



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

## COMMISSION MEETING

*August 23, 2011*

Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer  
Midland*

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

*Melinda Fredricks, Member  
Conroe*

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# **AGENDA**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – August 23, 2011**

**5806 Mesa Drive  
Austin, TX 78731**



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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José Cuevas, Jr.  
*Presiding Officer-Midland*

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

Melinda S. Fredricks  
*Member-Conroe*

Alan Steen  
*Administrator*

**Tuesday, August 23, 2011 – 8:30 a.m.**

## Agenda

1.	<b>Call to Order</b>	<b>José Cuevas, Jr.</b>
2.	<b>Approval of Commission Meeting Minutes of July 26, 2011</b>	<b>José Cuevas, Jr.</b>
3.	<b>Regional Changes Briefing</b>	<b>Alan Steen</b>
4.	<b>Twenty-nine Years Service Recognition, Tax Division Director Charlie Kerr</b>	<b>José Cuevas, Jr.</b>
5.	<b>Internal Audit of the Compliance Division</b>	<b>Russell Gregorczyk</b>
6.	<b>Internal Audit of Bond Processing by the Licensing Division</b>	<b>Russell Gregorczyk</b>
7.	<b>FY 2012 Internal Audit Plan</b>	<b>Russell Gregorczyk</b>
8.	<b>Approval to Publish Proposed Amendments to §45.121, Credit Restrictions and Delinquent List for Liquor</b>	<b>Martin Wilson</b>
9.	<b>Public Comment</b>	<b>José Cuevas, Jr.</b>
10.	<b>Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Discuss the Duties, Responsibilities, and Evaluation of the Administrator (Govt. Code §551.071, §551.074)</b>	<b>José Cuevas, Jr.</b>
11.	<b>Next Meeting Dates: Tuesday, October 25, 2011 Thursday, November 17, 2011</b>	<b>José Cuevas, Jr.</b>
12.	<b>Adjourn</b>	<b>José Cuevas, Jr.</b>

# **MINUTES**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – August 23, 2011**

**5806 Mesa Drive  
Austin, TX 78731**



# TABC

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## **COMMISSION MEETING MINUTES**

**August 23, 2011**

The Administrator's Annual Conference convened at 10:00 a.m., Monday, August 22, 2011 at the Holiday Inn Austin, NW Arboretum Hotel, 8901 Business Park Drive, Austin, Texas; and adjourned at 4:00 p.m. The second day of the Administrator's Annual Conference commenced on Tuesday, August 23, 2011 at 10:30 a.m. and was finally adjourned at 1:15 p.m. A majority of the Commissioners of the Texas Alcoholic Beverage Commission (TABC) were in attendance during various times of the conference and said conference was posted as an open meeting. However, no decision or action was taken by the Commissioners at any time during either day of this conference.

The Commissioners also met at a duly called Commission meeting on Tuesday, August 23, 2011 commencing at 8:45 a.m. and adjourning at 10:45 a.m. The following reflect the considerations and/or decisions made by the Commissioners during this Commission meeting.

**PRESIDING**

**OFFICER:**

José Cuevas, Jr.

**COMMISSIONERS**

Melinda Fredricks

**PRESENT:**

Steven M. Weinberg, MD, JD

**STAFF PRESENT:**

Carmen C. Adams, Accounts Examiner, Licensing Division

Gene Anderson, Lieutenant, Arlington Enforcement District

Carolyn Beck, Director of Communications and

Governmental Relations

Maggie Benavides, Accounts Examiner, San Antonio

Licensing Office

Mindy Carroll, Director, Education and Prevention

Education

Patty Cavazos, Accounts Examiner, Waco Licensing Office

W.R. Chatman, Sergeant, Amarillo Enforcement District

Charlie Cloud, Regional Director, Arlington Enforcement District  
Anna Contreras, El Paso Port of Entry  
Sherry Cook, Assistant Administrator, Executive Division  
Lisa Crissman, Attorney, Houston Legal Office  
Darryl Darnell, Regional Liaison  
Luann Dickerson, Executive Assistant, Executive Division  
Marc Decatur, Lieutenant, Houston Enforcement District  
Alex DelaGarza, Supervisor, Hidalgo Port of Entry  
Loretta Doty, Director, Human Resources Division  
Elsa D. Dovalina, Auditor, San Antonio Compliance Office  
Joey Estrada, Grants Coordinator, Education and Prevention  
Shelby Eskew, Director, Business Services Division  
Angelbert Garza  
Sandra Garza, Brownsville Port of Entry  
Kathy Gersbach, Executive Assistant, Executive Division  
Ollie M. Gonzalez, Tax Compliance Officer, Progreso Port of Entry  
Dennis Graham  
John Graham, Sergeant, Arlington Enforcement District  
Thomas Graham, Supervisor, Excise Tax  
Steve Greinert, Director, Tax Division  
Ying Yue Han, TABC Summer Intern, Executive Division  
Amy Harrison, Director, Licensing Division  
Emily Helm, General Counsel, Legal Division  
Sammy Henson, Training Specialist, Training Division  
Joe Iagnemmo, Web Administrator, Information Resources Division  
Ricardo Jauregui, Regional Director  
Debra Jones, Lieutenant, Houston Enforcement District  
Dexter K. Jones, Assistant Chief of Field Operations  
Shaun Jordan, Supervisor, Austin Licensing Office  
JoAnn Joseph, Assistant Director, Licensing Division  
Judith Kennison, Deputy General Counsel, Legal Division  
Charlie Kerr, Director, Tax Division/Education and Prevention  
Larry Linscombe, Jr., Lieutenant, Corpus Christi Enforcement District  
Shelia Lindsey, Attorney, Houston Legal Office  
Michael Lockhart, Regional Liaison  
Mauro Longoria, Auditor, San Antonio Compliance Office  
Hector Leura, Jr., Supervisor, Eagle Pass  
Roland Luna, Director, Ports of Entry

