Well, how would they know? They just figured it out at some point in time.

MR. KUNTZ: And that's the answer is it takes until we figure out that there's something that is in the system. Like I said, if somebody manages to get a title in and it is not discovered for some time, still the laws were in place when that title was issued, unfortunately. The administrative rules, the laws, all of those things existed at the time that title was issued and it did not comport with those laws and rules at the time the title was issued.

MR. DUNCAN: And the clearest example -- David Duncan, general counsel -- is the Polaris Slingshot. When the Polaris Slingshot issue arose, we were made aware that there were three other manufacturers of basically identical vehicles. In fact, the Slingshot was basically
identical to a thing called a Campagna T-REX, and we discovered that there were half a dozen of those that were registered and titled in Texas and that some of those had been registered, I believe, for years, and we revoked those at the same time as the few Polaris Slingshots that had made it into Texas at that point.

MR. WALKER: Well, so the Slingshot actually got registered?

MR. DUNCAN: The change in statute, that took a change in statute. It is now called an autocycle, it is neither a car nor a motorcycle.

MR. WALKER: It's less than a dune buggy.

MR. DUNCAN: It is an autocycle.

MR. SULLIVAN: This is not a gotcha. We didn't go into the DMV and say, oh, if we just fill out the paperwork in this way, we'll get it approved. I think what I tried to provide with my earlier testimony is the reasons we went through and why it is legal. This is not a situation where we go and we say, okay, if we use this specific language, we might get through. That was never the intent.

MR. WALKER: I get you. I think most of the Board gets that.

MR. GRAHAM: Just one last thing just so everybody is clear that you're going to put together a
work group, going to get stakeholders together, try to
work through all of this. Obviously there's a lot to
cover. I look forward to hearing the results of that. And
maybe just clarify for these folks if they do want to have
some kind of an appeal for a decision that's been made on
a title, how do they move forward, if they so choose, how
would they move forward with that.

MR. KUNTZ: The simplest thing would be to
write a letter to the department requesting a review of
that determination.

MR. GRAHAM: And they can cite the vehicle VIN
number.

MR. DUNCAN: Exactly, along with your arguments
that it meets all portions of the statute, not just 504 or
501. That's what Jeremiah was trying to get at earlier is
when that legislative change was made there are slight
differences between the titling reference to street rod
and custom vehicle and the license plate definition of
those. It's a very complicated thing. But to try to put
it into the context of what we understand, not it's safe,
not it passed an inspection, it has to fit within one of
the categories we have. And I will tell you, just to
drive home the point that started all of this was dune
buggies, and with dune buggies we have a very difficult
time identifying where that fits in the statute. In fact,
as nearly as we can tell, it's impossible, there really
isn't a definition that they fit in the statute.

MR. PALACIOS: Okay. Well, thank you very much
to our commenters. We truly appreciate your input and
your feedback. As we said before, this is a very complex
issue and our work is just beginning in this, we have a
lot going forward. Thank you.

Let's move forward now to agenda item number 8
which is a contested case, and here to address that issue
will be Mr. Daniel Avitia and Heather Pierce.

Yes, Mr. Avitia.

MR. AVITIA: Thank you, Chairman. Members, Ms.
Brewster, good morning. Again, Daniel Avitia, director of
the Motor Vehicle Division.

Members, this is an action item. I will be
requesting the Board to issue a final order. Alongside me
this morning is Ms. Heather Pierce. Ms. Pierce is an
attorney with the Enforcement Division and provided the
legal representation during the contested case hearing
held at the State Office of Administrative Hearings on
August 10 of this year.

Agenda item 8, which can be found on page 61 of
your board books, is the contested case Texas Department
of Motor Vehicles v. Rickey A. Lyons d/b/a The Race House.
On this matter staff is asking the Board to issue a final
order which concurs with the administrative law judge's proposal for decision which is to deny Mr. Lyons's application for a general distinguishing number to operate as an independent motor vehicle dealer.

The grounds for the denial are the following.

First, the respondent, Mr. Lyons, made material misrepresentations in his GDN application. Specifically, Mr. Lyons failed to disclose that he previously held a GDN license in the State of Texas.

Second, the respondent failed to admit that he was the manager of another dealership called Ladies Choice four years in the State of Texas. Under Mr. Lyons's leadership and management Ladies Choice had its GDN license revoked in one enforcement case, and in another case was assessed a $6,000 administrative penalty for the following issues: misusing temporary tags, operating as a dealer from a location that does not meet requirements, selling vehicles from a location other than a licensed location, making material misrepresentations to MBD on the GDN renewal with regard to the physical location of this business, failing to remit motor vehicle sales tax and failing to apply for transfer of title and registration, and finally, for failing to file or file in a timely manner the entity's 2015 motor vehicle inventory declaration reporting sales for the preceding 2014
calendar year.

