



**TABC**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

# COMMISSION MEETING

*January 26, 2016*

Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer  
Midland*

*Steven M. Weinberg, MD, JD, Member  
Colleyville*

*Ida Clement Steen, Member  
San Antonio*

# TABLE OF CONTENTS

<b>TITLE</b>	<b>PAGE</b>
<b>Agenda--TABC Commission Meeting - January 26, 2016.....</b>	<b>1</b>
<b>Minutes--TABC Commission Meeting - January 26, 2016 .....</b>	<b>3</b>
<b>Attachment 1: Promotional Recognitions – Lieutenant Nicole Walker, Arlington Enforcement Regional Office; Lieutenant Geoffery Weise, Arlington Enforcement Regional Office</b>	
<b>Attachment 2: Recognition of TABC Service Award Recipients – Robert “Bob” White, Information Resources Division; Ngoc-Bich Nguyen, Information Resources Division; Clifford Stech, Audit &amp; Investigations; Salvador Moralez, El Paso Enforcement; Geneva Crump-Mitchell, Houston Enforcement; Anthony Keel, Arlington Enforcement; Mario Villarreal, McAllen Enforcement; Noe Castaneda, Brownsville POE; Mario Benavides, Laredo POE</b>	
<b>Attachment 3: Commission Report: Executive Director and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities</b>	
<b>Attachment 4: CY16 Rule Review Plan Update</b>	
<b>Attachment 5: Enforcement Division Update</b>	
<b>Attachment 6: Approve Publication of Proposed Amendments to Rule §33.9, Fees for On-Line Transactions</b>	
<b>Attachment 7: Approve Publication of Proposed Amendments to Rule §41.52, Private Clubs – In General</b>	
<b>Attachment 8: Approve Publication of Proposed Repeal of Rule §41.54, Destructions</b>	
<b>Attachment 9: Approve Publication of Proposed New Rule §41.54, Destructions</b>	
<b>Certification of Minutes.....</b>	<b>26</b>

# **AGENDA**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. - January 26, 2016**

5806 Mesa Drive  
Austin, Texas 78731



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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José Cuevas, Jr.  
Presiding Officer-Midland

Steven M. Weinberg, MD, JD  
Member-Colleyville

Ida Clement Steen  
Member-San Antonio

Sherry Cook  
Executive Director

Tuesday, January 26, 2016

10:00 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of November 17, 2015	José Cuevas, Jr.
3.	Promotional Recognitions – Lieutenant Nicole Walker, Arlington Enforcement Regional Office; Lieutenant Geoffery Weise, Arlington Enforcement Regional Office	Earl Pearson
4.	Recognition of TABC Service Award Recipients – Robert “Bob” White, Information Resources Division; Ngoc-Bich Nguyen, Information Resources Division; Clifford Stech, Audit & Investigations; Salvador Moralez, El Paso Enforcement; Geneva Crump-Mitchell, Houston Enforcement; Anthony Keel, Arlington Enforcement; Mario Villarreal, McAllen Enforcement; Noe Castaneda, Brownsville POE; Mario Benavides, Laredo POE	Jay Webster Dexter Jones Earl Pearson Karen Smithwick
5.	Reception Honoring TABC Promotional Recognitions and Employee Service Award Recipients	José Cuevas, Jr.
6.	Commission Report: Executive Director and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities	Sherry Cook
7.	CY16 Rule Review Plan Update	Ed Swedberg
8.	Enforcement Division Update	Earl Pearson
9.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate on the Appointment, Employment, Evaluation, and Duties of the Positions of Executive Director and General Counsel (Govt. Code §551.071, §551.074, and Texas Alcoholic Beverage Code §5.11)	José Cuevas, Jr.
10.	Action on Items Discussed in Executive Session	José Cuevas, Jr.
11.	Approve Publication of Proposed Amendments to Rule §33.9, Fees for On-Line Transactions	Martin Wilson
12.	Approve Publication of Proposed Amendments to Rule §41.52, Private Clubs – In General	Martin Wilson

<b>13.</b>	<b>Approve Publication of Proposed Repeal of Rule §41.54, Destructions</b>	<b>Martin Wilson</b>
<b>14.</b>	<b>Approve Publication of Proposed New Rule §41.54, Destructions</b>	<b>Martin Wilson</b>
<b>15.</b>	<b>Public Comments</b>	<b>José Cuevas, Jr.</b>
<b>16.</b>	<b>Next Meeting Date: Tuesday, March 22, 2016</b>	<b>José Cuevas, Jr.</b>
<b>17.</b>	<b>Adjournment</b>	<b>José Cuevas, Jr.</b>

***Note:** Items may not necessarily be considered in the order they appear on the agenda. Executive session for advice of Counsel (pursuant to §551.071 of the Government Code) may be called regarding any agenda item. Action may be taken on any agenda item.*

#### **NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

# **MINUTES**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. - January 26, 2016**

5806 Mesa Drive  
Austin, Texas 78731



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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## **COMMISSION MEETING MINUTES**

**January 26, 2016**

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, January 26, 2016 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS  
PRESENT:**

José Cuevas, Jr.  
Steven Weinberg, MD, JD  
Ida Clement Steen

**STAFF PRESENT:**

Sherry Cook, Executive Director

Josh Alexander, Supervisor, Audit & Investigations Division

John Altum, Sergeant, Training Division

Donny Betts, Assistant Regional Supervisor, Houston Regional  
Audit Office

Gene Bowman, Director, Audit & Investigations Division

David Brandon, Assistant Director, Information Resources Division

Mindy Carroll, Director, Education & Prevention Division

Dustin Carter, Quality Assurance Specialist, Ports of Entry Division

Joe Cavazos, Lieutenant, Houston Enforcement Division

Amanda Collins, Regional Supervisor, Arlington Regional Audit  
Office

Antoine Collins, Regional Supervisor, Houston Licensing Regional  
Office

Marc Decatur, Major, Houston Enforcement Division

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Diana Figueroa, Executive Assistant, Office of Professional  
Responsibility Division

John Graham, Lieutenant, Corpus Christi Area Enforcement Office

Thomas Graham, Director, Tax & Marketing Practices Division

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, General Counsel Division

Gary Henderson, Systems Analyst, Information Resources Division  
Joe Iagnemma, Web Design Administrator, Information Resources  
Division  
Richard Jauregui, Major, San Antonio Regional Enforcement Office  
Dexter Jones, Assistant Chief, Enforcement Division  
Joann Joseph, Assistant Director, Licensing Division  
Anthony Keel, Agent, Arlington Enforcement Regional Office  
Victor Kuykendoll, Major, Arlington Enforcement Regional Office  
Marc Langley, Agent, Houston Enforcement Regional Office  
Marilyn Lindsay, Financial Services Manager, Business Services  
Division  
Geneva Mitchell, Administrative Assistant IV, Houston Enforcement  
Regional Office  
Marvin Montero, Lieutenant, Enforcement Administration  
Sal Morales, Lieutenant, El Paso Enforcement Division  
Harold Nanos, Major, Austin Enforcement Division  
Earl Pearson, Assistant Chief, Enforcement Division  
Andy Pena, Director, Office of Professional Responsibility Division  
Nicole Phillips, Audit Supervisor, Houston Regional Audit Office  
Jose Pineda, Supervisor, Licensing Division  
Gloria Darden Reed, Executive Assistant, Executive Division  
Albert Rodriguez, Director, Training Division  
Julie Ross, Supervisor, Licensing Division  
Raul Salinas, Lieutenant, San Antonio Enforcement Regional Office  
Sonia Salinas, Sergeant, Arlington Enforcement Regional Office  
Karen Smithwick, Director, Ports of Entry Division  
Bob Spagnola, Auditor, Houston Regional Audit Office  
Cliff Stech, Auditor, Waco Area Audit Office  
Ed Swedberg, Deputy Executive Director  
Ron Swenson, Captain, Special Investigations Unit  
Todd Talley, Regional Liaison, Field Operations  
Carla Thompson, Lieutenant, Arlington Enforcement Regional  
Office  
Mario Villarreal, Lieutenant, McAllen Enforcement Regional Office  
Nicole Walker, Lieutenant, Arlington Enforcement Regional Office  
Jay Webster, Director, Information Resources Division  
Geoffery Weise, Lieutenant, Arlington Enforcement Regional Office  
Martin Wilson, Assistant General Counsel, Legal Division

***GUESTS PRESENT:***

Vic Brooks, Vice President, Republic National Distributing  
Company  
Rick Donley, President, The Beer Alliance of Texas LLC  
Kyle Frazier, Texas Wine and Grape Growers Association  
Steve Greinert, Consultant, Wholesale Beer Distributors of Texas  
Cheri Huddleston, Legislative Consultant, Glazers  
Chelsy Hutchinson, Consultant, Republic National Distributing  
Company  
Teresa Kudrle

Georgia P. Marks, Youth Engagement Specialist, Texans Standing Tall  
Joseph Mitchell and Family  
Lance Lively, Executive Director, Texas Package Stores  
Fisher Reynolds, Analyst, Legislative Budget Board  
Tyler Rudd, Consultant, California Wine Institute  
Judy Stech  
Omar Villarreal, Texas Department of Public Safety  
Megan Weise  
Randy Yarbrough, Consultant, Wholesale Beer Distributors of Texas

### **CALL TO ORDER**

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:03 a.m. by Presiding Officer José Cuevas.

### **APPROVAL OF COMMISSION MINUTES OF NOVEMBER 17, 2015.**

**Presiding Officer Cuevas called for approval of the Commission meeting minutes of November 17, 2015. Commissioner Steven Weinberg so moved to approve the minutes as written. Commissioner Ida Clement Steen seconded the motion and the motion passed.**

### **PROMOTIONAL RECOGNITIONS - LIEUTENANT NICOLE WALKER, ARLINGTON ENFORCEMENT REGIONAL OFFICE; LIEUTENANT GEOFFERY WEISE, ARLINGTON ENFORCEMENT REGIONAL OFFICE**

Presiding Officer Cuevas called for agenda item # 3 - Promotional Recognitions to be presented. Assistant Chief Earl Pearson came forward to introduce the honorees:



**Lieutenant Nicole Walker** began her law enforcement career with the Texas Alcoholic Beverage Commission in 2007 as an Enforcement Agent in the Beaumont Office. She later promoted to the rank of Sergeant in the Amarillo Area Office in 2013 before transferring to the Waco Area Office and later the Houston Enforcement Regional Office. Lt. Walker holds a Bachelor of Arts degree in Psychology from Baylor University, a Master's Degree in Public Administration from Sam Houston State University and is a Certified Fraud Examiner. She currently holds a Master Peace Officer Certificate and an Instructor Certificate from the Texas Commission on Law Enforcement (TCOLE).

Lt. Walker enjoys spending time with her better half of six years, Marc Langley, and they love traveling the world and relaxing at home with their dog Kaida.



**Lieutenant Geoffery Weise** began his law enforcement career with Randall County Sheriff's Office in 2001 where he worked as a Deputy Sheriff before accepting the position as an Enforcement Agent with the Texas Alcoholic Beverage Commission assigned to the Amarillo Area Office in 2005. He was later promoted to the rank of Sergeant in the Amarillo Area Office in 2013. Lieutenant Weise holds a Bachelor of Science Degree from West Texas A&M University and is a Certified Fraud Examiner. He currently holds a Master Peace Officer Certificate, Instructor Certificate, Firearms and Patrol Rifle Instructor Certificate from the Texas Commission on Law Enforcement (TCOLE).

Lieutenant Weise married his wife Megan in 2011 and they are expecting their first child, Remington, in late November. In his spare time, Geoffery enjoys spending time at home with his wife and dogs and is an avid firearms collector, hunter, and outdoor enthusiast.

**RECOGNITION OF TABC SERVICE AWARD RECIPIENTS - ROBERT "BOB" WHITE, INFORMATION RESOURCES DIVISION; NGOC-BICH NGUYEN, INFORMATION RESOURCES DIVISION; CLIFFORD STECH, AUDIT & INVESTIGATIONS; SALVADOR MORALEZ, EL PASO ENFORCEMENT; GENEVA CRUMP-MITCHELL, HOUSTON ENFORCEMENT; ANTHONY KEEL, ARLINGTON ENFORCEMENT; MARIO VILLARREAL, MCALLEN ENFORCEMENT; NOE CASTANEDA, BROWNSVILLE POE; MARIO BENAVIDES, LAREDO POE**

Presiding Officer Cuevas called for agenda item # 4 – Recognition of TABC Service Award Recipients to be presented.

Director Jay Webster, Assistant Chief Dexter Jones, Assistant Chief Earl Pearson and Director Karen Smithwick came forward to introduce and read biographical information on the honorees:



**Robert "Bob" White** (25 Years) is a Systems Support Specialist IV in the Information Resources Division (IRD). He began his career with TABC on November 19, 1990 as an ADP Equipment Operator II in IRD. He was promoted to a Systems Support Specialist in February 1997. Prior to his employment with TABC, Bob was employed by Texas Instruments in Dallas and Forecast Consultants, an actuary firm.

During his tenure with TABC, Bob served on the TABC Health and Safety Committee as well as acting as Santa for TABC holiday events. In July 2015, Bob married Jim Simmons after being together for 38 years. Bob enjoys spending time with his two pet Maltese, LaRue and Lexus. Bob enjoys attending UT Football games and has been a season ticketholder since 1985. He also enjoys visiting casinos (mainly for the food).

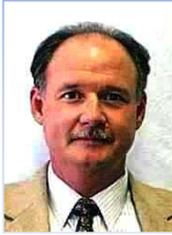


**Ngoc-Bich "Bich" Nguyen** (20 Years) is a Programmer V in the Information Resources Division. She began her career at TABC in July 1994 as a Programmer Apprentice. She left the TABC in November 1997, but returned in November 1998.

Bich received a bachelor's degree with a major in Management Information Systems from the University of Texas at Austin. During her tenure with TABC, she has received three awards - TABC Employee of the Year in 2001, TABC Outstanding Customer Service Award in 2002, and the 2012 Best of Texas Award for Outstanding IT Service and Support from Government Technology.

Bich has been married to her husband, An Le, for 28 years. In her spare time, Bich enjoys meditation, astrology and learning philosophy to build up her logical thinking and problem solving skills.

Commissioner Weinberg stated he thought it was interesting that a programmer could receive an Outstanding Customer Award. Executive Director Cook acknowledged that when she first arrived at TABC she had the pleasure of working with Bich who always has a smile on her face. She stated that back then and even to this day, Bich never says she can't do something, she is very resourceful and will find a solution to resolve an issue.