Richard Maness, System Support Specialist, Information Resources Division  
Vanessa Mayo, Supervisor, Houston Compliance Office  
Linda McLeod, Benefits Coordinator, Human Resources Division  
Maria Medrano, Brownsville Port of Entry  
Mark Menn, Lieutenant, Victoria Enforcement District  
J C Molloy, Sergeant, Austin Enforcement District  
Sal Morales, Lieutenant, El Paso Enforcement District  
James Murfetti, Administrative Assistant, Houston Compliance Office  
Brenda Myers, Assistant Regional Supervisor, Austin Compliance Office  
Harry Nanos, Agent, El Paso Enforcement District  
Sandra Patton, Attorney, Houston Legal Office  
Earl Pearson, Assistant Chief of Field Operations  
Abraham Pena, Tax Compliance Officer, Port of Entry  
Andy Pena, Director, Office of Professional Responsibility  
Gloria Darden Reed, Executive Assistant, Executive Division  
Daniel Reyna, Agent, Houston Enforcement District  
Albert Rodriguez, Lieutenant, Office of Professional Responsibility  
Robert Saenz, Regional Director  
Santos Saldana, Supervisor, Ports of Entry  
Sonia Salinas, Agent, McAllen Enforcement District  
Harold Salmon, Agent, Abilene Enforcement District  
Jackie Schlinger, Accounts Examiner, Victoria Licensing Office  
Jose Serna, Supervisor, Laredo Port of Entry  
Craig Smith, Lieutenant, San Antonio Enforcement District  
Loretta Smith, Assistant Director, Business Services Division  
Karen Smithwick, Regional Supervisor, San Antonio Compliance Office  
Robert Spagnola, Auditor, Galveston Compliance Office  
Todd Talley, Regional Liaison  
Eddie X. Torres, Agent, Laredo Area Office  
Tana Travis, Sergeant, Arlington Enforcement District  
Brian Tullis, Agent, Corpus Christi Enforcement District  
Rod Venner, Assistant Chief of Field Operations  
Jay Webster, Director, Information Resources Division  
Oscar Williams, Agent, Conroe Enforcement District  
Terry Willis, Auditor, Arlington Compliance Office  
Richard Wills, Supervisor, Houston Licensing Office  
Martin Wilson, Assistant General Counsel, Legal Division  
Elizabeth Wuehrmann, Statistician, Business Services Division

Elizabeth Zamora, Assistant Compliance Supervisor  
Michael Zhao, Auditor, Arlington Compliance Office

**GUESTS  
PRESENT:**

Vickie Adams, Coalition Coordinator, San Antonio Council of Alcohol and Drug Abuse  
Joey Bennett, Legislative Director, Texas Hospitality Association  
Ryan Bissett, Licensing Team Leader, Whole Foods  
Mark Bordos, Governmental Affairs, Anheuser-Busch  
Carol Borowy, Senior Paralegal, Eagle Golf  
Judy Brewer, Owner, Permits Plus, R  
Lou Bright, General Counsel, Texas Wine and Grape Growers Association (TWGGA)  
Vic Brooks, Vice President, Republic National Distribution Company  
Brent Bruner, Sales Executive, Jack Hilliard Distributing  
Chelsea Buckholtz, State Liaison, Governor's Office  
Colleen Buck, State Liaison, Governor's Office  
ML Calcote, Consultant, Republic National Distribution Company  
Angela Colton, Administrator/Instructor, Alcohol Awareness Program, University of Texas & Austin Community College  
Jake Creswell, Licensing Specialist, Whole Foods Market  
Arundel Davis, Administrative Assistant, Gerald Franklin Agency  
Bettie A. Doelitsch, Compliance Trainer/Licensing, Brookshire Brothers Limited  
Rick Donley, President, The Beer Alliance of Texas  
Doug DuBois, Director of Government Affairs, Texas Petroleum Marketers and Convenience Store Association (TPCA)  
Roy Floyd  
Gerald Franklin, Owner, Gerald Franklin Agency  
Glen Garey, General Counsel, Texas Restaurant Association  
Roger Gearhart, President, Graham Brothers Enterprises  
Jimmy Gibson, Senior Beverage Manager/Alcoholic-Non Alcoholic, Valero Retail  
Alan Gray, Executive Director, Licensed Beverage Distributors