The $6,000 penalty assessed by the Department of Motor Vehicles was unpaid at the time of the hearing, and as of yesterday's checking, remains unpaid.

The issue before you today is whether the Board should approve or deny Mr. Lyons's application for GDN licensure. The applicant in this case did not file exceptions, briefs of pleadings contesting the judge's findings of fact or conclusions of law. As you're aware, the Board can change findings of fact, conclusions of law or orders issued by a SOAH ALJ when change is justified under Texas Occupations Code 2001.058(e). We don't believe there are any such justifications present in this case. That is to say the SOAH judge did not fail to properly apply or interpret the law, agency rules, written policies or prior administrative decisions, there is not a prior administrative decision on which the SOAH ALJ relied on that is incorrect or should be changed, and finally, there is not a technical error in a finding of fact that should be changed.

Staff believes the judge's analysis of the law and the evidence presented in this case is thorough and that the conclusions of law reached in this case are certainly reasonable. Therefore, staff requests that the Board issue an order adopting the judge's findings of fact.
and conclusions of law and the judge's recommendation, again, which is to deny Mr. Lyons's application for licensure.

The applicant did receive notice of the Board's consideration of this case this morning. I believe Mr. Lyons is present this morning and would like to address the Board.

Members, this concludes my remarks. Thank you.

MR. PALACIOS: Thank you, Mr. Avitia.

And Mr. Rickey Lyons, I believe, is present to address this matter on his behalf. Please come forward.

Good morning, Mr. Lyons. The Board has allocated you five minutes.

MR. LYONS: Good morning. My name is Rickey Lyons, I am from Dallas. However, I want to start off by saying it was really a pleasure being here, learning a lot, seeing what a Board meeting is really about, how you guys discuss openly things that the department is working on, improvements, and just different challenges, and through a cohesive effort and criticism, I think you guys are moving forward in the right direction. We simply encourage you guys to continue to do the same thing.

A couple of things. The reason that I'm here, I didn't bring any notes, I wasn't prepared, but about two years ago my life was going really, really well. I'm from
Dallas and we had just completed a roof project, tore off the roof and completed a new decking, TPO, a brand new type of roof that was about $40,000 worth of work that we were able to source a general contractor and we got it done for 22K, with the help of some relatives.

At the time we were just working with the Enforcement Division attorney, Corrie Alvarado, and what had happened was we were fined $6,000, and my mother was working with Corrie Alvarado to get the fines reduced and get everything ironed out, and they had successfully done that. The $6,000 fine was reduced to $1,500 in December of 2015. Corrie Alvarado and my mother, they worked together to fix the last component that was warrant basically a zero fine. It was a permanent sign. We had just completed a complete tear-off and put-on of a brand new galvanized steel roof and building it up, so to put a permanent sign on the building, we didn't know how that was going to work out. However, we did advise Ms. Alvarado that we needed to get with the City of Dallas because we did have a pole in the parking lot but you had to be grandfathered in, so that warrants some things with the City of Dallas, submitting paperwork around December of 2015. Vacations were there, people were off work, and progress was going to be slow.

Also, we had just suffered a big tornado. As
we came in today, I heard you guys talking about Hurricane
Harvey. When there's a natural disaster, you know, contractors are depleted, there is a delay on everything, so December we had a 30-day good month. Corrie, we closed out the end of the year saying, okay, the $6,000 was reduced to $1,500, we just need a permanent sign, once you guys get that done, let us know what the city is saying, the City of Dallas, and all of that.

And then all of a sudden in January, guess what, there is this surprise, hey, we now need $6,000, we're going to push for revocation, and then February, Mr. Avitia signed off on that. So you've got to understand we didn't understand how to deal with that, and so now to hear the things that are brought up that we paid a fine for we thought we settled in good faith.

But here's another part about it, the company Ladies Choice is actually owned by my sister, who is in the military, she's a sergeant in the military, and there were some other things that we asked the State, as far as the administrative hearings and decisions, to abate that because under the Service Members Relief Act, you know, the license was revoked, there were administrative actions taken, and she wasn't notified, she was never notified. She never got a chance to appear, she never got a chance to represent, and the State moved forward quickly to
revoke the license.

So again, we're like saying, hey, this is unfair, how do we deal with this, after we just spent all this money to get the roof done and then we're dealing with the State who is moving forward really aggressive without any recourse, without any type of communication, just telling us to sit back and wait, wait, wait, and then all of a sudden January 2016 is here, February 2016 is here, now the license are revoked.

Now, another thing that they didn't mention was that -- and like the gentleman that mentioned the tax collector's office -- there was another instance that came up about us paying inventory taxes, and it was ironic but when we go down to the tax office, I've gone down several times, I made several phone calls. And they always said, Is Ladies Choice in business? And we were like scratching our head like what are you guys talking about. So a couple of trips downtown, they're saying, Sir, we can't pull your company up. Our P number, it was a P and six digits, we had the exact same number as another company who had five digits, and in the system they were unable to pull up our account.