**Clifford Stech** (40 Years) is an Auditor V in the Waco Audit Office. Mr. Stech began his career with TABC on November 3, 1975. He briefly retired in 2004 and was rehired on September 15, 2004. He has worked as an Auditor in the Waco office since 1994. Prior to transferring to the Waco office, Clifford worked in the Corpus Christi, Beaumont, and Longview offices.

Clifford earned his bachelor's degree in Accounting from Texas A&M Kingsville (formerly Texas A&I). During his tenure with TABC, he served on several committees including the Private Club Audit Committee and the Audit and Excise Committee. In addition, he has been an instructor in TABC's New Auditor Academy for four years.

Clifford has been married to his wife Judy for ten years. He has three children: Brent, Tim and Lori and three stepchildren: Joey, John and Jill. He also has six grandchildren. In his spare time, Clifford enjoys golf, fishing, antiquing and serving in his local church.



**Salvador "Sal" Moralez** (20 Years) is a Lieutenant in the El Paso Enforcement Office. He began his career with TABC in December 1985 as an Agent in the San Antonio Office. Prior to joining TABC, he worked as a Deputy Sheriff for Winkler County and a State Trooper in Reeves County. Sal promoted to Sergeant in 2004 and to the rank of Lieutenant in the El Paso Office in 2009. He has served as a Use of Force Trainer for TABC. Lt. Moralez has also served as a Trainer for the Texas Department of Public Safety Narcotics Training Unit.

Lieutenant Moralez holds a Master Peace Officer's Certification issued by the Texas Commission on Law Enforcement (TCOLE). He is a graduate of the Force Science Research Institute, based at Minnesota State University, Mankato and was a Force Science Analyst. He completed Command Staff Leadership Training offered by the Sam Houston University Criminal Justice Center in 2006. In 2010, Lieutenant Moralez was nominated for TCOLE's Texas Law Enforcement Achievement Award. He was also honored in 2011 by the TABC Officer's Association as the "Supervisor of the Year".

Lieutenant Moralez is an Ordained Buddhist Priest with the Mahajrya Buddhist Organization. He is also a Spiritual Teacher and Reiki Master. He has been inducted into the United States Martial Arts Hall and Filipino Martial Arts Hall of Fame. He has 10th Degree Black Belts and Ph.D.'s in both Filipino Martial Arts and Martial Arts along with other ranks and titles to his credit. He is the highest ranking Hispanic Martial Artist in the Southwestern United States. He is the Founder and Director of the United Zen Budo Federation International, an organization which has members worldwide.



**Geneva Crump-Mitchell** (20 Years) is an Administrative Assistant IV in the Houston Enforcement Office. She began her career with TABC in May 1995 as a Front Desk Receptionist. She was first promoted to a File Clerk and then an Administrative Assistant in 2005.

Geneva is a native Houstonian. She graduated from Kashmere High School and attended the University of Houston studying Theater Arts and Business Administration. During her tenure, Geneva served on the Career Ladder Committee helping to gather information to support the funding of career ladders for TABC. In 2000, Geneva received the TABC "Outstanding Customer Service" award. Geneva spearheads and plans the Thanksgiving luncheon and Christmas breakfast for Region 3; and the entire region loves her commitment to her internal hungry customers.

Geneva has been married to her husband, Joseph Mitchell, for 19 years. They have accepted the role all over again as Mom and Dad by raising, three of the their four beautiful grandkids: Mylien-11, Mya-6, Antwon-8, and Avya-7.

In her spare time, Geneva teaches baptism classes at her church.



**Anthony Keel** (20 Years) is an Agent V in the Arlington Enforcement Office. He began his career with TABC on January 16, 1996 as an Agent Trainee in the Beaumont Office. He transferred to the Arlington Office in 1998. Prior to employment with TABC, Agent Keel was a Police Officer and guard at the University of Texas at Tyler from 1990 through 1996.

He obtained a Bachelor of Science in Criminal Justice from the University of Texas at Tyler and an Associates of Applied Sciences in Criminal Justice from Tyler Junior College. He was awarded a Master Peace Officer certification in 2005. In addition, Agent Keel is a certified Firearms Instructor. In 2004, Agent Keel was the recipient of the TABC's Agent-of-the-Year Award.

Agent Keel has been married to his high school sweetheart, Christy since 1998. Together they have three children: Danielle age 10, Michael and Jonathan age 7 (fraternal twins). Agent Keel spends his free time with his wife and children and enjoys reading, shooting and working on firearms.



**Mario Villarreal** (20 Years) is a Lieutenant in the McAllen Enforcement office. Mario began his career with TABC in January 1996 as an Agent Trainee assigned to the Houston Enforcement Office. Since then, he has made his way through the ranks, while serving in various capacities throughout the State of Texas border area to include the Harlingen Outpost, El Paso Enforcement Office and McAllen Enforcement Office. Prior to joining TABC, Lieutenant Villarreal worked for the Bryan Police Department.

Lieutenant Villarreal received his bachelor's degree in Agriculture Economics from Texas A&M University in College Station. Lieutenant Villarreal holds a Master Peace Officer's Certification and Instructors Certificate from the Texas Commission on Law Enforcement (TCOLE).



**Noe Castaneda** (20 Years) is a Taxpayer Compliance Officer (TCO) III at the Brownsville Ports of Entry. He began his career with TABC in October 1985.

Noe was born and raised in Brownsville, Texas. After graduating from Homer Hanna High School, he attended Texas Southmost College in Brownsville to study Criminal Justice.

When he is not working, Noe enjoys barbecuing, listening to music, fishing and going to the beach with his family and friends.



**Mario Benavides** (25 Years) is a Taxpayer Compliance Officer III at the Laredo Ports of Entry. He began his career with the TABC in March 1990 at the Laredo Ports of Entry. He briefly left his employment with TABC in March 2005, but returned in November of the same year.

Mario was born and raised in Laredo, Texas. Mario and his wife Carmen have two children, Mario, Jr. and Cristina. In his spare time, Mario enjoys spending time with friends and family, barbecuing and watching the Dallas Cowboy games. His favorite sports besides football are baseball, boxing, and hunting at his ranch.

Presiding Officer Cuevas noted to Director Smithwick that he rarely sees employees from the Ports of Entry locations at the meetings and if travel issues prevented them from attending meetings. Director Smithwick stated that travel expenses are reimbursed by the agency; however, the TCO's have a tendency to shy away from public events. She added she will continue to extend the invitation to the meetings and encourage them to attend.

Commissioner Weinberg directed a comment to Director Doty that he noticed that many employees leave employment then return to the agency. He stated that practice sends the message of loyalty and commitment to the agency, and the continuity of staffing is cost effective to avoid training new employees. Director Doty responded that although she can't take credit for employees returning to the agency, she agreed that re-hiring employees cuts the cost of training new employees down. Commissioner Weinberg inquired if there was an additional expense to re-hiring employees returning to the agency. Director Doty stated it depends on the budget and if a worker is returning after three months, she added salary adjustments are made based on the budget available and if there is a difference in salary the position is being re-posted. She also relayed that there is a tax that is paid on employees that have retired and been re-hired. Commissioner Weinberg stated he is impressed by the employees with such long tenure and appreciates their loyalty. Commissioner Steen commented that she is humbled by the employees with such long tenure and dedication to the agency and she is honored to be a part of it. Presiding Officer Cuevas congratulated the honorees and recognizes the talent in the agency. He appreciates the support the families of the honorees have shown time and time again. He added he is proud of the employees and of the team work and growth they have shown.

#### **RECEPTION HONORING TABC PROMOTIONAL RECOGNITIONS AND EMPLOYEE SERVICE AWARD RECIPIENTS**

Presiding Officer Cuevas called for agenda item # 5 – Reception Honoring TABC Promotional Recognitions and Employee Service Award Recipients. The meeting adjourned for the reception honorees.

#### **COMMISSION REPORT: EXECUTIVE DIRECTOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES**

Presiding Officer Cuevas called upon Executive Director Sherry Cook to present the Commission Report: Executive Director and Agency Activities, Budget Issues and Staff Achievements, and Legislative Activities.

Executive Director Sherry Cook welcomed the guests of the honorees and thanked them for joining us in recognizing the employees being honored for promotions and service.

Executive Director Cook began her presentation by reviewing key dates on the *2016 At a Glance* slide and stated the agency has started the Strategic Planning process. The results from the Survey of Employee Engagement have been received and the Commissioners will receive a copy for their review. She indicated that this year's survey yielded the highest participation to date. She added the results are good with some areas of concern. The three lowest ranked categories remain the same, which are pay, internal communication and information systems. She added the results will be shared with the employees to assist in developing the strategic plan. The instructions from the Governor's Office for the development of the new plan have yet to be received, but the planning process will begin nonetheless. Once the instructions are received it will be used as a guide toward the direction given. She noted it has been relayed that the Governor's Office is looking to streamline the overall process to

ensure it is efficiently and concisely written, and there is *value* in the resulting Strategic Plan document.



## 2016 AT A GLANCE

<p><u>JANUARY</u></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">CY16 Rule Review Plan Update</li> <li style="padding-left: 20px;">Enforcement Division Update</li> <li style="padding-left: 20px;">Annual Tenure Award Recognition</li> <li>Strategic Planning Process Kick-off Meeting</li> <li>Annual Performance Evaluations Completed</li> <li>Paesano Season at Laredo Port of Entry</li> <li>Agency-wide Final Cutover to Replicon</li> <li>Submit FY17 TxDOT Grant</li> <li>Begin Laredo Port of Entry Renovation Project</li> <li>FY16/17 In-Service Training Cycle Begins</li> </ul> <p><u>FEBRUARY</u></p> <ul style="list-style-type: none"> <li>Annual Performance Evaluations Due</li> <li>TABC Administrative Rules Printed and Distributed</li> <li>TABC 80<sup>th</sup> Anniversary Document Printed and Distributed</li> <li>Submit FY17 JAG Grant</li> <li>Launch new Administrator's Report</li> </ul>	<p><u>MARCH</u></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">Information Resources Division Update (Include V:O Originals Plan)</li> <li style="padding-left: 20px;">Licensing Division Update</li> <li style="padding-left: 20px;">Semi-Annual Promotion Recognition</li> <li style="padding-left: 20px;">Annual Awards Recognition</li> <li>Administrator's Strategic Planning Conference</li> <li>Spring Break Minor Sting Operations</li> <li>Administrative Assistant Academy</li> </ul> <p><u>APRIL</u></p> <ul style="list-style-type: none"> <li>TABC Strategic Plan Completed</li> <li>FY18/19 Legislative Appropriations Request (LAR) Planning and Analysis</li> <li>End-of-Year Lease Expiration Planning Kick-off</li> <li>Begin Legislative Hearings on Interim Studies</li> </ul> <p><u>MAY</u></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">Ports of Entry Division Update</li> <li style="padding-left: 20px;">Strategic Plan Briefing</li> <li>FY18/19 LAR Completed</li> <li>End-of-Year Budget Requests Due (Include Projects, Summer Interns and Merit Awards)</li> <li>End-of-Year Budget Guidance Provided</li> </ul>
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Executive Director Cook stated February is an off month for the commission meeting and the newly formatted and concise Administrator's Report will be launched. It is the intent to provide a more thorough report on the operations of the Commission by engaging the Directors with an expectation this will be a tool to aid their Divisions in planning when trends are identified both negative and positive. She added this will assist the Directors in having a more strategic approach to address issues on more of a long term basis, not just as issues arise.

Executive Director Cook relayed in the past that promotions were included in Commission meetings as they occurred; however, future leaders will now be recognized on a bi-annual promotional basis. The next semi-annual promotion recognition will be at the March Commission meeting. She added during that meeting briefings will also be given by IRD and Licensing to communicate plans for future automation and projects.

Executive Director Cook stated the Administrator's Conference will be in March and in February we will coordinate with the Commissioners to see if they would like to attend and level of participation. Included in the meeting will be an overview of the Strategic Planning process for the Commissioners. Strategic planning will be completed in April just in time for the kick-off of the FY18/19 LAR planning process, in addition to the beginning of legislative hearing and interim studies.

She noted during the May Commission meeting a briefing will be provided for the strategic plan as well as an update of the Ports of Entry.

Executive Director Cook stated June will include cut-off for all FY16 purchases and the new Supervisor Academy will be launched. She noted July's Commission meeting would include updates from Tax and Marketing Practices and Education and Prevention Divisions, a briefing on the FY17 Operating Budget, and an update on the FY18/19 LAR which will be presented for approval by the Commissioners. The New Auditor Academy would also occur in July.

<b>2016 AT A GLANCE CONTINUED</b>	
<p><u>JUNE</u> FY16 Purchasing Cut-off New Supervisor Academy</p> <p><u>JULY</u> Commission Meeting FY17 Operating Budget Briefing FY18/19 LAR Briefing Tax and Marketing Practices Division Update Education and Prevention Division Update New Auditor Academy</p> <p><u>AUGUST</u> FY16 End-of-Year Close-out FY18/19 LAR Submission to LBB</p> <p><u>SEPTEMBER</u> Commission Meeting (proposed date change) Audit and Investigations Division Update Internal Auditor Update (FY16 Results and FY17 Plan) Semi-Annual Promotion Recognition FY16 Performance Measure Analysis Back-to-School Minor Sting Operations Wal-Mart Lawsuit Trial CAPPs Financials Go-Live</p>	<p><u>OCTOBER</u> New Enforcement Agent Academy Begins FY17 Divisional Operating Budget Allocation Legislative Hearings on Budget and Finance FY16 Grant Funding Close-out Houston Super Bowl Planning Kick-off CAPPs Human Resources Kick-off SECC Campaign</p> <p><u>NOVEMBER</u> Commission Meeting Human Resources Division Update Training Division Update Legislative Session Planning Update Annual Financial Report Due Legislative Engagement and Bill Tracking Kick-off</p> <p><u>DECEMBER</u> New Enforcement Agent Academy Graduation Holiday Activities Implement Procedures for Submitting Fiscal and Legislative Impact of Bills</p>

Executive Director Cook stated August is year-end close out for BSD and also the deadline for submitting the FY18/19 LAR to the LBB. She added FY17 begins in September and noted a proposed a Commission meeting date change. Commissioner Weinberg inquired what the need for a date change was. Executive Director Cook explained that Texas is hosting the Northern/Southern Regional NCSLA September conference in Austin. She noted because Austin is such a popular place to visit, venues and dates were very limited which required the NCSLA conference to be scheduled the week of the September 27<sup>th</sup> Commission meeting. She added the Wal-mart lawsuit goes to trial that week as well. She is proposing the Commission meeting be moved up a week to September 20, 2016. Presiding Officer Cuevas, Commissioners Weinberg and Steen indicated they were fine with the proposed date change. Executive Director Cook stated she would update the date for the September Commission meeting on the agency website.