Alan Greenspan, General Counsel, Glazer's  
Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk  
Certified Public Accountants  
Kim Harvey, Office Manager, Gerald Franklin Agency  
Ahmed Hasora, Director, Greater Houston Restaurant  
Association  
Susan Hoedebeck, Legal Assistant, J. Wade Bingaman,  
Attorney  
Gary Huddleston, Director, Consumer Affairs, Kroger  
Daniel Huerta, Director of Specialized Beverages,  
Brookshire Brothers  
Deborah K. Johnson, Administrative Assistant, Gerald  
Franklin Agency  
Jill Johnstone, Program Specialist, Mothers Against Drunk  
Driving (MADD)  
Shouket Karowadia, Senior Vice President, Greater Houston  
Restaurant Association  
Laura Karrer, Office Manager, Republic National Distribution  
Company  
Grace Kelly, Texas State Liaison, TIPS  
Steve Koebele, Government Relations Counsel, Greater  
Houston Restaurant Association, Northern Texas Trade  
Association, Greater Austin Merchants Cooperative  
Association, South Texas Merchants Association  
Cooperative  
Patti LaBarba, Owner, Joe LaBarba Permit Service  
Lance Lively, Executive Director, Texas Package Stores  
Association  
Fred Marosko, Consultant, Texas Package Stores  
Association  
Jack Martin, Attorney, Jack Martin and Associates  
Virgie Martinez, Administrative Assistant, Gerald Franklin  
Agency  
K P Prince, Health Education Coordinator II, University of  
Texas  
Thuong Ngu, Administrative Assistant, Gerland Franklin  
Agency  
Terrance Norman, Managing Member, Global Wines South  
Texas  
Erin Rahr, Vice President, Rahr & Sons  
Fritz Rahr, President, Rahr & Sons  
Cynthia D. Rehwaldt, Manager, Training Delivery, Valero  
Mark Threadgill, Attorney, Graham Brother Enterprises  
Melanie Tolbert, Licensing Manager, Valero Energy  
Ralph Townes, Senior Vice President, Licensed Beverage  
Distributors/Glazers

Sharra Weaver, Owner, Weaver's Licensing Service  
Chris White, Treasurer, Open The Taps  
Terry Wilt, Greater Austin Underage Drinking Prevention  
Council (GAUDPC)  
Randy Yarbrough, Consultant, Wholesale Beer Distributors  
of Texas  
Robert Zamora, Owner, Capital Financial Services/Zamora  
Financial Services

### **CALL TO ORDER**

The meeting of the Texas Alcoholic Beverage Commission was called to order at 8:45 a.m. by Presiding Officer José Cuevas.

Presiding Officer Cuevas welcomed and extended his appreciation to members of the industry, TABC Officers, departmental staff from Licensing, Ports of Entry, Legal Division, and TABC Agents for their attendance at the Administrator's Conference. He stated how proud he is of the Agency's effort in establishing a joint partnership with the members of industry in achieving a working business relationship. Presiding Officer Cuevas stated that he envisions the new Agency's realignment structure to continue in a positive way and even build stronger relationships with our partners as we move forward.

### **APPROVAL OF COMMISSION MEETING MINUTES OF JULY 26, 2011**

**Presiding Officer José Cuevas called for approval of the Commission meeting minutes of July 26, 2011. Commissioner Steven Weinberg so moved to approve the minutes as written, and Commissioner Fredricks seconded. The motion carried.**

### **REGIONAL CHANGES BRIEFING**

Presiding Officer Cuevas called upon Joel Moreno, Chief of Field Operations to give the Administrator's briefing on the regional changes. Presiding Officer Cuevas announced the absence of Administrator Alan Steen was due to a death in his family.