MR. PALACIOS: Are you close to wrapping up, Mr. Lyons?

MR. LYONS: Pardon me?
MR. PALACIOS: Your time is up.

MR. LYONS: I'm trying to speak a little fast.

MR. PALACIOS: But your time is up, so just please wrap it up. I'll give you a few more seconds.

MR. LYONS: Okay. So with that, we had to learn that the tax collector's office coordinates with the central appraisal district who tried to get with Corrie Alvarado and let her know that we made an error with the City of Dallas, how can we resolve this. With Corrie there was no cooperation, and it's just been a downward spiral. This has sent my family and everybody into it's just been a complete disarray. And we want to just make sure to let you guys know that we've done a lot, people are relying on us to continue to put out good product, we want to do good things, and that's why we're here.

MR. PALACIOS: Thank you, Mr. Lyons.

Are there any questions for Mr. Lyons?

(No response.)

MR. PALACIOS: Hearing none, I will entertain a motion.

MR. PAINTER: Mr. Chairman, I move that the Board adopt the PFD as written.

MR. PALACIOS: The motion has been made by Board Member Painter to adopt the PFD. All in favor please signify by raising your right hand.
MR. WALKER: The PFD being the administrative ruling from SOAH?

MR. PALACIOS: Yes.
MR. PAINTER: Yes.
MR. PALACIOS: All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion carries unanimously.

Thank you, Mr. Lyons.

Let's move on to agenda item number 9. We will hear from Mr. Jimmy Archer on agenda item 9 regarding Chapter 219, and we also have someone who has come forward to comment on this as well.

MR. ARCHER: I can still say good morning. Mr. Chairman, members of the Board, for the record, my name is Jimmy Archer, I'm director of the Motor Carrier Division. This agenda item may be found on pages 82 through 112 of your Board book. I have three rules to present to you for adoption today. All these proposed rule amendments were presented to the Board at the August 17 Board meeting and created permits that were authorized by the 85th Legislature.

The first rule amendment is to 43 Texas Administrative Code Section 219.34 which creates a North Texas Intermodal Permit. I believe that Caroline called
it the Northeast Texas Permit. On our system it's called the North Texas Permit; it's an intermodal permit. The North Texas Intermodal Permit allows for the transport of sealed intermodal shipping containers in portions of Bowie County. The statute provides specific axle configurations and weights of the vehicle combinations with a gross weight not to exceed 93,000 pounds.

In the original rule proposal we set the fee at $2,000, as allowed by statute. Staff is recommending the permit fee be set at $500 based on comments received from TxDOT, the Bowie County judge and representatives of Domtar. The department asked TxDOT for their recommendation on an initial fee for this permit. Based on Domtar's estimate, they would buy approximately 20 permits per year and will take approximately 1.5 trips per day, five days per week under each permit.

In a letter dated October 19, 2017, TxDOT concluded that a permit fee of $200 is sufficient at this time to cover the anticipated increase in pavement and bridge consumption costs caused by the increased weight of the permitted vehicles. The Honorable James Carlow, Bowie County Judge, requested the department to set the permit fee at an amount that is proportionate to the short distance within the county that aligns with similar permits in Texas. Domtar representatives submitted four
comments requesting the department to adjust the proposed permit fee to align with the following: distance to be traveled which is 2.5 miles, and similar permits issued by the department.

Mr. Colin Parrish submitted a comment on behalf of Domtar in which he proposed a formula which is based on the fee for the Intermodal Shipping Container Permit under 219.36 -- which I'll talk about in a little bit -- to come up with a $500 fee for the North Texas Intermodal Permit.

Mr. Parrish also stated that the legislature intended the permit fee to be set lower than $2,000, except in extreme circumstances or as a last resort, and that the fee for this permit will be viewed as a precedent setting test case.

The department recommends reducing the permit fee in 219.34 from $2,000 to $500 which is fair and reasonable for this annual permit. However, the department does not adopt the formula proposed by Mr. Parrish. We disagree with the argument that the permit fee should be based on the distance of the road on which the permit is authorized, and we disagree with the argument that the legislature intended the permit fee to be set at lower than $2,000, except in extreme circumstances or as a last resort. And finally, we do not intend to set precedent in determining future permit fees.
The Transportation Code requires the department to initially set the fee for this permit at an amount not to exceed $2,000. This section also says that beginning in 2022, September 1 of each even-numbered year, the department shall set the fee for this permit based on the results of studies conducted by TxDOT, and does not list distance as a factor for the TxDOT study which will be used to determine the future fee for this permit. The legislature did not intend for this initial fee to set a precedent for the future fee for this permit because the legislature provided the factors on which the future fee must be based. Also, there's no language in statute that says the department must set the fee lower than $2,000, except in extreme circumstances or as a last resort.