**Executive Director Cook will update the September Commission Meeting date to September 20, 2016 on the agency commission meeting calendar.**

Executive Director Cook stated CAPPs Financials will go-live in September. October events include a New Agent Academy (if there are enough vacancies), the Legislative Hearings on Budget and Finance, and the planning kick-off for the 2017 Houston Super Bowl. She continued reviewing the remainder of events through December 2016 which include implementing procedures for submitting Fiscal and Legislative Impact Bills. She noted that she purposely included Division updates for each of the upcoming Commission meeting which provides the Commissioners an advanced opportunity to request specific updates from each Division.

Presiding Officer Cuevas inquired what Executive Director Cook has heard on the Budget and Finance for FY17/18. Executive Director Cook stated she attended a function at DPS in which the State Comptroller was in attendance, she conveyed that FY16/17 was fairly stable because quite a bit of money was left on the table last legislative session. She stated it was relayed FY18/19 will be a difficult budget session. She added the Comptroller of Public Accounts and the Legislative Budget Board will be testifying this afternoon on how the cost of fuel and oil production will affect the budget.

Chairman Cuevas inquired why Chief Robert Saenz was not present. Executive Director Cook stated Chief Saenz and Director Mariann Morelock were attending the hearing on Open Carry on Campuses. She added they are not scheduled to speak but they will testify if called upon. She also mentioned Chief Saenz and Director Morelock will stay for today's hearing in which the Comptroller and LBB were testifying on the effects of fuel/oil production on the budget.

Chairman Cuevas established with Executive Director Cook that Chief Saenz and Director Morelock would only testify if called upon and she affirmed that statement. She explained that the agency has not been asked to testify on open carry; however, there has been much conversation on the topic on how open carry affects a licensee. She added the agency is working with the Governor's office on guidance on the issue. She stated presently the agency has left it to the retailer to determine whether or not they ask a customer if they have a license to carry.

Commissioner Weinberg asked that they be kept informed of what is said in the hearing on the FY18/19 budget. Executive Director Cook said she would update them with any new information. Commissioner Weinberg added he doesn't feel as confident that the second half of the biennium will be as "rosy" as predicted and we should prepare for the possibility of prioritizing cuts and be ready for it in case it happens.

Commissioner Weinberg stated since Texas sponsored an earlier Dallas Superbowl, we won't need to reinvent the wheel, we can use the experience and planning from the Dallas Superbowl and be able to smoothly plan for the Houston Superbowl. Executive Director Cook agreed that we do have experience and have already been involved in some meetings. She added the agency looks forward to partnering and helping to make it a great event.

Commissioner Weinberg recommended that contact should be made soon to suppliers (taxi companies) to provide "taxi ride" coupons for people leaving bars. During the Dallas Superbowl, bars kept a supply available and people used them to get safe rides home. He added these coupons were used and there were no known reported fatalities that weekend.

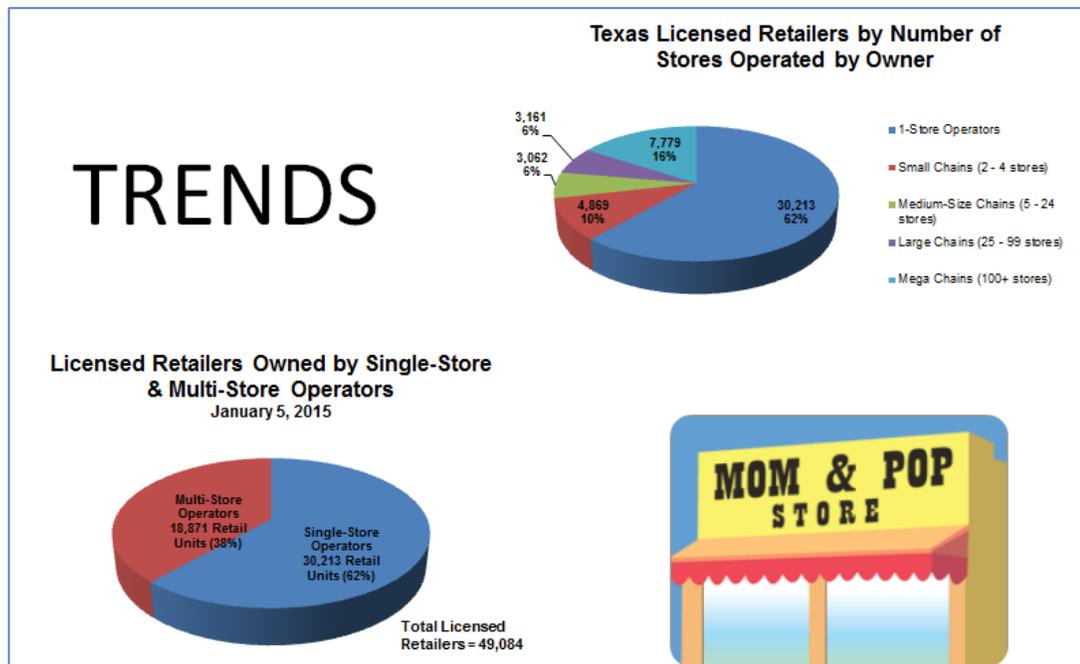
Executive Director Cook stated Austin Region Agent, Tricia Rutledge was awarded a Certificate of Commendation by the Leander Police Department for her work on a fatality source investigation. Certificates of Commendation are awarded by the Leander PD to peace officers from other agencies that have "rendered valuable and distinguished service to the Leander Police Department and the Leander community." She ended by thanking Agent Rutledge for representing the agency in a professional manner.

Executive Director shared several accomplishments throughout the agency:

- Supervisors in the Arlington region decided to leverage their ability to run undercover operations in bringing non-compliant operators into compliance which has resulted in the highest number of administrative cases from priority location follow-ups. These are locations that have repeat public safety violations.
- All of the ports continue to see revenue gains, which amounts to over \$65K than in the same month of the prior year. The only place showing a drop in revenue is within cigarette taxes, which we may want to visit during the LAR process. Which isn't a bad thing if it means less people are smoking.
- Licensing continues to address number of days to issue a permit and is working on an end-to-end evaluation which will accomplish several objectives. First making sure processes align with the automation, already implemented and second process mapping for originals on-line. She noted the average fluctuates from time to time and they are looking into a solution to stabilize the average. Director Harrison and Director Webster will present these plans during the March Commission meeting.

Commissioner Weinberg stated that in recalling the last Commission meeting analysis on the timeliness of issuing permits, it appears to be on track. He believes it will smooth out by the 12 month period. Deputy Executive Director Swedberg stated that Director Harrison's team has been working diligently to address issues and have been working overtime, focusing on originals over renewals/supplementals.

Executive Director Cook reviewed the Trends chart which compared licensed retailers owned by single-store and multi-store operators. She pointed out that there are still a lot of small businesses in Texas that contribute to the stability of the economy. She added it's a reminder that the differences in sizes of the business and business models should be factored in making decisions.



Commissioner Weinberg inquired who the top entities owning 100 or more licensed retailers were. Executive Director Cook stated the top two entities were Dolgencorp of Texas (Dollar General) with 973 licensed retail units and Quality Licensing Corp (Walmart) which has 651 licensed retail units. She noted Dollar General is fairly new in carrying alcohol.

Executive Director Cook reviewed the agency vacancies. She stated as of January there are only 18 vacancies. She remarked that low of a vacancy count is historical. She gave thanks to the directors, Director Doty and her staff, especially recruiter Keon Flowers for bringing in qualified applicants. She added it is important to go into the next session with very few vacancies. Presiding Officer Cuevas added this is a result of the "right sizing" from the last session. Executive Director Cook agreed and noted by March the vacancies will be in the single digits. She also stated the Commissioners would be receiving vacancy updates on a monthly basis.

Commissioner Weinberg stated that the upside to that is that the agency is doing what it is asked to do and the downside is budgetary. He inquired how is being almost fully staffed affecting the budget. Executive Director Cook stated that because of the "right sizing" last session, we were reduced in headcount but the money for those positions was untouched, because of this the budget leveled out. She added because we are more adequately funded, the budget is sound and we appreciate all the efforts from the LBB.

Executive Director concluded her presentation and inquired if the Commissioners had questions. Commissioner Weinberg commented that a project that he would like considered and made a priority are Body Cameras, and asked for an update on what progress has been made on researching Body Camera use. He knows they are used in Arlington and would like them more widely used; however, he doesn't think they should be personally purchased by agents.

Assistant Chief Earl Pearson stated there is currently a mixture of State purchased (approximately 100 body cameras) and personally purchased body cameras being used in the field. He added Training Director Albert Rodriguez met with Deputy Executive Director Swedberg and a policy will be written outlining how and when the cameras will be used. He mentioned that Director Mindy Carrol will be researching grants that can be used to fund additional good quality body cameras. Assistant Chief Pearson stated body cameras are being priced and compared to ensure the cameras selected to purchase adequately capture video that at times will be in a minimally lit location. Presiding Officer Cuevas stated it makes sense to have an Agency standard camera to ensure the quality video is captured and used throughout the agency by agents. He inquired about the purchase timeline for body cameras. Assistant Chief Pearson stated they are working diligently on the project and writing the body camera policy will be a priority in the upcoming months. He added there is a State law that dictates body camera use and they will incorporate those requirements into the agency's policy. Deputy Executive Director Swedberg added in addition to the technology standard and agency Body Camera Use policy, there is an Evidence Policy that will be written to address how the evidence will be retained and secured so it can be admissible as required.

Commissioner Weinberg commented that although agents should be using State purchased body cameras, he commends the agents who are taking the initiative to use their personal cameras on the job.

### **CY16 RULE REVIEW PLAN UPDATE**

Presiding Officer Cuevas called Deputy Executive Director Swedberg to present the CY2016 TABC Rule Review Plan. Deputy Executive Director Swedberg stated back in November 2014 it was discussed that a thorough rule review was being planned. He added there is a statutory requirement stating the rules must be reviewed on a four year cycle. The first year review plan began in 2015 and although there was a lot of headway made on the rules, and he hopes the Commissioners agree that the progress made in the first rules review was fruitful. He noted there is still large amount of rules that need to be reviewed in the next few years.

Deputy Executive Director Swedberg stated that Assistant General Counsel Martin Wilson and Executive Assistant Luann Dickerson created a matrix to track the rules, which also notes when the rule was last reviewed and expected action. He explained the following steps will be used during the CY2016 rule review plan:

- Identify rules exceeding the “4 year review” Government Code requirement
- Assess each rule for complexity, relevance and potential for necessary changes
- Develop schedule for presentations to Commissioners during upcoming Board Meetings in CY2016
- Be prepared to modify schedule as required

Deputy Executive Director Swedberg reviewed the bi-monthly Rule Review schedule, that begins in March 2016 and ends in November 2016 which coincides with the Commission meetings. He also presented a snapshot of the CY2017 Rule Review schedule. He added the schedules will be modified to adjust to workloads and schedules of the Rule Committee (consisting of Division Directors) and fortunately because this isn't a legislative year there won't be any rules resulting from the legislative session. He noted March will be heavy on Tax and Marketing Practices rules, with emphasis in Chapter 41 which relates to reporting. He stated a new rule addressing Loyalty Programs will be included in the March rules review, and noted the agency has been involved heavily with the stakeholders and getting feedback. He ended asserting the rule will provide guidance on Loyalty Programs especially on the retail level and the rule will be presented at the next Commission meeting.

Commissioner Weinberg noted that several of the rules have exceeded the four year review requirement. Deputy Executive Director Swedberg commented that yes, there were some rules where the updates couldn't be located and they had to refer to source documents, and sometimes the Texas Register in some cases, to determine when the rule was last reviewed. He stated in May the most significant rule will be 41.48 - Changes Relating to Control which will require major changes and may draw some heated discussion amongst the stakeholders. July, will revisit Chapter 41 with major rule changes expected for 41.32 - Monthly Report of Distilled Spirits and Wines, and 41.41 - Nonresident Seller's Report. He noted September rules review will mostly relate to Licensing and also new rule 39.2 - Cigarette Tax which will clarify the statute.

Deputy Executive Director Swedberg stated in November, Field Operations and General Counsel will review the sanctions and penalty schedules for Health, Safety and Welfare Violations and Major Regulatory Violations and offenses that fall into the categories, which will require some significant changes. He commented that if all goes as planned in 2016, 2017, and 2018, when the next cycle starts, it will only require clean-up and not major changes. Commissioner Weinberg requested clarification on when the rule review process began. Deputy Executive Director Swedberg stated the Commissioners were advised of the rule review process plan in 2014 but the rule review cycle didn't actually begin until 2015. General Counsel Helm interjected that the last cycle began in 2010 with Seller/Server rules and quickly progressed with less pertinent rules to more stringent rules. She added once Deputy Executive Director Swedberg was charged with heading the project, he planned and organized the rules and now has us right on track. She noted that although many rules reflect they haven't been reviewed in quite some time, that was not always the case; however, we are doing clean up and wanted the rules officially addressed and presented to the Board. She stated the Attorney General commented in regards to meetings they have attended, they have never witnessed an agency taking the rule review process as seriously and as organized as our agency.

Presiding Officer Cuevas inquired how much time is allocated by the Rules Committee to discuss/revise rules that are controversial and require major changes. Deputy Executive Director Swedberg stated the first step is for the Rules Review Committee to assign the rule to a subject matter expert among the Division Directors. The Division Director will then meet with their team and are given a timeline to draft recommendations, with focus on whether the changes are in the State's interest, the changes are then brought to the Rules Review Committee for discussion. Next, stakeholders meetings or individual meetings with industry members are scheduled to discuss the rules. Deputy Executive Director Swedberg noted the time allocated to review a controversial rule is not long but is dependent on brainstorming, writing, coordinating and meeting with the stakeholders and industry members. He added that the rule review process can be time consuming if we hit an impasse, such as if multiple stakeholders have different views. If that happens, Assistant General Counsel Wilson has to gather the different views for discussion by the Rules Committee to determine if there is a compromise, then those are presented to the stakeholders/industry member at a public hearing and back and forth until a compromise is met. Commissioner Weinberg stated he is glad to hear the AG's office is pleased with our rules review work. General Counsel Helm stated the rule review process is a good tool to determine what is obsolete and is a good opportunity to bring innovation to the rules. Presiding Officer Cuevas inquired how many rules were struck in the last few years. General Counsel Helm responded at least 50. Commissioner Weinberg asked if they needed help. She responded they can always use help; however, things aren't out of control. Commissioner Weinberg commented that we may need to consider having additional Commission meetings where only rules are addressed to stay on top of the rules review and stay within the four year cycle.