Chief Moreno's report focused on the agency's realignment initiative. He stated that under the old structure, the agency was comprised of five regions with multiple district offices. However, the new structure will be comprised of three regions and five districts. Region one, the North Texas Region is located in the upper quadrant of the state. The Regional office will be located in Arlington and split into District One and District Two. Region Two and District Three, known as the Coastal Bend Region, will be located in Houston. Region Three, known as the Border Region will have a Regional office located in San Antonio and split into two Districts known as District 4 and District 5. The new reporting structure for Field Operations is as follows:

**Field Operations Organizational Ladder:**

**Assistant Chief of Region (CPO / Civilian)**  
- Regional Liaisons' Asst (CPO / Civilian)

**Regional Director of Field Operations/Major (CPO/Civilian)**

<b><u>ENFORCEMENT</u></b>	<b><u>COMPLIANCE</u></b>
Captain (CPO)	Regional Supervisor of Compliance
Lieutenant	Assistant Regional Supervisor of Compliance
Sergeant/Team Leader	Auditor V (Senior Auditor)
Senior Agent IV	Auditor IV
Agent II thru IV	Auditor III and II

Chief Moreno stated that the decisions driving the realignment were based on several demographics that included population, number of permits, and the effects of wet/dry elections. Resources were then realigned according to the data.

Presiding Officer Cuevas queried Chief Moreno for the names of the leadership team for field operations. Chief Moreno responded with, Assistant Chief Dexter Jones with Regional Director Charlie Cloud and Regional Liaison Darryl Darnell in the North Region; Assistant Chief Earl Pearson with Regional Director Robert Saenz and Regional Liaison Todd Talley in the Coastal Bend Region; and Assistant Chief Rod Venner with Regional Director Richard Jauregui and Regional Liaison Michael Lockhart in the Border Region.

Presiding Officer Cuevas congratulated Robert Saenz and Richard Jauregui for their promotions to Majors.

Presiding Officer Cuevas quizzed Chief Moreno's strategy to limit the criminal activities such as money laundering or illegally obtaining a license/permit. Chief Moreno stated that the data obtained from the local police departments and captured in the Law Enforcement Analysis Portal (LEAP) will be utilized. He stated that LEAP's major function is the focus on crime and link analysis where problem locations can be monitored with a report generated each time a complaint is filed. Presiding Officer Cuevas commented that the Agency's major focus and its policies should always align with putting good people in business and keeping the bad actors out.

Presiding Officer Cuevas asked Chief Moreno to explain the delivery of training and presentations outside of the agency. Chief Moreno stated that the Training Division and Compliance personnel have conducted in-house training presentations as well as presentations in the community/public settings.

Commissioner Weinberg asked if there will be any sufficient changes to the budget in the realignment structure. Chief Moreno stated the Agency should experience

“savings” in personnel salaries. He also stated that toughbooks in the agent’s vehicle will serve as an important tool. Commissioner Weinberg commented that the realignment structure idea fits perfectly with the 2010 consensus and realigns the workload to be efficient around the state.

Chief Joel Moreno’s report is supported by a PowerPoint presentation.  
(Attachment 1)

**TWENTY-NINE YEARS SERVICE RECOGNITION, TAX DIVISION**  
**DIRECTOR CHARLIE KERR**

Presiding Officer Cuevas called for the recognition of Director Charlie Kerr. He asked Director Charlie Kerr and the Ports of Entry employees to come forward.

Director Kerr spoke on being recognized for twenty-nine years of state service at the Texas Alcoholic Beverage Commission. He stated that he appreciated the job opportunities afforded during his tenure. Director Kerr applauded the support and work ethic of the Ports of Entry personnel and stated Agency employees need to visit the border ports. He thanked the staff in Education and Prevention and the Tax Division for their support.

Commissioner Weinberg read and presented a Proclamation from the State of Texas, Office of the Governor, congratulating Charles B. Kerr on a well-deserved retirement after 29 years of service to the people of Texas.

Commissioner Fredricks read and presented a Certificate of Merit to Charles B. Kerr in recognition of achievement of twenty-nine years of dedicated and unselfish service to the Texas Alcoholic Beverage Commission.

An engraved plaque was presented to Director Charlie Kerr by Supervisors from the Ports of Entry. The plaque read: “In appreciation for the support, leadership, and guidance given to the Ports of Entry Division”.

Presiding Officer Cuevas commented to Director Kerr “that part of a man’s character and legacy is what they do for others.” He stated that Director Kerr carried each Commissioner on a first ever visit to the Ports of Entry bridge station. Presiding Officer Cuevas thanked Director Kerr for the first-hand knowledge of the day-to-day port operations.

(Attachment 2)

**INTERNAL AUDIT OF THE COMPLIANCE DIVISION**

Presiding Officer Cuevas asked upon Mr. Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants for the presentation of the agenda item, Internal Audit of the Compliance Division.

Mr. Gregorczyk stated that over the past several months his firm has conducted internal audits in the Compliance and Licensing Divisions along with the fiscal year 2012 Internal Audit Plan.

Mr. Gregorczyk gave a brief explanation of the audit purpose of the internal audit of the Compliance Division was to evaluate the effectiveness of policies and procedures governing key functions performed by the Compliance Division at headquarters and the field offices and to determine whether the established policies and procedures were being followed.