If the Board approves, staff anticipates publication of the amendment in the Texas Register. This permit will become effective 20 days after filing with the Register, and I ask that the Board adopt Section 219.34 with the recommended fee of $500.

MR. DUNCAN: And, members, David Duncan, general counsel. What Jimmy has just been covering in his presentation is that the numbers have been in varying amounts from different sources, so TxDOT said $200, the commenter from the Domtar side said $500. If the Board were to set an amount anywhere at or below $2,000, it is
defensible. There really is no magic formula for this, and there is no formula specified in statute other than beginning in 2022. I just wanted to make clear that it is within the Board's discretion to set the fee anywhere from below $2,000 up to $2,000.

MR. PALACIOS: Thank you, Mr. Duncan.

Mr. Archer, is your presentation complete?

MR. ARCHER: Yes, sir.

MR. PALACIOS: At this point then I want to call up Mr. Colin Parrish, who is here to speak on this issue.

MR. PARRISH: Thank you for hearing me today. My name is Colin Parrish. I'm here representing Domtar.

MR. PALACIOS: Mr. Parrish, for the Board's benefit, can you let them know what Domtar stands for?

MR. PARISH: It's the name of the company, it stands for Dominion Tar. Domtar is an integrated pulp and paper manufacturing products company that Dominion Tar didn't really represent what it does anymore, so a long time ago they changed it to Domtar.

They do integrated pulp and paper. This product that they're going to be moving is a fluff pulp, it's going to be big rolls of kind of a fibrous cardboard that they're going to ship overseas to make baby diapers and adult incontinence products in this case.
I will keep it super brief. I just wanted to thank everybody for their professionalism throughout the whole process, during the comment period, through everything, the initial proposed rule and then now the modified recommended proposed rule. So I know it's a thankless job that they all get, we just wanted to say thank you for your time. And I can answer any questions.

MR. PALACIOS: Thank you, Mr. Parrish.

Are there any further questions for Mr. Archer or Mr. Duncan or Mr. Parrish?

(No response.)

MR. PALACIOS: Hearing none, I will entertain a motion

MR. WALKER: I have a question.

MR. PALACIOS: Yes.

MR. WALKER: So what I have heard so far and what I have read is that it is asking this Board to set a fee for a permit to transport 2-1/2 miles, and I think the staff has maybe made a suggestion/recommendation of $500.

MR. PALACIOS: That is correct.

MR. WALKER: And as a trucker and as the trucking industry's representative on this Board, I've got all kind of mixed emotions because the next thing we're going to look at here is the milk transport people and the statutory fee that was set on that is $1,200 to haul the

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same amount of weight of milk going down the gravel road
from the dairy farm to where they bottle the milk at, the
South Texas permit that was statutorily set was $6,000 for
93- to 95,000 pound overweight containers, very similar to
these up there, that was statutorily set at $6,000 in
Houston on about a three-mile route down there. Then it
says set fees standard to those out there, the legislative
mandate says, didn't it say, Jimmy, similar to other fees
out there?

MR. ARCHER: And requests that were made by the
commenters.

MR. WALKER: And so my company and anybody else
who buys a permit from this agency today, if I take and go
pick up a load that weighs legal weight and take it from
one side of the road down to the other side, I pay $85,
and if you take and think about what these guys are doing
here on this fee is they're paying an equivalent of
$1.28 -- based on the volume that they're going to do at
$500 is $1.28 for every time they do that. So when I put
that in perspective to myself, I think about every time I
get on the Harris County Toll Road in Houston, Texas and I
go from one exit to the next exit in my car -- and I'm
paying fuel taxes to pay to build that road but somebody
says we've got to pay for this through the cost of
tolls -- I get charged $1.25 driving a car from one exit
to the next exit on the Harris County Toll Road in Houston, Texas.

I don't think that $500, I don't think that $200 that the TxDOT study is real legitimate. And furthermore, I'm going to tell you something else about this that nobody has thought about is that 2-1/2 miles, I can go get a truck today, and when they said there's going to be 20 permits bought on this thing, I could go out there and buy one permit with one truck and move every one of their loads and just shuttle two miles down that road, disconnect that trailer and hook to a different truck and let him take it the remainder of the distance someplace else. So theoretically, you could probably do this with one permit all year long and move all their loads with one truck.

My suggestion, and I don't have the golden ball, but I wouldn't do this for less than $1,000. And the State issued me just the other day, we got a permit on some stuff we do in Houston on some tires where they grind tires up, and we got a permit -- Jimmy, what's it called -- a variance, we got a weight tolerance permit that allows us 10 percent to move some crushed up ground tires because the guy that crushes them up and grinds them sometimes overloads our trailer, so we needed a permit to do that. We take that down the street and Jimmy charges.
me $1,000 for that.