Executive Director Cook revisited a comment Commissioner Weinberg made on the budget and vacancies. She noted as long as there are vacancies and the FTE cap is not exceeded, positions can be moved around the agency to fill required resource needs. However, once all vacancies are filled we no longer have the latitude to move positions around. She added there are several factors driving additional strain on

Legal's resources and we may need to request additional headcount in the next LAR process.

Presiding Officer Cuevas requested Director Doty come forward. He stated that currently Legal is being provided part-time assistance to help with the burden of work. He inquired with so many current vacancies can more be done to lessen Legal's strain. She responded the question is more of a BSD issue but her understanding is that an amendment to the budget has to be made for a position to be moved to another division. She added all the positions currently vacant are needed in other divisions, so if you take a vacant position and give it to Legal for example, another division would have to do without. Deputy Executive Director Swedberg interjected that Legal's strain can be lessened by temporary employees which can work for up to 6 months; however, the issue is that there is no specific strategy that fund's Legal directly. Legal's funding is prorated among other strategies such as Enforcement and POE. Executive Director Cook stated they are in the process of hiring an Attorney III for Legal and that should help with the strain. General Counsel Helm elaborated that the position was upgraded from an Open Records Paraprofessional to an Attorney III which will close this Friday. She noted in the interim she has a full-time temporary and a part-time temporary attorney on staff and she is bringing in another full-time attorney to fill the gap while the Attorney III position is being filled. The main function of the full-time temporary is to work on the open records backlog; however she is being more cautious as Legal continues to receive more complex open records. She added Legal has begun working with IRD to lay out a plan to determine if they are utilizing their resources to the fullest. She stated they are catching up and appreciates Executive Director Cook's and Deputy Executive Director Swedberg's support in providing available resources. Presiding Officer Cuevas stated he doesn't want to just catch up, he wants to be ahead of the open records requests and all options should be considered, whether that requires a full time position or hiring an outside consultant. General Counsel Helm stated she agrees with his approach and appreciates his support. Commissioner Weinberg added that you just can't hire anyone to do this work, it has to be someone with experience in the area.

### **ENFORCEMENT DIVISION UPDATE**

Presiding Officer Cuevas called Assistant Chief Earl Pearson for the Enforcement Division Update. Assistant Chief Pearson reviewed the staffing for Region 1, noting there is a Sergeant vacancy in the Amarillo Area Office. It is currently being discussing whether the position should be relocated the Lubbock Regional Office. He stated the benefit will be the new sergeant will have the ability to directly confer with the Major and Lieutenant on issues facing the Region as well as his or assigned Sergeant Sector.

Assistant Chief Pearson reviewed the staffing for Region 2. Presiding Officer Cuevas inquired what areas made up Region 2. Assistant Chief Pearson responded it consists of Dallas up to Sherman, the Tyler/Longview area and back down just before Lufkin. Commissioner Weinberg inquired how many satellite offices were in each region. Assistant Chief Pearson stated Region 1 has offices in El Paso, Odessa, San Angelo, Alpine, Abilene, Amarillo, Region 2 has offices in Denton, McKinney, Arlington, Tyler and Wichita Falls. He added Region 3 has offices in Houston, Galveston, Lufkin, Beaumont, and Richmond. He reviewed the staffing for Region 3 and indicated there

were no vacancies. He also reviewed Region 4 staffing which includes offices at Austin Headquarters, Austin Regional office, Georgetown, San Marcos, Bastrop, Belton, and Waco and there are no vacancies. Finally he reviewed Region 5 staffing and mentioned they will be looking to fill an administrative assistant position where the current person has recently submitted their letter of resignation. He elaborated that Region 5 has offices in San Antonio, Laredo, McAllen, Harlingen, and Corpus Christi. Assistant Earl Pearson also reviewed the Fleet, Communication and Supply unit located at the Austin warehouse and noted they were fully staffed. Enforcement staffing consists of 5 Majors, 14 Lieutenant, 28 Sergeants (with one vacancy), 176 Agents, and 15 Administrative Assistants for a total of 238 employees. Presiding Officer inquired what the employee count was before "right sizing". Assistant Chief Pearson responded the count was about 300, explaining some agent positions were lost and others were moved to the SIU area along with some supervisor positions.

Assistant Chief Pearson reviewed the staffing for the Special Response Team which is comprised of Enforcement staff and includes 1 Lieutenant, 3 Sergeants, and 36 Agents. In 2015 members of SRT were deployed for the following:

- Laredo-January (Paisano)
- Laredo-March (Holy Week)
- El Paso-May ((To Check Possible Revenue Gain Based on Traffic Patterns Supplied by Customs and Border Protection)
- Brownsville/Progreso-November (To Check Possible Revenue Gain Based on Traffic Patterns Supplied by Customs and Border Protection)

The last call-out the entire unit was deployed was in the September 2011 Bastrop Fire.

Commissioner Weinberg stated he recalled revenues increased when the SRT team was present. Assistant Chief Pearson concurred that not only did revenue increase at the two Laredo bridges but also at Columbia and this was due to a team effort by POE, SRT and the Customs and Border Protection. Commissioner Weinberg commented that was an interesting result from that effort and it's something to learn from. Assistant Chief Pearson stated that Customs and Border Protection approached the POE supervisors and asked what they could do to assist with facilitating getting traffic off the bridge and reduce bottlenecking of traffic. He stated it was a win-win effort in assisting the Customs and Border Protection. He added cones were put up to direction people needing to pay taxes instead of them staying in line which helped ease traffic congestion. Commissioner Weinberg inquired if this would be a permanent effort. Assistant Chief Pearson stated in his opinion it probably will be. He added the Executive Director accompanied them to Laredo and with her blessing it will occur more often. Discussions with Director Smithwick and Donna POE Manager Carla Rios have begun to plan efforts at the seaports.

Assistant Chief Pearson gave an overview of the awards presented to agents in 2015:

- Agents Schott, Patterson, Meyer and former Agent David Noble were publicly recognized in an award ceremony by the Brazos Valley Chapter of Mothers Against Drunk Driving.
- Agent Tricia Rutledge received a Leander Police Department Certificate of Commendation. A Certificate of Commendation is issued when a member of

another law enforcement agency has rendered valuable and distinguished service to the Leander Police Department.

- Agent Greg Lewis was recently nominated by the Program Specialist for MADD for the Commitment to Youth Award. The nomination was due to Agent Lewis' membership in the Greater Austin Underage Drinking Prevention Council.
- The 2015 Regional Agent Recognition Award recipients were Agent Todd Carroll, Agent Roger Devine, Agent Matthew Kelso, and Agent Kevin Oginski.

Assistant Chief Pearson reviewed promotions during FY 2015 and noted he is very proud of them.

December 2015: Peter Gonzales & Matthew "Kyle" Kelso promoted to Sergeant

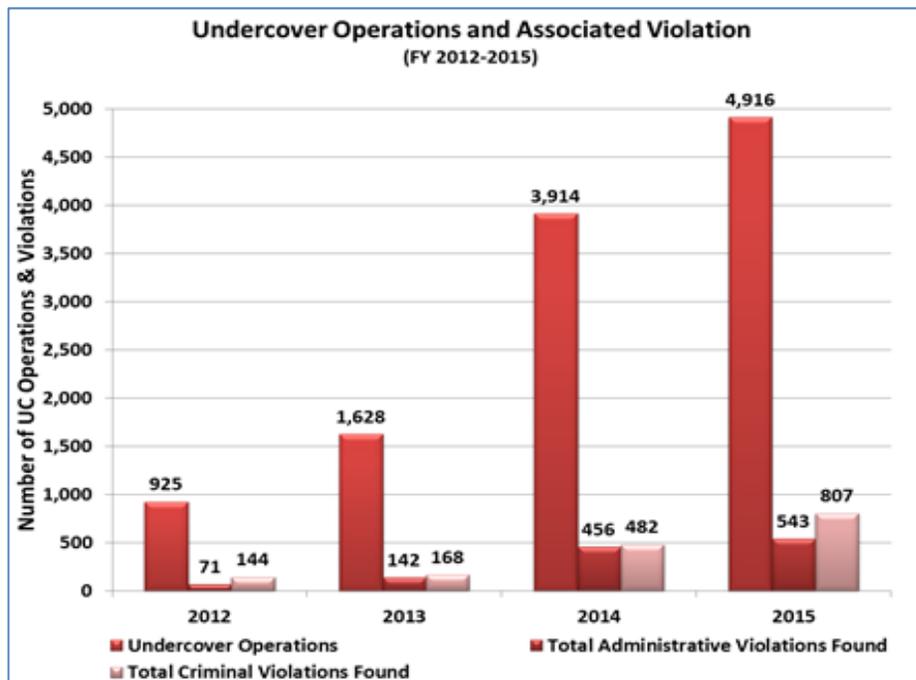
October 2015: Nicole Walker & Geoffery Weise promoted to Lieutenant

June 2015: Mark Menn and Harry Nanos reclassified to Major

November 2014: Jeffery Farmer, David Ianni & Jason Winter promoted to Sergeant

September 2014: Joe Cavazos promoted to Lieutenant

Assistant Chief Pearson gave an overview of the Undercover Operations from FY2012-2015.



He stated the Agency's ability to work proactively in an undercover capacity has allowed us to locate the root of public safety violations versus being reactive to violations which have already occurred. He added the increase in quality (due to training) and quantity (due to increased manpower) of these types of operations has a direct relation to the increase in operations conducted and violations detected. He commented back in 2012 Undercover Operations were typically conducted M-F 8-5pm. He noted in 2015 Undercover Operations have soared since shifting undercover operations to times when the violations are actually occurring. He stated a complete turnaround in approach on how the areas of the agency work together has made a huge difference in the success. He has no reservations in stating there is a near 100%

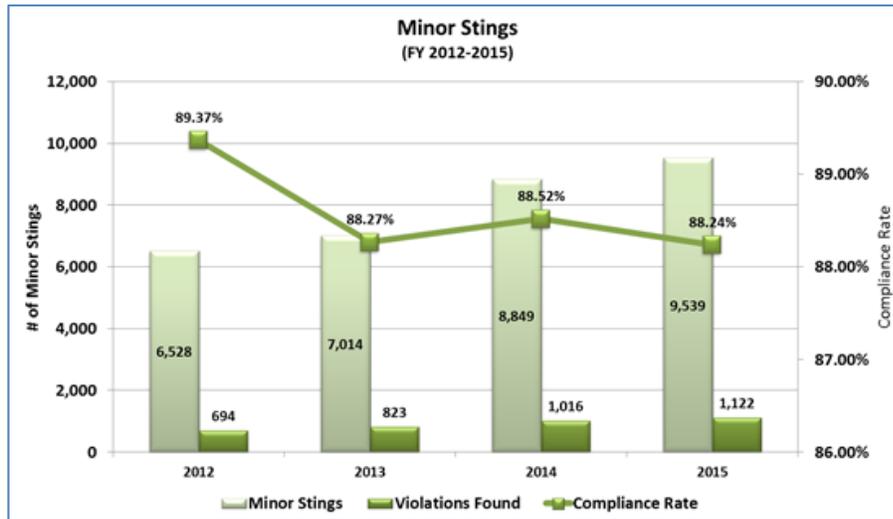
buy-in by the agents to do what needs to be done, when it needs to be done and how it needs to be done. He stated this mentality begins at the top with management and filters down. Commissioner Weinberg stated according to the numbers it appears visiting locations when the bad things are happening reflects in the increased Administrative Violations found. Assistant Chief Pearson acknowledged that conducting more Undercover Operations and being there when violations occur has made it easier in settling administrative cases out in the field. He added for the administrative cases that cannot be settled in the field, Legal has done an outstanding job helping settle the cases. He acknowledged in the past we were our own worst enemy, bickering amongst ourselves but with a more positive approach, and increased communication and teamwork between the agents and field legal staff cases are being settled more efficiently.

Assistant Chief Pearson reviewed the Percentage of Violations Found During Undercover Operations slide. He explained the very nature of Undercover Operations aims to detect violations of the Alcoholic Beverage Code from a different perspective than open inspections. These operations allow CPOs to detect violations that would likely not be detected in an open capacity. Over this paradigm shift, CPOs have increased their ability and knowledge and have become more efficient at locating criminal violations. He stated Undercover Schools are continuing with the aid of Training Director Albert Rodriguez and there are approximately 50 agents remaining to be trained. Fort Hood and Camp Mabry have made facilities available for Undercover Operations training. He added with the training staff and authorization from the Executive Director and Deputy Executive Director being able to conduct the Undercover Operations training is beneficial to the agency. He stated although agents aren't required to take the Undercover Operations training, agents are encouraged to have a general working knowledge of undercover operations. Commissioner Weinberg inquired if Undercover Operations training was part of the New Agent Academy. Assistant Chief Pearson stated it has been incorporated along with Reality Based training. He added round 2 of Reality Based training is coming up, as with any training if you don't use it, it tends to be forgotten. Commissioner Ida Steen inquired if refresher courses are offered for training taken. Assistant Chief Pearson stated that yes, refresher courses are offered and Training Director Rodriguez was asked to help develop a plan so they can provide additional training. He noted there are A.C.T certified instructors out in the field to provide Reality Based training, each region has 2-3 instructors.

Assistant Chief Pearson reviewed the Administrative vs Criminal Cases slide and noted criminal cases have declined sharply in fiscal year 2015 – the reason may be attributed in part to the issues surrounding §11.641 (c) of our Code. More focus is being given to the permit side of a case as opposed to the criminal side.