Mr. Gregorczyk outlined a number of key findings relating to inspections, audit and management of confiscated property. He discussed a recommendation to revise the current process for performing marketing practices audits. He suggested moving to complaint-based marketing practices investigations rather than risk-based audits. He stated the process would significantly reduce the time required to complete the investigations since the process would no longer be an audit and to include an education component for providing standardized training and presentations to wholesalers and distributors regarding marketing practices rules and potential violations. Mr. Gregorczyk stated that personnel in management do not agree with this recommendation.

Commissioner Weinberg asked who in management does not concur with this recommendation. Mr. Gregorczyk responded Assistant Chief Dexter Jones. Commissioner Weinberg stated that the complaint based approach is being used in enforcement and asked Assistant Chief Jones if he thought that approach would work in the compliance area. Assistant Chief Jones offered a reason to disagree with the recommendation is to be able to take a practical approach on the front end working with the wholesalers and distributors versus coming through the back end through a complaint-based process. His position is to seek voluntarily compliance with the wholesalers and distributors on the front end through the auditing process. Presiding Officer Cuevas stated that the process follows the cornerstones.

Mr. Gregorczyk also recommended the appointment of a new audit committee by the Compliance Division Director for the updating of the Excise Tax Audit Manual in order to comply with the statute.

Presiding Officer Cuevas asked Assistant Chief Jones for his explanation in the handling of cash and the disposal of alcoholic/non-alcoholic liquor in TABC's possession in field offices. Assistant Chief Jones stated that during sting operations conducted around the state and from the confiscation of liquor products, there is cash that is also collected. With the help of the Business Services Director and the Legal Counsel, he suggests to have open banking accounts to deposit those funds. When a case is resolved, the cash funds will be disposed through proper channels. In cases involving the disposal of alcoholic products, Assistant Chief Jones stated his compliance officers would work with the District Attorney's offices around the state

through the Agency's and local law enforcement officers in the proper disposal techniques. Presiding Officer Cuevas applauded the idea. (Attachment 3)

**Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Fredricks moved for the approval of the Texas Alcoholic Beverage Commission's Internal Audit of the Compliance Division. Commissioner Weinberg seconded the motion and the motion passes.**

### **Internal Audit of Bond Processing by the Licensing Division**

Mr. Gregorczyk next report focused on the internal audit of the Licensing Division. He stated that the audit purpose for the Licensing Division's internal audit is to evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing Division for processing for bonds required for alcoholic beverage license and permit applications and renewals.

Mr. Gregorczyk stated that Licensing is in compliance with the Alcoholic Beverage Code and agency administrative rules governing the various types of bonds required by TABC, however the administrative rules related to the bonds need to be reviewed and updated to ensure that current bond requirements and procedures comply with the Alcoholic Beverage Code. He commented that the Commission has the option to consider whether permit and tax bonds should be waived by administrative rule as allowed by the statute since permit bonds are not being required and tax bonds are not cost effective for TABC to administer. Mr. Gregorczyk further elaborated that it is not cost effective for TABC to process liquor and/or beer tax bonds. He stated that the Tax Division staff and Licensing staff agree that collecting liquor and beer tax bonds, including processing exemptions, served no useful purpose for the agency or the public. There is no revenue generated and no licensee/permittee has ever been requested to forfeit his/her bond. Mr. Gregorczyk stated that Licensing Director Amy Harrison agreed with his finding and recommendation. Director Harrison concurred. Commissioner Weinberg asked if Assistant General Counsel Martin Wilson agreed with Mr. Gregorczyk and Director Harrison. Assistant General Counsel Wilson concurred.

Mr. Gregorczyk discussed significant recommendations involving a review by Licensing for:

- Applications Procedures Manual;
- Licensing Procedures Manual;
- Renewal forms and Applications Guides for Retailers and Wholesalers
- Versa's Regulation User's Guide
- Bond Table;

Mr. Gregorczyk stated that TABC management concurred with the findings and recommendations of the audit and will implement all recommendations by the target dates indicated in the management response with Director Harrison being the responsible part for implementing all recommendations.

Commissioner Weinberg inquired if an administrative rule will be presented to the Commission governing the various types of bonds required by statute and administrative rule. Assistant General Counsel Wilson answered in the affirmative and stated the rule will be presented in October or November. (Attachment 4)

**Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Fredricks moved for the approval of the Texas Alcoholic Beverage Commission's Internal Audit of Bond Processing by the Licensing Division. Commissioner Weinberg seconded the motion and the motion passes.**

#### **FY 2012 INTERNAL AUDIT PLAN**

Mr. Gregorczyk's final report established the policies and guidelines to govern internal audits of all operations of the Texas Alcoholic Beverage Commission. He stated the internal audit guidelines are reviewed for compliance with appropriate standards and updated as necessary each fiscal year. (Attachment 5)

**Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Fredricks moved for approval of the Texas Alcoholic Beverage Commission's Fiscal Year 2012 Internal Audit Plan. Commissioner Weinberg seconded the motion and the motion passes.**

#### **APPROVAL TO PUBLISH PROPOSED ADMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR**

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the next agenda item. Assistant General Counsel Wilson stated that House Bill 2012 in the 82<sup>nd</sup> Regular Session of the Texas Legislature amended the Alcoholic Beverage Code §102.32 and specifies that for the purposes of the credit restrictions and reporting delinquencies, a holder of a winery permit is considered a retailer when purchasing wine from a Chapter 19 wholesaler for resale to ultimate consumers in unbroken packages. He stated that §45.121 currently does not include wineries in the definition of "retailer" and the rule should be amended to conform to House Bill 2012.