Is that not correct, Mr. Archer?

MR. BARNWELL: I thought you guys were friends.

(General laughter.)

MR. WALKER: So I'm sitting here thinking, there is no standard out there, apparently. The legislature said $2,000 is the maximum we can charge on this. I sure don't think that $200, I sure don't think that $500 is legitimate. I'd recommend somewhere at least $1,000 be the charge for this annual permit.

MR. PALACIOS: Mr. Archer, I understand we had feedback from stakeholders, legislature and so forth. The $500 number, how did we arrive at that, I guess.

MR. ARCHER: I'd like to make two comments. To answer your question, Ms. Love stated that they had visited with legislative members who were fine with the $500 fee. The second thing is I would agree with Member Walker that there is no set formula for setting a permit fee. I mean, once the legislature passes it --

MR. WALKER: It's all over the board.

MR. ARCHER: I mean, there's no standard formula. I can't calculate the fees for each permit type that we have, and we have 30 of them now, and tell you that there's anything that's similar between more than three of them at a time. There's three that use distance
as a calculation, those are by letter permits, those are
set on weight and distance. All the rest of them they
were set by the legislature.

Again, as Mr. Duncan said, it's the Board's
pleasure to set this fee as what they feel it should be, 
anything from $2,000 or less.

MR. GRAHAM: Followup question. So in the case 
of the fee that's been established at $6,000 for the 
container units down at the port, that's an annual fee.
Correct?

MR. ARCHER: Correct. It's one permit.

MR. GRAHAM: This $500 fee is not an annual 
fee?

MR. WALKER: It's annual also.

MR. GRAHAM: It is an annual fee. So we're 
talking about the same thing.

MR. WALKER: According to the testimony, or 
this deal here is that they're going to run 1-1/2 loads 
per day per truck, well, they want 20 permits. But you 
could theoretically do this with one truck and pick it up 
at one end of the road and take it to the other end and 
shuttle it, and the State of Texas is only going to make 
whatever we set that fee and one truck could do all of 
this work, I guarantee you.

MR. ARCHER: Let me clarify. Domtar's estimate
in their letter, which is in your materials, is that they
would buy 20 permits, they estimate 20 permits per year.

MR. GRAHAM: But in relation to other permits, in my mind there's really no relevance to how many permits they're going to buy, it's being consistent and equal and treating everyone consistent across the board.

MR. WALKER: There's no way that we are going to be consistent here because we don't have the latitude or the knowledge to be consistent, because I'm telling you right now, these permits are all over the board and they're statutorily being created and the permit in Houston, Texas to do exactly what these guys are doing in North Texas is $6,000. And the trucks have to be special designed trucks to do it, with third axles on them, they have to have anti-rollover, they have to have disc brakes. That bill is convoluted as all get-out, and this one got through as, hey, you can do it and the DMV has to set the fees.

MR. PALACIOS: Well, as Mr. Duncan has stated, it is the Board's purview to set the fee, we have the discretion up to $2,000, staff has recommended $500, we've had good discussion on this matter. At this time I'll entertain a motion to adopt a fee.

MR. WALKER: I would make a motion that we set the fee at $1,000 annually.
MR. PALACIOS: The motion has been made by Board Member Walker to adopt the fee at $1,000 annually.

MR. BARNWELL: Second.

MR. PALACIOS: Second by Board Member Barnwell.

All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion carries unanimously.

Thank you, Board Member Walker, Mr. Archer.

MR. ARCHER: I have two other permits to discuss with you today. The other two permits authorized by the 85th Legislature are the Fluid Milk Transport Permit, and the Intermodal Shipping Container Permit.

Section 219.35 creates the Fluid Milk Transport Permit which allows the transport of fluid milk in Texas. The statute provides for specific axle configurations and weights for the vehicle combination, with the gross weight not to exceed 90,000 pounds. The fee for this permit is set by statute at $1,200.

Section 219.36 creates the Intermodal Shipping Container Permit which allows for the transport of a sealed intermodal shipping container more than 30 miles from a port authority or port of entry that is located in a county contiguous with the Gulf of Mexico or bay or inlet opening into the Gulf. The fee for this permit was set in statute at $6,000. The statute provides specific...
axle configurations and weights for the vehicle combinations, with a gross weight not to exceed either 93,000 pounds on six axles or 100,000 pounds on seven axles.

These rules establish the requirements, restrictions and procedures regarding these two new permits such as application method, movement restrictions during hazardous conditions, curfew restrictions and windshield stickers. The proposed amendments no fiscal implications for the state or local governments. If the Board approves, staff anticipates filing of this notice with the adoption of these amendments through the Texas Register. They will become effective 20 days after filing, and I ask that the Board approve these rules for adoption.

MR. WALKER: I so move that we accept the adopted proposed rules.

MR. PALACIOS: Motion by Board Member Walker to accept the proposal.