Assistant Chief Pearson discussed the Minor Stings slide for FY2012-2015 and noted the compliance rate is declining. He stated we will continue to conduct minor stings and noted some Sheriff and Police Departments have shown interest and are being educated on TABC policy and how minor stings are conducted. The goal is to get the compliance rate at 90%. Deputy Executive Director Swedberg pointed out that in 2015 there were over 9500 minor stings and there are over 48,000 retail locations. He added if we continue with the 2015 rate we'll hit every licensed location once every 5 years. Minor Stings focus priority locations which include repeat offenders. He stated

we are doing everything we can with our resources but it is imperative that we utilize the local resources to conduct minor stings. It should also be noted that focus for minor stings are now being made to locations that haven't been checked in quite a while which is affecting the compliance rate. He added the message will soon be received that TABC is back out there and is hopeful the compliance rate will increase with our increased presence and we intend to hold them accountable.



Commissioner Weinberg raised a question on the penalty schedule, if whether the penalty goes up with each violation. Assistant Chief Pearson stated it does with the ultimate penalty of losing their license. He also pointed out that Deputy Executive Director Swedberg stated the same license locations were being visited because of priority and convenience but that mindset has changed and now focus has been expanded to more rural and non-priority locations. This new approach was due to feedback received from Regional majors, lieutenants and sergeants that new locations should be visited.

Assistant Chief Pearson reviewed the Breach Investigations slide. He stated in fiscal year 2012, there were nearly 2,000 breach investigations in the "on-going" stage. In fiscal year 2013, management made a push to enter these types of investigations properly (classification and enter them when a complaint is received). This push resulted in the numbers of on-going investigations going from 1,972 in fiscal year 2012 to 1,376 in FY 2013; 813 in FY 2014 and 277 in FY 2015. This push to close out older cases, could be one of the reasons for the decrease in percentage of breach investigations being closed without violations being found. We are now at a point where these investigations are being handled properly and we are not inundated with cases that were not being tracked or even possibly worked.

Assistant Chief Pearson concluded by reviewing the Inspections and Priority Inspections slide. He stated while total inspection volume has trended upwards in recent years, volume for the current fiscal year (FY 2016) has been lower than expected or desired. A shift in Enforcement 's inspection mix, which decreased the proportion of open and exterior surveillance inspections conducted and increased the proportion of more time-intensive minor stings and undercover operations was responsible for a significant proportion of the shortfall. He noted the shift did permit

the agency to focus more resources on public safety concerns and to employ the tactics that are better suited for rooting out public safety violations. Despite the slow start, Enforcement still expects to hit full stride by mid-year and to meet or exceed its annual goal of 81,144 inspections before the end of the fiscal year. Priority Inspection volume has also trended upwards in recent years. After a recent analysis of the data found that follow-up inspections conducted after the first six months of close observation produced diminishing returns, Enforcement opted to cease follow-up inspections and end priority status after six months and to refocus the saved resources on another public safety concern-- recently licensed retail businesses, who collectively have been responsible for an excessively high percentage of the public safety offenses cited by the agency. Because of this change, FY 2016 priority inspection volume is expected to be lower than in FY 2014 or FY 2015 and to total no more than 25,000 - 30,000 by the end the current fiscal year.

Commissioner Weinberg stated according to the data they are about 26-27% of the yearly predicted inspections which should be close to 33%, he inquired if Assistant Chief Pearson could explain the slow start. Assistant Chief Pearson stated he believes the slow start was due to redirected focus to undercover operations, breach investigations and minor stings. He added with certain events coming up around the state of Texas such as spring break, the rodeo, and upcoming Austin events, plans have been made to visit those locations and conduct inspections. He finished by stating the Majors know what the goals are and he is confident that the goals will be met. He added with emphasis being made to the priority locations because they are the ones that cause not only us but the citizens of Texas problems.

Presiding Officer Cuevas inquired if there were any questions, and there were none. He concluded by stating he understands why Assistant Chief Pearson has the respect and loyalty of his staff, he is clear and direct and generously expresses his appreciation of the CPOs, legal and licensing. Assistant Chief Pearson stated the agency has a great family atmosphere and it is easy to come to work when you have the support of upper management and the Commissioners and he appreciates them working for the agency's best interest. Commissioner Weinberg directed a comment to Commissioner Steen and stated he remembers when the agency philosophy was changed a few years back and it appears to be paying off and he doesn't have a problem with an 88-89% compliance rate. He added there will always be bad actors and the numbers look great and Enforcement is doing a great job.

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the presentation of agenda Item 11.

**APPROVE PUBLICATION OF PROPOSED AMENDMENTS TO RULE §33.9, FEES FOR ON-LINE TRANSACTIONS**

Assistant General Counsel Martin Wilson stated agenda item 11 are changes that were made as a result of Texas.gov changing the fee structure and the rule is being revised to be in compliance with the new fee structure. He added this is being presented for publication and comments. He noted the rule was not presented at a stakeholder meeting because we are complying with mandates on the new fee structure.

**Presiding Officer Cuevas called for a motion on the agenda item 11. Commissioner Weinberg moved to Approve Publication of Proposed Amendments to Rule §33.9, Fees for On-line Transactions. Commissioner Steen seconded the motion and the motion passes.**

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the presentation of agenda Item 12.

**APPROVE PUBLICATION OF PROPOSED AMENDMENTS TO RULE §41.52, PRIVATE CLUBS – IN GENERAL**

Assistant General Counsel Martin Wilson stated agenda item 12 has a lot of changes most being stylistic and grammar changes. He added the biggest change is on the requirement for food service, proposing to allow food service to be fulfilled by an outside vendor or contracted vendor; however, the food must be on premise and payment would be required to be paid to the club as opposed to the vendor. He stated there was a stakeholder meeting held on this rule and no comments were made.

**Presiding Officer Cuevas called for a motion on the agenda item 12. Commissioner Weinberg moved to Approve Publication of Proposed Amendments to Rule §41.52, Private Clubs – In General. Commissioner Steen seconded the motion and the motion passes.**

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the presentation of agenda Item 13.

**APPROVE PUBLICATION OF PROPOSED REPEAL OF RULE §41.54, DESTRUCTIONS**

Assistant General Counsel Martin Wilson stated agenda item 13 goes hand in hand with agenda item 14 but this needs to be addressed first. He stated this rule addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission is proposing to repeal the text of this section as it currently exists and separately replace it with new text under the same rule number and title.

**Presiding Officer Cuevas called for a motion on the agenda item 13. Commissioner Weinberg moved to Approve Publication of Proposed Repeal of Rule §41.54, Destructions as recommended by staff. Commissioner Steen seconded the motion and the motion passes.**

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the presentation of agenda Item 14.

### **APPROVE PUBLICATION OF PROPOSED NEW RULE §41.54, DESTRUCTIONS**

Assistant General Counsel Wilson stated this is the new rule that addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission has reviewed the current section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions to the existing rule are necessary. He stated this rule was discussed in a stakeholder meeting and comments were received. He commented that the comments received were incorporated into the new rule.

**Presiding Officer Cuevas called for a motion on the agenda item 14. Commissioner Weinberg moved to Approve Publication of Proposed New Rule §41.54, Destructions as recommended by staff. Commissioner Steen seconded the motion and the motion passes.**

Commissioner Weinberg inquired if the agency will be required to make on rule on open carry on license premises. Assistant General Counsel Wilson stated he doesn't believe the agency will, based on his personal opinion. He stated unless more guidance is received from the Governor's Office or Attorney General or Legislation who look at the issues more broadly, he doesn't believe a rule will be helpful. Commissioner Weinberg agrees that it is wise to wait for guidance.

### **PUBLIC COMMENTS**

Presiding Officer Cuevas opened the floor for additional comments before the Commission. No one came forward to address the Commission.

### **EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE ON THE APPOINTMENT, EMPLOYMENT, EVALUATION, AND DUTIES OF THE POSITIONS OF EXECUTIVE DIRECTOR AND GENERAL COUNSEL (GOVT. CODE §551.071, §551.074, AND TEXAS ALCOHOLIC BEVERAGE CODE §5.11)**

Presiding Officer Cuevas announced that the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time 12:48 p.m., January 26, 2016 and an Executive session will be held to consult with legal counsel regarding pending and anticipated litigation against the agency and to deliberate on the appointment, employment, evaluation, and duties of the Positions of Executive Director and General Counsel (Govt. Code §551.071, §551.074, and Texas Alcoholic Beverage Code §5.11)

The Texas Alcoholic Beverage Commission has concluded its Executive session and is now in open regular session. The date is January 26, 2016 and

the time is 2:12 p.m. No final action, decision or vote was made in Executive session.

**NEXT MEETING DATE:** Tuesday, March 22, 2016

**ADJOURN**

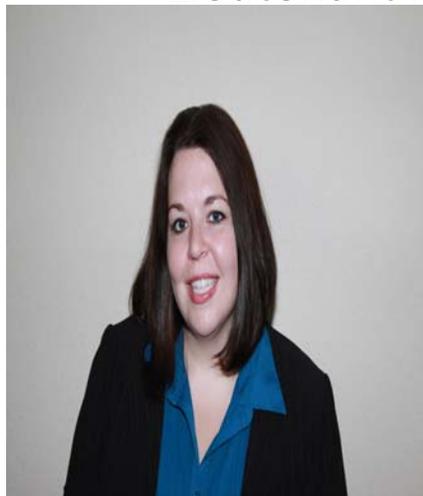
Presiding Officer José Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion to adjourn. Commissioner Steen seconded the motion. The motion was made and seconded. The motion passes. Presiding Officer José Cuevas announced that the meeting was adjourned at 2:13 p.m.

# **Attachment 1**

**Promotional Recognitions: Lieutenant Nicole Walker,  
Arlington Enforcement Regional Office; Lieutenant  
Geoffery Weise, Arlington Enforcement Regional  
Office**

## PROMOTIONS

### Lieutenant Nicole Walker



Lieutenant Nicole Walker began her law enforcement career with the Texas Alcoholic Beverage Commission in 2007 as an Enforcement Agent in the Beaumont Office. She later promoted to the rank of Sergeant in the Amarillo Area Office in 2013 before transferring to the Waco Area Office and later the Houston Enforcement Regional Office. Lt. Walker holds a Bachelor of Arts degree in Psychology from Baylor University, a Master's Degree in Public Administration from Sam Houston State University and is a Certified Fraud Examiner. She currently holds a Master Peace Officer Certificate and an Instructor Certificate from the Texas Commission on Law Enforcement (TCOLE).

Lt. Walker enjoys spending time with her better half of six years, Marc Langley, and they love traveling the world and relaxing at home with their dog Kaida.

## PROMOTIONS

### Lieutenant Geoffery Weise



Lieutenant Geoffery Weise began his law enforcement career with Randall County Sheriff's Office in 2001 where he worked as a Deputy Sheriff before accepting the position as an Enforcement Agent with the Texas Alcoholic Beverage Commission assigned to the Amarillo Area Office in 2005. He was later promoted to the rank of Sergeant in the Amarillo Area Office in 2013. Lieutenant Weise holds a Bachelor of Science Degree from West Texas A&M University and is a Certified Fraud Examiner. He currently holds a Master Peace Officer Certificate, Instructor Certificate, Firearms and Patrol Rifle Instructor Certificate from the Texas Commission on Law Enforcement (TCOLE).

Lieutenant Weise married his wife Megan in 2011 and they are expecting their first child, Remington, in late November. In his spare time, Geoffery enjoys spending time at home with his wife and dogs and is an avid firearms collector, hunter, and outdoor enthusiast.

# **Attachment 2**

**Recognition of TABC Service Award Recipients:  
Robert “Bob” White, Information Resources  
Division; Ngoc-Bich Nguyen, Information Resources  
Division; Clifford Stech, Audit & Investigations;  
Salvador Moralez, El Paso Enforcement; Geneva  
Crump-Mitchell, Houston Enforcement; Anthony  
Keel, Arlington Enforcement; Mario Villarreal,  
McAllen Enforcement; Noe Castaneda, Brownsville  
POE; Mario Benavides, Laredo POE**

## Robert “Bob” White

### 25 Years



Robert “Bob” White is a Systems Support Specialist IV in the Information Resources Division (IRD). He began his career with TABC on November 19, 1990 as an ADP Equipment Operator II in IRD. He was promoted to a Systems Support Specialist in February 1997. Prior to his employment with TABC, Bob was employed by Texas Instruments in Dallas and Forecast Consultants, an actuary firm.

During his tenure with TABC, Bob served on the TABC Health and Safety Committee as well as acting as Santa for TABC holiday events. In July 2015, Bob married Jim Simmons after being together for 38 years. Bob enjoys spending time with his two pet Maltese, LaRue and Lexus. Bob enjoys attending UT Football games and has been a season ticketholder since 1985. He also enjoys visiting casinos (mainly for the food).

## Ngoc-Bich Nguyen

### 20 Years



Ngoc-Bich “Bich” Nyguyen is a Programmer V in the Information Resources Division. She began her career at TABC in July 1994 as a Programmer Apprentice. She left the TABC in November 1997, but returned in November 1998.

Bich received a bachelor’s degree with a major in Management Information Systems from the University of Texas at Austin. During her tenure with TABC, she has received three awards – TABC Employee of the Year in 2001, TABC Outstanding Customer Service Award in 2002, and the 2012 Best of Texas Award for Outstanding IT Service and Support from Government Technology.

Bich has been married to her husband, An Le, for 28 years. In her spare time, Bich enjoys meditation, astrology and learning philosophy to build up her logical thinking and problem solving skills

## Clifford Stech

### 40 Years



Clifford Stech is an Auditor V in the Waco Audit Office. Mr. Stech began his career with TABC on November 3, 1975. He briefly retired in 2004 and was rehired on September 15, 2004. He has worked as an Auditor in the Waco office since 1994. Prior to transferring to the Waco office, Clifford worked in the Corpus Christi, Beaumont, and Longview offices.

Clifford earned his bachelor's degree in Accounting from Texas A&M Kingsville (formerly Texas A&I). During his tenure with TABC, he served on several committees including the Private Club Audit Committee and the Audit and Excise Committee. In addition, he has been an instructor in TABC's New Auditor Academy for four years.

Clifford has been married to his wife Judy for ten years. He has three children: Brent, Tim and Lori and three stepchildren: Joey, John and Jill. He also has six grandchildren. In his spare time, Clifford enjoys golf, fishing, antiques and serving in his local church.