Assistant General Counsel Wilson stated that in the original section that was adopted in 2009, the Commission indicated that it would periodically review it and shorten the time allowed from the end of the reporting period to the date of the publication of the Delinquent List. Assistant General Counsel Wilson explained that when a retailer's name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full (Alcoholic Beverage Code §102.32 (d)). His request is that the Commission amends the section to give retailers two fewer days to pay a delinquent bill before their names appear on the Delinquent List. (Attachment 6)

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish for a 30-day comment period in the *Texas Register* the proposed amendments to §45.121, Credit Restrictions and Delinquent List for Liquor. Commission Fredricks seconded and the motion passes.**

### **PUBLIC COMMENT**

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

### **EXECUTIVE SESSION**

**The regular open session of the Texas Alcoholic Beverage Commission was recessed at 9:23 a.m., August 23, 2011 and an executive session was held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §551.071, §551.074.**

**The Texas Alcoholic Beverage Commission concluded its executive session and resumed in open regular session on August 23, 2011 at 10:35 a.m. No final action, decision or vote was made in executive session.**

### **NEXT MEETING**

Commissioner Fredricks made a motion to change the October commission date from Tuesday, October 25, 2011 to Tuesday, October 18, 2011. Commissioner Weinberg seconded the motion and the motion carried. Commissioner Weinberg made a motion to change the commission meeting scheduled on Tuesday, November 17, 2011 to Tuesday, November 15, 2011. Commissioner Fredricks seconded the motion to change and the motion carried.