MR. PAINTER: Second.

MR. PALACIOS: Second by Board Member Painter.

All those in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.
Thank you, Mr. Archer.

Moving right along, we'll move on to agenda item number 10, rule proposal. We'll now hear, once again, Mr. Jeremiah Kuntz.

MR. WALKER: How long is this going to take?
How many questions does Mr. Barnwell have?

MR. BARNWELL: Mr. Walker's questions.

(General laughter.)

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

Before you is a package of rules that we are seeking permission to propose for public comment. These rules amend Chapter 217, there's a laundry list of these, 217.71, 217.72, 217.73 to rename the subchapter and subsection titles. The proposed amendments also clarify that the purpose of the subchapter is to prescribe the policies and procedures under which the department may make automated equipment for use of RTS available at county tax assessor-collectors for users who opt to use webDealer.

The proposed amendments to 217.71 add a definition for title application and webDealer and correct some grammatical errors. Proposed amendments to 217.72 also make minor wording changes. The proposed amendments also add a new 217.74, access to and use of webDealer.
which includes requirements for submitting title applications through webDealer, including a requirement that the user must retain the title documents or other ownership evidence pertaining to the transaction for a minimum of four calendar years.

And then along with the proposed amendments and new sections described above, the department proposes related amendments to 215.144 and 221.72. These proposed amendments relate to record retention requirements for users of webDealer who are either a GDN holder or a salvage vehicle dealer.

To sum all this up, what we are adding in here are the record retention requirements for dealers or the salvage industry to retain the original salvage documents that are being submitted through the system. This will assist us particularly in the webSalvage arena. Today the insurance industry has to send in the original documents prior to us issuing them a salvage title. This will shorten the time frame to process those because the entity will just retain the original documents in their files for four years and we will be able to process those without waiting for the original documentation to make it to the department. So this rule is intended to streamline those processes by having the entity that's submitting the documents retain the originals for that time period.
MR. BARNWELL: Mr. Chairman, I move that the Board approve the proposed amendments to Chapter 215, 217 and 221, as proposed by Mr. Kuntz.

MR. PALACIOS: I'll repeat that. There was a motion made by Board Member Barnwell to accept the amendments, as proposed on Title 43.

MS. HARDY: Second.

MR. PALACIOS: Second by Board Member Hardy. All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

MR. KUNTZ: Would you like me to continue?

MR. PALACIOS: Yes, please.

MR. KUNTZ: Agenda item 11, this is rules that will be published for public comment. The proposed amendments add a definition for all-terrain vehicles and recreational off-highway vehicles by reference to Transportation Code 502.001. The amendments specify that an ATV and ROV are designed primarily for recreational use, and we've had some instances where manufacturers have asked for a title determination on off-road vehicles that are to be used for utility use, primarily the ones that we're talking about, you would see, as an example, the passenger carriers that are in the terminals of an airport that have usually like three benches on them. There have
been requests for title determinations on whether a title would be required for those. This is to help clarify that issue that if the vehicle is not intended for recreational off-highway use, then it would fall outside of those two definitions.

MR. PALACIOS: We do have someone who is present to provide comment on this issue. If you're finished with your presentation, Mr. Kuntz, I'll ask him to come forward.

Mr. Bruce Carlile, are you present? Please come forward.

MR. CARLILE: My name is Bruce Carlile from Houston.

Respectfully I'm going to decline because I'm really with the Volkswagen contingent and I don't want to muddy the waters. I apologize for wasting your time.

MR. PALACIOS: Thank you very much, sir. Are there any questions for Mr. Kuntz regarding this?

MR. KUNTZ: And just to clarify and make sure that there's no ambiguity, this does not have any impact on dune buggies.

(General laughter.)

MR. PALACIOS: Thank God.

Hearing no questions, I'll entertain a motion
on agenda item number 11.

MR. BARNWELL: Mr. Chairman, I move that the Board approve the proposed amendments to Chapter 217 for publication in the Texas Register for public comment.

MR. WALKER: I second.

MR. PALACIOS: Motion made by Board Member Barnwell, second by Board Member Walker to adopt the proposal of the amendment. All in favor please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously. We are getting towards the end now. We will move on now to executive session.

We are going into closed session. It is now 12:13 p.m. on December 7, 2017. We'll go into closed session under Texas Government Code Sections 551.071, .074, and 551.089. For those of you in attendance, I anticipate being in executive session for approximately 30 minutes and reconvene in open session after that.

With that, we are recessed from public meeting and going into executive session.

(Whereupon, at 12:13 p.m., the meeting was recessed, to reconvene this same day, Thursday, December 7, 2017, following conclusion of the executive session.)

MR. PALACIOS: It is approximately 12:50 p.m.
on December 7, 2017, and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken in closed session.