## Salvador Moralez

### 30 Years



Salvador "Sal" Moralez is a Lieutenant in the El Paso Enforcement Office. He began his career with TABC in December 1985 as an Agent in the San Antonio Office. Prior to joining TABC, he worked as a Deputy Sheriff for Winkler County and a State Trooper in Reeves County. Sal promoted to Sergeant in 2004 and to the rank of Lieutenant in the El Paso Office in 2009. He has served as a Use of Force Trainer for TABC. Lt. Moralez has also served as a Trainer for the Texas Department of Public Safety Narcotics Training Unit.

Lieutenant Moralez holds a Master Peace Officer's Certification issued by the Texas Commission on Law Enforcement (TCOLE). He is a graduate of the Force Science Research Institute, based at Minnesota State University, Mankato and was a Force Science Analyst. He completed Command Staff Leadership Training offered by the Sam Houston University Criminal Justice Center in 2006. In 2010, Lieutenant Moralez was nominated for TCOLE's Texas Law Enforcement Achievement Award. He was also honored in 2011 by the TABC Officer's Association as the "Supervisor of the Year".

Lieutenant Moralez is an Ordained Buddhist Priest with the Mahajrya Buddhist Organization. He is also a Spiritual Teacher and Reiki Master. He has been inducted into the United States Martial Arts Hall and Filipino Martial Arts Hall of Fame. He has 10th Degree Black Belts and Ph.D.'s in both Filipino Martial Arts and Martial Arts along with other ranks and titles to his credit. He is the highest ranking Hispanic Martial Artist in the Southwestern United States. He is the Founder and Director of the United Zen Budo Federation International, an Organization which has members worldwide.

## Geneva Crump-Mitchell

### 20 Years



Geneva Crump-Mitchell is an Administrative Assistant IV in the Houston Enforcement Office. She began her career with TABC in May 1995 as a Front Desk Receptionist. She was first promoted to a File Clerk and then an Administrative Assistant in 2005.

Geneva is a native Houstonian. She graduated from Kashmere High School and attended the University of Houston studying Theater Arts and Business Administration. During her tenure, Geneva served on the Career Ladder Committee helping to gather information to support the funding of career ladders for TABC. In 2000, Geneva received the TABC "Outstanding Customer Service" award. Geneva spearheads and plans the Thanksgiving luncheon and Christmas breakfast for Region 3; and the entire region loves her commitment to her internal hungry customers.

Geneva has been married to her husband, Joseph Mitchell, for 19 years. They have accepted the role all over again as Mom and Dad by raising, three of their four beautiful grandkids: Mylien-11, Mya-6, Antwon-8, and Avya-7.

In her spare time, Geneva teaches baptism classes at her church.

## Anthony Keel

### 20 Years



Anthony Keel is an Agent V in the Arlington Enforcement Office. He began his career with TABC on January 16, 1996 as an Agent Trainee in the Beaumont Office. He transferred to the Arlington Office in 1998. Prior to employment with TABC, Agent Keel was a Police Officer and guard at the University of Texas at Tyler from 1990 through 1996.

He obtained a Bachelor of Science in Criminal Justice from the University of Texas at Tyler and an Associates of Applied Sciences in Criminal Justice from Tyler Junior College. He was awarded a Master Peace Officer certification in 2005. In addition, Agent Keel is a certified Firearms Instructor. In 2004, Agent Keel was the recipient of the TABC's Agent-of-the-Year Award.

Agent Keel has been married to his high school sweetheart, Christy since 1998. Together they have three children: Danielle age 10, Michael and Jonathan age 7 (fraternal twins). Agent Keel spends his free time with his wife and children and enjoys reading, shooting and working on firearms.

## Mario Villarreal 20 Years



Mario Villarreal is a Lieutenant in the McAllen Enforcement office. Mario began his career with TABC in January 1996 as an Agent Trainee assigned to the Houston Enforcement Office. Since then, he has made his way through the ranks, while serving in various capacities throughout the State of Texas border area to include the Harlingen Outpost, El Paso Enforcement Office and McAllen Enforcement Office. Prior to joining TABC, Lieutenant Villarreal worked for the Bryan Police Department.

Lieutenant Villarreal received his bachelor's degree in Agriculture Economics from Texas A&M University in College Station. Lieutenant Villarreal holds a Master Peace Officer's Certification and Instructors Certificate from the Texas Commission on Law Enforcement (TCOLE).

## Noe Castaneda 30 Years



Noe Castaneda is a Taxpayer Compliance Officer III at the Brownsville Ports of Entry. He began his career with TABC in October 1985.

Noe was born and raised in Brownsville, Texas. After graduating from Homer Hanna High School, he attended Texas Southmost College in Brownsville to study Criminal Justice.

When he is not working, Noe enjoys barbecuing, listening to music, fishing and going to the beach with his family and friends.

## Mario Benavides 25 Years



Mario Benavides is a Taxpayer Compliance Officer III at the Laredo Ports of Entry. He began his career with the TABC in March 1990 at the Laredo Ports of Entry. He briefly left his employment with TABC in March 2005, but returned in November of the same year.

Mario was born and raised in Laredo, Texas. Mario and his wife Carmen have two children, Mario, Jr. and Cristina. In his spare time, Mario enjoys spending time with friends and family, barbecuing and watching the Dallas Cowboy games. His favorite sports besides football are baseball, boxing, and hunting at his ranch.

# **Attachment 3**

**Commission Report: Executive Director  
and Agency Activities, Budget Issues, Staff  
Achievements, Legislative Activities**



**Commission Meeting January 26, 2016**  
**Executive Director**  
**Sherry Cook**



## 2016 AT A GLANCE

<p><b><u>JANUARY</u></b></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">CY16 Rule Review Plan Update</li> <li style="padding-left: 20px;">Enforcement Division Update</li> <li style="padding-left: 20px;">Annual Tenure Award Recognition</li> <li>Strategic Planning Process Kick-off Meeting</li> <li>Annual Performance Evaluations Completed</li> <li>Paesano Season at Laredo Port of Entry</li> <li>Agency-wide Final Cutover to Replicon</li> <li>Submit FY17 TxDOT Grant</li> <li>Begin Laredo Port of Entry Renovation Project</li> <li>FY16/17 In-Service Training Cycle Begins</li> </ul> <p><b><u>FEBRUARY</u></b></p> <ul style="list-style-type: none"> <li>Annual Performance Evaluations Due</li> <li>TABC Administrative Rules Printed and Distributed</li> <li>TABC 80<sup>th</sup> Anniversary Document Printed and Distributed</li> <li>Submit FY17 JAG Grant</li> <li>Launch new Administrator's Report</li> </ul>	<p><b><u>MARCH</u></b></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">Information Resources Division Update (Include V:O Originals Plan)</li> <li style="padding-left: 20px;">Licensing Division Update</li> <li style="padding-left: 20px;">Semi-Annual Promotion Recognition</li> <li style="padding-left: 20px;">Annual Awards Recognition</li> <li>Administrator's Strategic Planning Conference</li> <li>Spring Break Minor Sting Operations</li> <li>Administrative Assistant Academy</li> </ul> <p><b><u>APRIL</u></b></p> <ul style="list-style-type: none"> <li>TABC Strategic Plan Completed</li> <li>FY18/19 Legislative Appropriations Request (LAR) Planning and Analysis</li> <li>End-of-Year Lease Expiration Planning Kick-off</li> <li>Begin Legislative Hearings on Interim Studies</li> </ul> <p><b><u>MAY</u></b></p> <ul style="list-style-type: none"> <li>Commission Meeting</li> <li style="padding-left: 20px;">Ports of Entry Division Update</li> <li style="padding-left: 20px;">Strategic Plan Briefing</li> <li>FY18/19 LAR Completed</li> <li>End-of-Year Budget Requests Due (Include Projects, Summer Interns and Merit Awards)</li> <li>End-of-Year Budget Guidance Provided</li> </ul>
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## 2016 AT A GLANCE CONTINUED

### JUNE

FY16 Purchasing Cut-off  
New Supervisor Academy

### JULY

Commission Meeting  
    FY17 Operating Budget Briefing  
    FY18/19 LAR Briefing  
    Tax and Marketing Practices Division Update  
    Education and Prevention Division Update  
New Auditor Academy

### AUGUST

FY16 End-of-Year Close-out  
FY18/19 LAR Submission to LBB

### SEPTEMBER

Commission Meeting (proposed date change)  
    Audit and Investigations Division Update  
    Internal Auditor Update (FY16 Results and  
    FY17 Plan)  
    Semi-Annual Promotion Recognition  
FY16 Performance Measure Analysis  
Back-to-School Minor Sting Operations  
Wal-Mart Lawsuit Trial  
CAPPS Financials Go-Live

### OCTOBER

New Enforcement Agent Academy Begins  
FY17 Divisional Operating Budget Allocation  
Legislative Hearings on Budget and Finance  
FY16 Grant Funding Close-out  
Houston Super Bowl Planning Kick-off  
CAPPS Human Resources Kick-off  
SECC Campaign

### NOVEMBER

Commission Meeting  
    Human Resources Division Update  
    Training Division Update  
    Legislative Session Planning Update  
Annual Financial Report Due  
Legislative Engagement and Bill Tracking Kick-off

### DECEMBER

New Enforcement Agent Academy Graduation  
Holiday Activities  
Implement Procedures for Submitting Fiscal and  
Legislative Impact of Bills

## SENATE FINANCE

January 26, 2016

1:00 – 4:00

**The Comptroller of Public Accounts and the  
Legislative Budget Board will provide testimony on  
the impact of oil prices and production on state  
revenue and the budget. (Invited testimony only)**

## “Certificate of Commendation”

Awarded to Agent Tricia Rutledge of the Austin Region by the Leander Police Department for her work on a fatality source investigation which resulted in the arrest of a Leander woman who had illegally furnished alcoholic beverages to a local 19 year-old who later died as a result of his intoxication.

Certificates of Commendation are awarded by the Leander PD to peace officers from other agencies that have “rendered valuable and distinguished service to the Leander Police Department and the Leander community.”

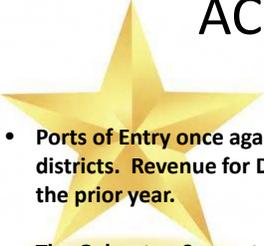
## ACCOMPLISHMENTS

### CHANGING TACTICS TO ADDRESS PUBLIC SAFETY VIOLATIONS:

- Supervisors of the Arlington Enforcement Region changed tactics. (Region 2)
- Rather than just performing routine walk-through inspections to satisfy priority locations monitoring requirements, they now perform undercover operations every 4 - 6 weeks at the businesses that have as yet unresolved public safety cases.
- As a consequence, Arlington now has the highest number of administrative cases arising from priority location follow-ups.



## ACCOMPLISHMENTS



- **Ports of Entry** once again reported revenue gains for the seaports and all land port districts. Revenue for December 2015 was \$65,513 higher than in the same month of the prior year.
- The Galveston Seaport and all land port districts continue to post revenue gains in comparison with the same period of the prior fiscal year, despite a drop in revenue from cigarette importations.
- Average number of days to issue an original application for the month of December was 35.33, well below the 39 day target. The fiscal year-to-date average remains slightly above the performance target at 40.76 days but is substantially lower than the 42.72 day FY year-to-date average observed at the end of November.

## TRENDS

### Texas Licensed Retailers by Number of Stores Operated by Owner

Category	Count	Percentage
1-Store Operators	30,213	62%
Small Chains (2 - 4 stores)	4,869	10%
Medium-Size Chains (5 - 24 stores)	7,779	16%
Large Chains (25 - 99 stores)	3,062	6%
Mega Chains (100+ stores)	3,161	6%

### Licensed Retailers Owned by Single-Store & Multi-Store Operators

January 5, 2015

Category	Count	Percentage
Single-Store Operators	30,213	62%
Multi-Store Operators	18,871	38%

Total Licensed Retailers = 49,084



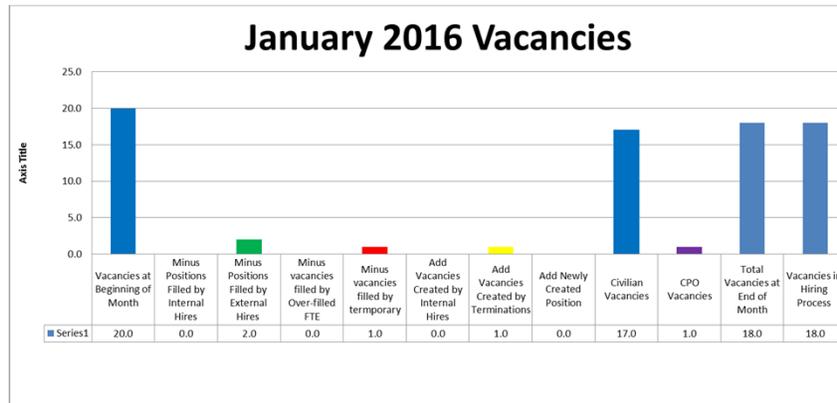
**Entities Owning 100 or More Licensed Retailers**

As of 01/05/2015

Business Entity Name	Licensed Retail Units
DOLGENCORP OF TEXAS INC.	973
QUALITY LICENSING CORP.	651
WALGREEN CO.	646
E. T. B. INC.	610
FAMILY DOLLAR STORES OF TEXAS LLC	522
SSP BEVERAGE LLC	503
BIG DIAMOND LLC	392
7-ELEVEN BEVERAGE COMPANY INC. (ET AL)	365
HEB BEVERAGE COMPANY LLC	334
HENPIL INC.	223
7-ELEVEN BEVERAGE COMPANY INC.	214
CHILI'S BEVERAGE COMPANY INC.	202
SKIPPER BEVERAGE COMPANY LLC	184
SPEC'S FAMILY PARTNERS LTD.	164
CABANA BEVERAGES INC.	160
BROTHERTON, JOSEPH KENT (ET AL)	159
CONVENIENCE BEVERAGE INC.	156
SUPERTARGET LIQUOR OF TEXAS INC.	143
SOUTHWEST CONVENIENCE STORES LLC	140
CHIPOTLE TEXAS L.L.C.	136
OKLAHOMA QUIKTRIP BEVERAGE CORPORATION	125
FIKES INVESTORS INC. NO. 2 (ET AL)	124
CIRCLE K LICENSING COMPANY INC.	121
BROOKSHIRE BROTHERS BEVERAGE CORPORATION	110
RACETRAC BEVERAGE COMPANY	109
RANDALL'S BEVERAGE COMPANY INC.	107
TOWN & COUNTRY FOOD STORES INC.	104
PAY AND SAVE INC.	102