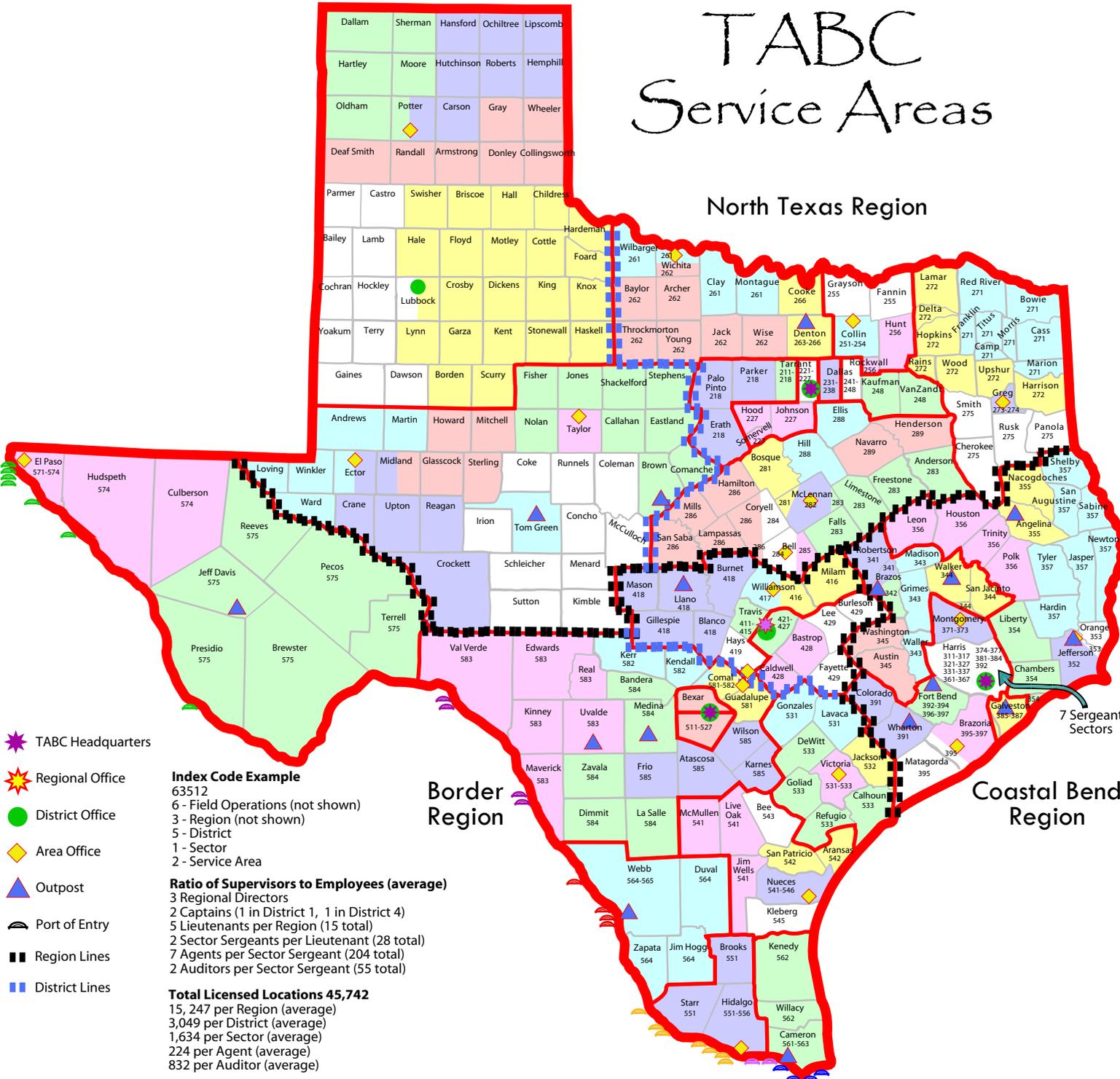
### **ADJOURNMENT**

**Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion was made and seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned at 10:36 a.m.**

# **Attachment 1**

## **Regional Changes Briefing**

# TABC Service Areas



North Texas Region

Border Region

Coastal Bend Region

- TABC Headquarters
- Regional Office
- District Office
- Area Office
- Outpost
- Port of Entry
- Region Lines
- District Lines

**Index Code Example**  
 63512  
 6 - Field Operations (not shown)  
 3 - Region (not shown)  
 5 - District  
 1 - Sector  
 2 - Service Area

**Ratio of Supervisors to Employees (average)**  
 3 Regional Directors  
 2 Captains (1 in District 1, 1 in District 4)  
 5 Lieutenants per Region (15 total)  
 2 Sector Sergeants per Lieutenant (28 total)  
 7 Agents per Sector Sergeant (204 total)  
 2 Auditors per Sector Sergeant (55 total)

**Total Licensed Locations 45,742**  
 15,247 per Region (average)  
 3,049 per District (average)  
 1,634 per Sector (average)  
 224 per Agent (average)  
 832 per Auditor (average)

7 Sergeant Sectors

# **Attachment 2**

**Twenty-nine Years Service Recognition  
Tax Division Director Charlie Kerr**



**STATE OF TEXAS  
OFFICE OF THE GOVERNOR**

July 12, 2011

**Greetings to:**

**Charles B. Kerr**

Congratulations on your well-deserved retirement after 29 years of service to the people of Texas.

Public service is an honor, for its foundation is in the public trust. Daily, state employees earn this trust, demonstrating dependability, initiative and wise stewardship of public resources. Their endless dedication highlights that this state's greatest asset lies with the people who call it home.

First Lady Anita Perry joins me in sending best wishes for an enjoyable and fulfilling retirement.

Sincerely,

*Rick Perry*

Rick Perry  
Governor



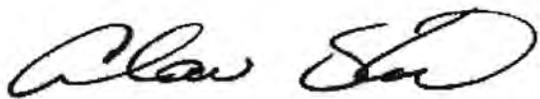
**Certificate of Merit**  
*Presented To*

**Charles B. Kerr**

*In recognition of Achievement*

*This certificate of merit is presented in recognition of twenty-nine years of dedicated and unselfish service to the Texas Alcoholic Beverage Commission.*

*The Texas Alcoholic Beverage Commission is proud to present this award for outstanding service.*



Administrator



Presiding Officer



Commissioner



Commissioner

*August 31, 2011*

# **Attachment 3**

**Internal Audit of the Compliance Division**

**Texas Alcoholic Beverage Commission  
Internal Audit of the  
Compliance Division**

Final Report

As Approved by the Commissioners on

August 23, 2011

As Prepared by  
Jansen & Gregorczyk  
Certified Public Accountants

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**Texas Alcoholic Beverage Commission Internal Audit of the Compliance Division  
Final Report – August 23, 2011**

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August 23, 2011

Commission Members  
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit of the Compliance Division.

The internal audit was conducted in accordance with generally accepted government auditing standards and *Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors.

**Signed Copy on File**

Jansen & Gregorczyk  
Certified Public Accountants

## **EXECUTIVE SUMMARY**

### **Audit Purpose**

The primary purpose of the internal audit were to evaluate the effectiveness of policies and procedures governing key functions performed by the Compliance Division at headquarters and the field offices and determining whether the established policies and procedures are being followed.