We are awaiting Mr. Jeremiah Kuntz. We'd like clarification on two items that we previously voted on, as soon as he arrives, which he has arrived.

Thank you, Mr. Kuntz. We would like clarification on two items that we voted on earlier on Chapter 217. I believe they were amendments 217.41 and 217.123 and .124.

MR. KUNTZ: Yes, sir. Before you are the proposals for publication to amend Chapter 217.41 of the Administrative Code. The purpose of this amendment is to implement HB 1590. This is one of the bills that Caroline Love referred to earlier. This eliminates the requirement that the department conduct a hearing to determine whether a revocation of a disabled parking placard should continue or be rescinded, and adds that a person from whom a placard has been seized can apply for a new placard by submitting an application under Transportation Code 681.003. This is a legislative change that occurred this last legislative session.

We used to, if a handicap placard was seized from a person, we had basically a process by which they could come in and request to get that back. The law was
changed to eliminate that process and just allow them to
reapply, so they would just go into the tax office, show
the proof that they qualify for the handicap placard, and
it eliminates that process that we would go through which
really did not result in anything substantial in the
process.

MR. PALACIOS: Thank you. Please proceed.

MR. KUNTZ: Continuing on, the final rule that
is for publication is 217.123 and 217.124. These
particular rules deal with motor vehicle records and the
fees that are assessed. What we are attempting to do here
is to clarify some of the practices that the agency has
had that have been administered through contracts with
individuals that obtain certain motor vehicle records. We
have had, as a practice, exemptions for law enforcement or
certain governmental entities from having to pay fees in
order to get motor vehicle records from the department.
What we are doing is clarifying in rule so that there's no
ambiguity as to who qualifies for exemptions from the fees
and who would have to pay and which types of motor vehicle
records that would apply to

Essentially what we are doing here is putting
it out to where if you come in under contract and obtain
the database, let's say you're a county toll road
authority, and you need our motor vehicle records in order
to send toll bills to your customers, what we would do is
we would provide them with weekly updates to the system,
so all the transactions that have occurred for the week
that updated title records, we provide those in electronic
format to them for free. They would be responsible for
data-mining that information themselves to determine who
the owner of vehicles are.

If, however, they wanted us to do the work,
which we refer to as a batch process, where they would
send us license plates and then we would query the
database and then give them the results in a report, those
services would have to be paid for because they require
staff time and they create workload for the folks in IT.

And so what we're clarifying here is that there
are certain ways that you can get these records that we
will give them to you for free if you're a governmental
entity or law enforcement, and then in other instances if
we're required to do something in order to get the records
for you, we would assess those fees. And so that's the
main purpose of doing this is to clarify that, and then
also codify into the rule some of the fees that were being
assessed through contractual arrangements. There's been
new files that have come about since these rule were first
implemented that didn't exist before, and so we're trying
to make sure that the fees for those specific files are
clarified in the administrative rule.

MR. PALACIOS: Are there any questions on these three amendments?

MR. WALKER: Yep. So you mentioned giving the toll road people the information, giving the information and charging somebody that might need some. Who sets the fee and how much is the fee to buy that information?

MR. KUNTZ: So the fees are set in this rule. So the specific fee for those records are set by this administrative rule.

MR. WALKER: Show me where that list is, what page.

MR. KUNTZ: It's on page 188 of your board book. For new contracts and renewals, the cost for title histories are $5.75, certified title histories $6.75, it goes on down here. Weekly updates is under D.2, and a weekly update would be for $135 a week. So if you're getting the reoccurring weekly updates to the database, you would pay $135 per week to get those.

MR. WALKER: So it says here there's a deposit of $1,000. What's the deposit for?

MR. KUNTZ: That is what we would deduct from for those weekly charges.

MR. PAINTER: To make sure we get our money.

MR. KUNTZ: Yes. So they pay up front and then
we deduct it. It's kind of like an escrow account.

MR. WALKER: So then when they go in there and draw our data down, they pay a minimum, it's 12 cents per record?

MR. KUNTZ: For weekly updates there's a deposit of $1,755. The first week that they receive a file, we would deduct $135 from the $1,755, and every time they get the record, we would deduct that money from their deposit, and then they would reload that account.

MR. WALKER: Is that all of the files?

MR. KUNTZ: No. So under electronic motor vehicle records --

MR. WALKER: There's 28 million registered cars in the State of Texas, or whatever, 23-. So when they pull down, what do you get for that 135 bucks? All 23 million, or whatever it is?

MR. KUNTZ: No. So what you have to do is you first have to load a database using the master file. The master file has all of the current records that are in our database. The weekly file contains all of the changes to that master file that have occurred the previous week. So all the transactions that are processed in a county office for that week show up in a weekly file, and you would use that to update your database -- so somebody has to have a database on the outside of our system -- they would update
their database with those weekly changes. That weekly
file has all the alterations and changes that would have
occurred.