**January 2016 Vacancies**





# **Attachment 4**

**CY16 Rule Review Plan Update**



## TABC Rule Review Plan -- 2016

Ed Swedberg  
Deputy Executive Director  
01/26/2016

1



## CY2016 Rule Review Plan

- Identify rules exceeding the "4 year review" Government Code requirement
- Assess each rule for complexity, relevance and potential for necessary changes
- Develop schedule for presentations to Commissioners during upcoming Board Meetings in CY2016
- Be prepared to modify schedule as required

2



## January 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
33.9	Fees For On-Line Transactions	10/18/2013	Licensing	Minor Changes
41.52	Private Clubs – In General	5/16/2003	Audit	Minor Changes
41.54	Destructions	3/17/1996	Audit	Repeal
41.54	Destructions	3/17/1996	Audit	New Rule

3



## March 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
35.5	Private Carrier's Permit Safety Program	8/16/96	Licensing	Major Changes
41.20	Timely Filing of Reports	8/01/1994	Tax & Marketing	No Changes
41.21	Industrial Permits	1/1/1976	Tax & Marketing	Major Changes
41.25	Records to Be Kept Separate	9/18/1978	Tax & Marketing	Minor Changes
41.27	Tax Credit – Wine Processing	1/1/1976	Tax & Marketing	Major Changes
41.31	Tax	9/18/1978	Tax & Marketing	Minor Changes
41.37	Industrial Alcohol Report	9/18/1978	Tax & Marketing	Merge w/ 41.21
41.38	Carrier Report	9/18/1978	Tax & Marketing	Minor Changes
41.39	Warehouse Report	1/1/1976	Tax & Marketing	Major Changes
41.43	Authorization	1/1/1976	Tax & Marketing	Minor Changes
41.44	Copy	1/1/1976	Tax & Marketing	Minor Changes
45.102	Loyalty Programs	New	Tax & Marketing	New Rule

4



## May 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
31.4	Public Information Signs	2/15/08	Licensing	No Changes
33.7	Warning Sign Requirements	12/19/97	Licensing	Minor Changes
35.2	Importation of Liquor	8/13/99	Audit	Minor Changes
39.1	Tax Stamps	8/18/95	Ports of Entry	Minor Changes
41.28	Sale and Delivery of Beer to Retail Premises and Private Clubs	9/19/1978	Audit	Minor Changes
41.29	Bonded Warehouse Breakage	1/1/1976	Audit	Delete
41.30	Sale and Delivery of Ale to Retail Premises	9/18/1978	Audit	Minor Changes
41.48	Changes Relating to Control	9/18/1978	Licensing	Major Changes
41.49	Private Clubs – Temporary Memberships	12/05/2003	Audit	Minor Changes
41.51	Private Clubs -- Purchases	12/14/2003	Audit	Minor Changes

5



## July 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
33.10	Citizenship and Status	5/16/08	Licensing	No Changes
41.32	Monthly Report of Distilled Spirits and Wines	1/1/1976	Tax & Marketing	Major Changes
41.33	Receiving Record of Distilled Spirits and Wines	1/1/1976	Tax & Marketing	Merge w/ 41.32
41.34	Distilled Spirits Report of Miniatures	1/1/1976	Tax & Marketing	Merge w/ 41.32
41.35	Daily Bottling Report	2/24/1994	Tax & Marketing	Minor Changes
41.36	Monthly Report of Ale and Malt Liquor	1/1/1976	Tax & Marketing	Merge w/ 41.32
41.41	Nonresident Seller's Report	1/1/1976	Tax & Marketing	Major Changes
41.53	Required Records for Brewpubs	2/24/1994	Tax & Marketing	Minor Changes
41.55	Malt Beverages for Export	12/05/2003	Tax & Marketing	No Change

6



## September 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
33.5	Food and Beverage Certificate	8/18/95	Licensing	Minor Changes
33.11	Application and Issuance	12/05/03	Licensing	Major Changes
33.12	Use of Caterer's Permits	7/27/90	Licensing	Major Changes
33.41	Financial Interest	8/16/96	Licensing	Delete
34.4	Attribution of Actions of Employee to License or Permit Holder	8/13/10	Field Ops & General Counsel	Minor Changes
34.5	Mandatory Participation in Seller Server Certification	8/13/10	Field Ops & General Counsel	Minor Changes
39.2	Cigarette Tax	New	Ports of Entry	New Rule

7



## November 2016 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead	Expected Action
34.1	General Provisions	5/22/09	Field Ops & General Counsel	Major Changes
35.31	Offenses Against the General Welfare	8/13/99	Field Ops & General Counsel	Major Changes
34.2	Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations	8/15/08	Field Ops & General Counsel	Major Changes
34.3	Schedule of Sanctions and Penalties for Major Regulatory Violations	8/13/10	Field Ops & General Counsel	Major Changes

8



## CY2017 Rule Review

Rule Chapter	Rule Title	Date Last Reviewed	Agency Lead
35.1	Transportation of Alcoholic Beverages by Package Stores and Wine Only Package Stores	8/13/99	Licensing
45.75	Mandatory Label Information for Malt Beverages	1/1/1976	Tax & Marketing
45.76	Brand Names	1/1/1976	Tax & Marketing
45.78	Name and Address	6/3/05	Tax & Marketing
45.80	Net Contents	5/20/94	Tax & Marketing
45.106	Sweepstakes and Games of Chance	2/17/06	Tax & Marketing
45.109	Restocking and Rotation of Alcoholic Beverages	9/11/98	Tax & Marketing
45.111	Advertising Signs at Charitable or Civic Events	9/11/98	Tax & Marketing
50.1 – 50.31	Alcoholic Beverage Seller Server Training	8/13/10	Education/Prevention

# **Attachment 5**

**Enforcement Division Update**

# ENFORCEMENT

**Earl R. Pearson**  
**Assistant Chief**

Organization

Structure

# Region 1



- œ Major Mark Menn
- œ Lieutenants - 2
- œ Sergeants - 3 (& 1 Vacancy)
- œ Agents - 21
- œ Administrative Assistants - 2

# Region 2



- œ Major Victor Kuykendoll
- œ Lieutenants - 3
- œ Sergeants - 6
- œ Agents - 45
- œ Administrative Assistants - 3

## Region 3



- œ Major Marc Decatur
- œ Lieutenants - 4
- œ Sergeants - 7
- œ Agents - 45
- œ Administrative Assistants - 4

## Region 4



- œ Major Harry Nanos
- œ Lieutenants - 2
- œ Sergeants - 5
- œ Agents - 32
- œ Administrative Assistants - 2

## Region 5



- œ Major Richard Jauregui
- œ Lieutenants - 3
- œ Sergeants - 7
- œ Agents - 33
- œ Administrative Assistants - 4

## Fleet, Communication & Supply Unit



- œ Lieutenant Marvin Montero
- œ Program Specialist
- œ Inventory & Store Specialist
- œ Clerk

# Special Response Team

## Special Response Team

---

❧ Lieutenant-1  
❧ Sergeant-3  
❧ Agent-36

❧ 2015 Deployments  
❧ Laredo-January  
❧ Laredo- March  
❧ El Paso- May  
❧ Brownsville/Progresso- November



## Promotions FY 2015



### ☞ December 2015

☞ Peter Gonzales & Matthew "Kyle" Kelso promoted to Sergeant

### ☞ October 2015

☞ Nicole Walker & Geoffery Weise promoted to Lieutenant

## Promotions FY 2014



### ☞ June 2015

☞ Mark Menn and Harry Nanos reclassified to Major

### ☞ November 2014

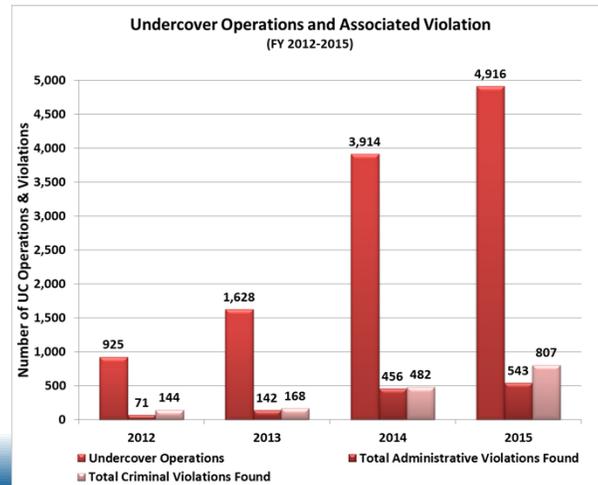
☞ Jeffery Farmer, David Ianni & Jason Winter promoted to Sergeant

### ☞ September 2014

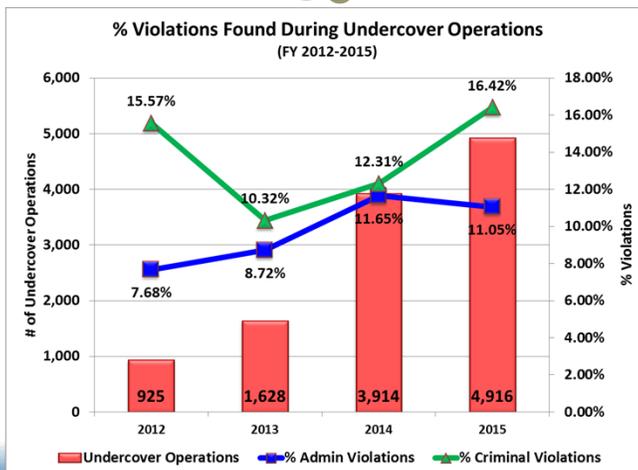
☞ Joe Cavazos promoted to Lieutenant

# Enforcement Numbers

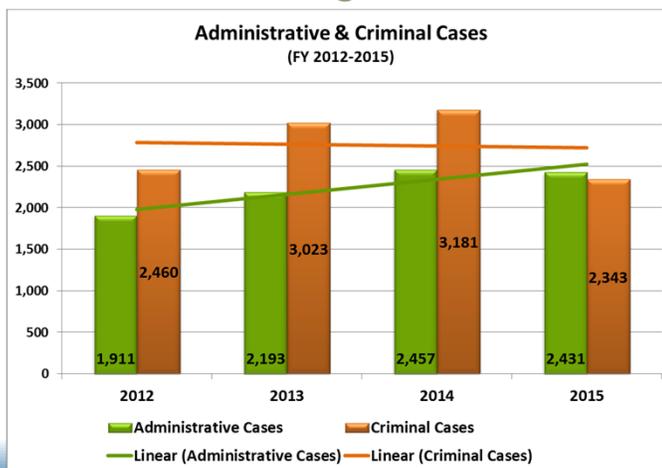
## Undercover Operations



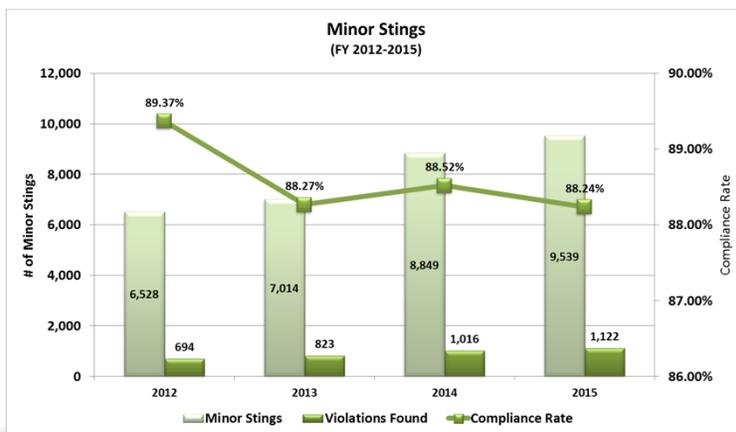
## UC Operation Admin & Criminal Violations



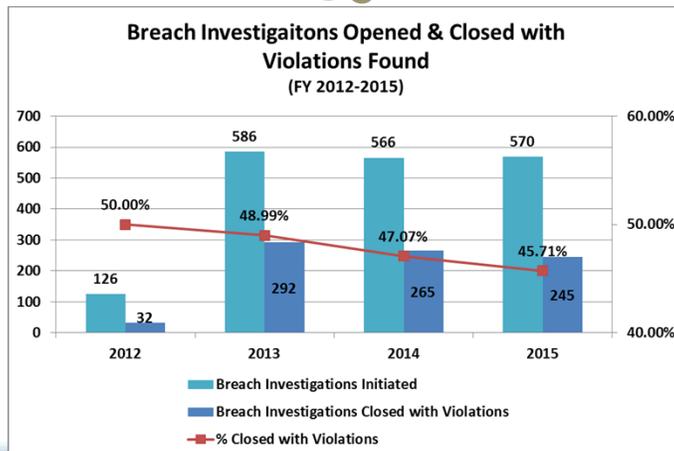
## Admin & Criminal Cases



# Minor Stings

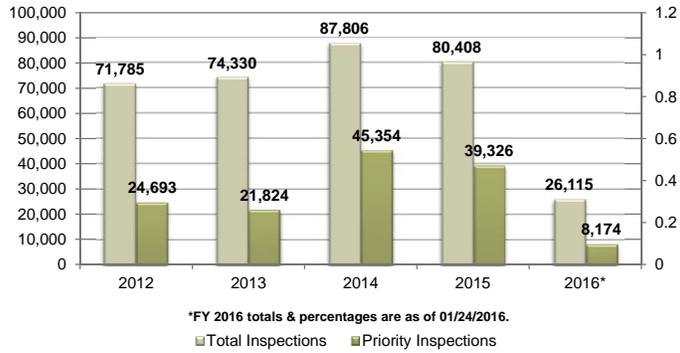


# Breach Investigations



# Inspections & Priority Inspections

Inspections & Priority Inspections  
FY 2012 - FY 2016\*



Questions?

# **Attachment 6**

**Approve Publication of Proposed  
Amendments to Rule §33.9, Fees for On-Line  
Transactions**

## **January 26, 2016 Commission Meeting**

### **Agenda Item 11: Approve Publication of Proposed Amendments to Rule §33.9, Fees for On-Line Transactions**

The Texas Alcoholic Beverage Commission proposes amendments to §33.9, relating to Fees for On-Line Transactions.

Section 33.9 sets the fees for on-line transactions with the commission. The proposal clarifies that a credit card transaction incurs a 25 cent fee, plus an additional fee of 2.75 percent of the total transaction amount. These fees for the use of a credit card would not be changed under the proposal.