MR. WALKER: That were changed over the last
week.

MR. KUNTZ: Correct. So it's just the
exceptions.

MR. WALKER: There's no requirement for them to
go and do that download. Correct?

MR. KUNTZ: No. If they want to just start
going our weekly files, they could start by just
obtaining a week's file at a time until they had gone for
52 weeks and then they would have the totality of the
database at that point.

MR. WALKER: I wouldn't have the totality on
day one?

MR. KUNTZ: You would not. The weekly update
is only going to have the transactions that were processed
in a county office that week.

MR. BARNWELL: It's an incremental update.

MR. KUNTZ: Correct.

MR. WALKER: So let me ask you a question
because this kind of hits home here a little bit. I go
out here and sell my pickup truck that I'm driving.

Harris County Toll Road Authority sees my truck license
plate number. I go and change it at the county tax assessor-collector's office. So now six months from now that license plate goes through a Harris County Toll Road booth and they send me a notice that says, hey, you ran a booth and didn't pay a tag. Well, I don't even own that vehicle, nor do I own that tag anymore. Is that because Harris County didn't update their data?

MR. KUNTZ: No. When you sell a vehicle the owner on record is not updated until the purchaser of that vehicle applies for title. So take for example, you trade your vehicle in to a dealership, it sits on the dealership's lot for six months, it is still in your name for six months until the new purchaser purchases that and the dealership goes to the county office and applies for title in the new owner's name.

However, what you can do is --

MR. WALKER: Who takes my tag off that car? Should I take it off?

MR. KUNTZ: You should, yes. Our best practice is anybody that sells a vehicle should remove the license plate and registration sticker from that vehicle upon sale of it, as well as file a vehicle transfer notification with the department which will actually put a remark on your record that that vehicle has been transferred and that it is pending a new purchaser applying for title.
MR. WALKER: But the typical person does not do that.

MR. KUNTZ: They should. It's on our website, it is free to obtain.

MR. WALKER: I go to Raymond's dealership, drive in there, say Raymond, what will you give me for my car out here? Raymond says I'll give you a thousand bucks for it. I say put it against the cost of a new one, and here's the keys to my old one.

MR. PALACIOS: The common practice amongst dealerships is to remove license plates and we put temporary tags on.

MR. KUNTZ: A dealer is required by law to issue new registration to that vehicle when they sell it. What we refer to as sticker scraping, they're required by law to remove the license plate and registration from that vehicle before it is sold.

MR. BARNWELL: But not upon acquisition.

MS. CARAWAY: Before it's sold. That's the problem.

MR. PALACIOS: Normally that's a matter of practice. As soon as we bring the vehicle in inventory, we'll remove plates and everything else and put a temporary plate on it.

MR. KUNTZ: You have the right to remove your
license plate and registration and take it with you.

MR. WALKER: We do that on all of our big trucks.

MR. KUNTZ: I would encourage anybody that sells a vehicle to remove the license plate and registration from that vehicle when they sell it.

MR. WALKER: So let's talk about who can buy that list for that fee down here.

MR. KUNTZ: Under state and federal law there are permitted purposes for the use of that list. It is not limited to the individual but it is for a permitted purpose. So if you are a governmental entity performing a governmental function and you have a need to know the registration and title of a vehicle that has a license plate on it, then you have a legitimate purpose to obtain that data to do your governmental function.

MR. WALKER: I own a wrecker service, a towing service.

MR. KUNTZ: Yes, that is a permitted use under DPPA at the state and federal level. A tow truck company is an entity that does have the authority to obtain that information.

MR. WALKER: So you can buy all of the data that we have, a tow company can.

MR. KUNTZ: Yes. Under state and federal law.
MR. PALACIOS: Any further questions for Mr. Kuntz?

(No response.)

MR. PALACIOS: I want to remind everyone that the detail of the items that Mr. Kuntz has reviewed with us are included in the board book that was given to all of us last week.

Any further questions on these items? If not, thank you very much.

MR. DUNCAN: And members, I apologize, next time as the motion is being made, we'll try to be real clear, if we're breaking items down or we taking them together, we'll just try to be a little clearer. Apologies.

MR. PALACIOS: Thank you, Mr. Duncan.

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

MR. BARNWELL: Merry Christmas, everybody. So moved.

MR. GRAHAM: Second.

MR. PALACIOS: All in favor?

(A show of hands.)

MR. PALACIOS: Let the record reflect it is now 1:02 p.m. We are now adjourned.

(Whereupon, at 1:02 p.m., the meeting was
adjourned.)
CERTIFICATE

MEETING OF:  TxDMV Board
LOCATION:  Austin, Texas
DATE:  December 7, 2017

I do hereby certify that the foregoing pages, numbers 1 through 194, 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.

/s/ Nancy H. King  12/13/2017
(Transcriber)  (Date)

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