A transaction paid by ACH or electronic check currently incurs a 25 cent fee plus an additional fee of 0.5% of the total transaction amount. The proposal would modify the fee structure for these transactions by eliminating the 25 cent fee and imposing a flat fee of one dollar rather than basing the fee on the transaction amount.

The proposed amendments are consistent with the fees required by Texas.Gov, which processes the commission's on-line transactions.

Section 33.9 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government, as the fees are calculated to recover the costs of the services provided.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. Fees for credit card transactions are unchanged in the proposal. The impact of proposed changes to the fees for ACH or electronic check transactions will vary depending on the amount of the transaction, but in most cases the total amount will be less than the total current fees. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the costs of providing on-line transactions will be covered by those making such transactions.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which allows the commission to charge a reasonable service fee to applicants using electronic or internet service to apply for licenses, permits and certificates.

The proposed amendments affect Alcoholic Beverage Code §§5.31 and 5.55, and Government Code §2001.039.

### **§33.9 Fees for On-Line Transaction.**

- (a) This rule relates to §5.55 of the Alcoholic Beverage Code.
- (b) A service fee of \$0.25 shall be assessed for each on-line transaction **paid by credit card.**
- (c) An additional fee of 2.75% of the total transaction amount shall be assessed for transactions paid by credit card.
- (d) **A service** ~~An additional~~ fee of **one dollar (\$1.00)** ~~0.5% of the total transaction amount~~ shall be assessed for transactions paid by ACH or electronic check.

# **Attachment 7**

**Approve Publication of Proposed Amendments  
to Rule §41.52, Private Clubs – In General**

**January 26, 2016 Commission Meeting**

**Agenda Item 12: Approve Publication of Proposed Amendments to Rule §41.52, Private Clubs – In General**

The Texas Alcoholic Beverage Commission proposes amendments to §41.52, relating to Private Clubs – In General.

Section 41.52 sets forth general rules relating to private clubs. Most of the proposed changes are grammatical, change outdated references, correct internal references, change gender-specific references to gender-neutral references, or change the word "administrator" to "executive director" (pursuant to Alcoholic Beverage Code §5.11(b) and commission practice).

Currently, the language of subsection (c)(1)(F) references a tax bond requirement. Consistent with the commission's treatment of tax bonds generally, the reference would be changed to apply to any bond that may otherwise be required but to remove an affirmative obligation in this section that a bond be maintained.

The proposal also addresses food service requirements in subsection (e). The requirement for "complete" meals would be eliminated. Under the proposal, clubs could fulfill the food service obligation by contracting with an outside vendor. The food would have to be available upon request and be delivered to and served on the club's premises. In addition, payment for the food service would have to be made by the member to the club, and not to the outside vendor.

Section 41.52 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local or state government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because regulatory burdens regarding bonds and food service are relaxed in a manner consistent with the commission's mission.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin,

Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

#### **§41.52. Private Clubs--In General.**

(a) *Scope.* This section does not apply to temporary members or to hotel patrons, as described in the Alcoholic Beverage Code, §§32.09, 32.10, and 32.11. In addition, subsection (c)(1)(G) and (H) and subsection (e) of this section do not apply to fraternal organizations or to veterans' organizations.

(b) *Definitions.* The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Club* - A private club.

(2) *Member and membership* - a member of and membership in a private club.

(c) *Membership and related topics.*

(1) No private club shall be qualified to hold a private club registration permit unless it shall:

(A) have 50 or more members at all times;

(B) have a membership committee composed of three or more members of the club and vested with authority by charter, by-law or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and when functioning as such shall be subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes shall be required of any discussion or action regarding a membership application which is denied;

(C) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;

(D) keep a well-bound well-bound book in which is shown the following about each member: ~~the~~ The full name of the member, ~~the member's~~ his initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from

membership. ~~When Provided that when~~ a member has been removed from membership, ~~the his~~ membership number may be reassigned to another member. ~~Additional well-bound~~ ~~Provided further that additional well-bound~~ books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club. ~~A Provided further that a~~ club using a ~~computer system business machine~~ to maintain its membership records shall not be required to keep a ~~well-bound well-bound~~ book if such ~~computer system machine~~ provides ~~the such~~ information as ~~shall be~~ required by the ~~executive director administrator~~, and is approved in writing by the ~~executive director or the executive director's designee administrator~~;

(E) keep all books, records and minutes required herein on the premises of such club, and make them available to any representative of the commission upon reasonable notice;

(F) maintain in force ~~any bond required and executed by a bond executed by:~~ the corporation, as principal, if an incorporated club, ~~;~~ or, ~~by~~ an officer of the club, as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes ~~owed owned~~ by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the ~~executive director administrator~~ and the attorney general of Texas;

(G) if operating under the locker system, at all times keep all liquor owned by each member under the locker system in a locker located on the premises and rented only to such member, except when the member, one of ~~the member's his~~ family or ~~the member's his~~ guest is present on the premises and using such liquor; and

(H) if operating under the pool system, keep a ~~well-bound well-bound~~ book in which is recorded the following about each member of the pool: ~~the member's His~~ name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. The information required to be kept in a book by this ~~subparagraph paragraph~~ may be kept in the book required in subparagraph (D) of this paragraph. ~~A Provided that a~~ club using a ~~computer system business machine~~ to bill each member of its liquor pool shall not be required to have such ~~well-bound well-bound~~ book if such ~~computer system machine~~ provides ~~the such~~ information as ~~shall be~~ required by the ~~executive director administrator~~ and is approved by the ~~executive director or the executive director's designee administrator~~.

(2) No membership shall be terminated except by action of the membership committee or by written resignation of the member. Resignation of any member shall be recorded immediately in the minute book of the membership committee and in the records required by ~~subparagraph paragraph (1)(D)~~ of this ~~paragraph subsection~~.

(3) The ~~executive director administrator~~ may, after notice and hearing, refuse to issue a private club registration permit if the ~~executive director he~~ finds that the applicant has failed to comply with any requirement set forth in this subsection.

(4) After notice and hearing the ~~executive director administrator~~ may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if the ~~executive director he~~ finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section.

(d) *Who may consume.* As provided in the Alcoholic Beverage Code, §32.01, alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

(1) The word "member" shall mean a person who has been admitted to membership as provided in subsection (c) of this section.

(2) The term "member's family" shall mean the spouse, parents, and adult children of the member.

(3) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(e) *Food service.* A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that **complete** meals shall be available on the club premises for service to members, their families, and guests. **The food service requirement may be fulfilled through the use of a concession or catering agreement with an outside vendor. Prepared food must be available upon request, and must be delivered and served at the licensed premises. Payment for food service must be made to the private club.**

(f) *Suspension and cancellation.* After notice and hearing the **executive director administrator** may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if **the executive director he** finds that the club or any of its members, agents, servants, or employees has:

(1) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the **executive director administrator; or and**

(2) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this section or by any provision of the Alcoholic Beverage Code.

(g) Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable **license** information and proof of such consent must be maintained with the permittee's membership records.

# **Attachment 8**

**Approve Publication of Proposed Repeal  
of Rule §41.54, Destructions**

**January 26, 2016 Commission Meeting**

**Agenda Item 13: Approve Publication of Proposed Repeal of Rule §41.54, Destructions**

The Texas Alcoholic Beverage Commission proposes the repeal of §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission is proposing to repeal the text of this section as it currently exists and separately replace it with new text under the same rule number and title.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because outdated and outmoded procedures will be removed so that more efficient procedures can replace them.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

**TEXT OF CURRENT RULE TO BE REPEALED:**

**§41.54 Destructions.**

(a) Each permittee subject to the provisions of the Alcoholic Beverage Code, §§201.03, 201.04, and 201.42 and each licensee subject to the provisions of the Alcoholic Beverage Code, §203.01 shall be entitled to receive an exemption from tax or a tax credit for any alcoholic beverages destroyed in accordance with the provisions stated herein.

(b) In order to qualify for this exemption from tax or a tax credit, the alcoholic beverages to be destroyed must meet the following criteria:

- (1) be in full unopened containers;
- (2) be unsalable or unmarketable;
- (3) have never been claimed for any other type of tax credit or exemption; and
- (4) have never been claimed for a refund of tax.

(c) The beverages, which will be claimed for destruction, must be destroyed in such a manner that the product will be rendered unrecoverable or unfit for human consumption.

(d) Prior to the destruction of the alcoholic beverages, the permittee or licensee must:

(1) notify the nearest authorized representative of the commission of the intent to destroy alcoholic beverages at least three full working days prior to the destruction. This notification must be made in writing on an "Application for Destruction of Alcoholic Beverages" and must contain the following information:

- (A) the account's trade name;
- (B) the account's location address;
- (C) the license or permit number of the licensee or permittee;
- (D) the reason the merchandise is to be destroyed;
- (E) the location at which the destruction will take place;
- (F) the time at which the destruction will take place;
- (G) the method to be used to destroy the alcoholic beverages;
- (H) the type of alcoholic beverages destroyed; and
- (I) a listing by brand, quantity, container size, and package size of the

destroyed merchandise, if beer or ale and malt liquor are destroyed; or a summary by class of alcoholic beverage, quantity, container size, and wine gallons, if distilled spirits and wine are to be destroyed.

(2) Receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(e) The licensee or permittee must obtain the following documentation for the tax exemption or credit claimed:

(1) A signed written approval for the destruction of the alcoholic beverages from the nearest authorized representative of the commission. This information should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(2) If distilled spirits and wine are destroyed, a detailed listing by brand, type or class of liquor, and package size of all alcoholic beverages destroyed. This listing may be in the form of an invoice if the invoice provides all required information. The listing should not be submitted with the Monthly Wholesaler's Report but retained by the account for inspection by an authorized representative of the commission upon request.

(3) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the licensee or permittee shall retain a copy of the receipt for payment for this fee and make such available to an authorized representative of the commission upon request.

(4) An affidavit of destruction executed by an employee of the licensee or permittee who witnessed the destruction of the alcoholic beverages. Separate affidavits must be prepared for distilled spirits and wine; ale and malt liquor; and beer. The affidavits should contain the following:

(A) the name and title of the person who witnessed the destruction and is preparing the affidavit;

(B) the date destroyed;

(C) the location where the destruction took place;

(D) how the merchandise was destroyed; and

(E) a copy of the original "Application for Destruction of Alcoholic Beverages".

(f) An original and two copies of the affidavit for destruction should be made and distributed as follows:

(1) The original should be submitted with the monthly report upon which the exemption for the destruction is claimed. If the licensee or permittee is unable to claim the destruction as an exemption on a tax report, they may submit a letter requesting an authorized tax credit. The request along with the destruction affidavit should be submitted to the commission's Austin headquarters.

(2) One copy should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(3) The second copy should be forwarded to the commission office where the original "Application for Destruction of Alcoholic Beverages" was filed.

(g) The commission may designate an authorized representative to be present during the destruction of the alcoholic beverages.

# **Attachment 9**

**Approve Publication of Proposed New  
Rule §41.54, Destructions**

**January 26, 2016 Commission Meeting**

**Agenda Item 14: Approve Publication of Proposed New Rule §41.54, Destructions**

The Texas Alcoholic Beverage Commission proposes new §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission has reviewed the current section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions to the existing rule are necessary. Therefore, in that separate rulemaking the commission is proposing to repeal the text of this section as it currently exists and in this rulemaking the commission is proposing to replace it with new text under the same rule number and title.

Proposed subsection (a) specifies which permittees and licensees are entitled to a tax exemption or tax credit for alcoholic beverages that are destroyed in accordance with the section.

Proposed subsection (b) defines which destructions qualify for a tax exemption or tax credit.

Proposed subsection (c) specifies the timeline to notify the commission prior to a destruction and that an Application for Destruction of Alcoholic Beverages must be used to provide the notice. It also requires that written approval be received before the destruction occurs.

Proposed subsection (d) specifies the documents to be retained after a destruction, including a copy of the Application for Destruction of Alcoholic Beverages signed by an authorized representative of the commission, any receipt for fees charged by the facility where the destruction occurred, and an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction.

Proposed subsection (e) provides that the approved Application for Destruction of Alcoholic Beverages must be submitted with the monthly excise tax report filed with the commission upon which the tax exemption is claimed. If a permittee or licensee is unable to claim the destruction as an exemption on a tax report, the subsection would allow the permittee or licensee to submit a letter requesting issuance of an authorized tax credit.

Proposed subsection (f) requires that the permittee or licensee retain a copy of the Application for Destruction of Alcoholic Beverages.

Proposed subsection (g) specifies that the commission may require that the alcoholic beverages designated for destruction be physically inspected by the commission's authorized representative prior to destruction and/or that the actual destruction be witnessed by such a representative.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local or state government.

The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the procedures for claiming a tax exemption or tax credit on destroyed alcoholic beverages will be clear.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new rule affects Alcoholic Beverage Code §5.31.

## **TEXT OF NEW RULE**

### **§41.54. Destructions**

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, shall be entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with the provisions of this section.

(b) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit, the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(c) Prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, the permittee or licensee must comply with the requirements of this subsection.

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on an Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(d) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the documentation referenced in this subsection and make it available to an authorized representative of the commission upon request.

(1) A signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved shall be provided to the permittee or licensee by the nearest authorized representative of the commission when the destruction is approved.

(2) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the permittee or licensee shall retain a copy of the receipt for payment of this fee.

(3) An employee of the permittee or licensee who witnessed the destruction of the alcoholic beverages must execute an affidavit of destruction. The affidavit shall include the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits and wine, for ale and malt liquor, and for beer.

(e) The approved Application for Destruction of Alcoholic Beverages (including any attachments) shall be submitted with the monthly excise tax report filed with the commission upon which the exemption for the destruction is claimed. If the permittee or licensee is unable to claim the destruction as an exemption on a tax report, it may submit a letter to the Commission requesting issuance of an authorized tax credit.

(f) A copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) should be retained in the permittee's or licensee's files and made available upon request for inspection by an authorized representative of the commission.

(g) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

# **CERTIFICATION**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. – January 26, 2016**

5806 Mesa Drive  
Austin, Texas 78731



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on January 26, 2016.

A handwritten signature in cursive script that reads "Sherry Cook".

Sherry Cook  
Executive Director

Sworn and subscribed before me this 28<sup>th</sup> day of July 2016.



A handwritten signature in cursive script that reads "Gloria Darden Reed".

Gloria Darden Reed  
Notary in and for Travis County