### **Key Findings**

- Procedures and internal controls for managing confiscated property at the field offices are effective and with some minor exceptions are being followed in managing confiscated property.
- Region 5 (San Antonio) takes photographs of liquor obtained in purchase of evidence fund activities and destroys the physical evidence. This has apparently been the practice of the region for many years, but per the confiscated property procedure this is not allowed for purchase of evidence items.
- Review of items in the property rooms and safes during audit testing indicated that there is a significant problem related to determining case disposition in a timely manner and disposing of confiscated property that is no longer needed.
- The forms used to document seizures and purchased evidence should be updated. The form for seizures does not have sufficient identifying information in some cases to be able to track the case disposition or to research case disposition.

- None of the property rooms currently have surveillance cameras in use to monitor the property rooms. Should there be a theft or loss of evidence, pending cases could be jeopardized and TABC could be subject to unwanted publicity.
- There is an effective, well-documented process for performing new location inspections and auditors are following established procedures in performing these inspections.
- There is an effective, well-documented process for performing open compliance checks and auditors are following established procedures in performing these inspections. Some areas for improvement were noted however in performing open compliance checks.
- Compliance auditors are not allowed to enter more than one type of inspection performed on a single visit. By allowing auditors to enter multiple types of inspection reports for each physical visit performed, more complete statistics would be available on each type of inspection performed.
- There are effective and efficient procedures for performing food and beverage inspections and analyses and established procedures are being followed in performing these inspections and analyses.
- There are effective and efficient procedures for issuing and serving summary suspensions and established procedures are being followed in issuing and serving summary suspensions.
- There is an effective, well-documented process for performing local distributor audits and auditors are following established procedures in performing these audits.

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- The procedures for processing administrative cases are effective and established procedures are being followed in processing administrative cases.
- There are effective and efficient procedures for performing purchase of evidence funds audits; however, not all regions are performing these audits every six months as required by the established procedures.
- There are effective and efficient procedures for performing cash/credit law inspections and investigations and established procedures are being followed in performing these inspections and investigations.
- Established procedures are being followed in performing marketing practices audits, but the second level audit reviews and quality control reviews are not being performed in a timely manner.
- The overall effectiveness of marketing practice audits is questionable given the amount of time and effort that is required to perform the audits and the few marketing practices violations that are found.
- There are effective procedures for selecting entities for excise tax audits, assigning and monitoring staff performance of these audits. There are also effective procedures for performing excise tax audits; however, the quality review process is not being performed in a timely manner and changes should be made to comply with certain sections of the Alcoholic Beverage Code regarding excise tax audits.

**Significant Recommendations**

- Region 5 (San Antonio) should be advised to eliminate the practice of keeping photographs of purchased evidence and follow the approved procedure unless the procedure is revised to allow photographs to be used for purchased evidence.
- The Compliance Division should work with Legal and Enforcement to determine if the alternative of using photographs of evidence and destroying or disposing of the actual liquor could be done in a manner that would not jeopardize the case for purchase of evidence cases.
- Enforcement management in each region (and district office) should develop a process to ensure that Enforcement staff provides case disposition information to Compliance on all items tracked in the Automated Seized Property System when more than a year has lapsed since the seizure.
- The forms used to document seizures and purchased evidence should be updated. Input should be obtained from Enforcement, Compliance and Legal so that the forms contain all information that is needed to effectively track the seizure, ensure that all necessary identifying information is obtained that will be necessary if the evidence is needed in a case and for determining case disposition.
- The cost and feasibility of using surveillance cameras in the confiscated property rooms should be investigated to determine whether this would be cost effective way to increase security of evidence in the property rooms.

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- The Compliance Division should work with Roy Hale to determine a method that will allow the Compliance auditors to enter each type of inspection conducted during a visit to a licensed location without duplicating information when reporting performance measures information to the Legislative Budget Board.
- The Compliance Division should work with Legal to determine if there are circumstances when a signed settlement agreement and waiver form could be submitted by mail or fax, including determining what documentation would be necessary to substantiate that the signature is that of the licensee/permittee.
- Regions delinquent on purchase of evidence audits should complete the audits as soon as possible.
- The current process for performing marketing practices audits should be revised to move to complaint-based marketing practices investigations rather than risk-based audits. The procedures should be revised to move from an audit-based process to an investigation process. This would significantly reduce the time required to complete the investigations since the process would no longer be an audit. The process should include an education component for providing standardized training and presentations to wholesalers and distributors regarding marketing practices rules and potential violations.

- If management determines that the current procedures for marketing practices audits will continue to be used, then the second level audit reviews and quality control reviews should be performed in a timely manner to ensure the audits were conducted in accordance with established procedures, to provide feedback to the auditor and to ensure that all findings and conclusions are accurate.
- A new audit committee should be appointed by the Compliance Division Director to update the *Excise Tax Audit Manual*. One of the first duties of the committee should be to determine the most relevant national auditing standards that TABC should adopt. The *Manual* should be updated as soon as possible to comply with the requirement for an annual review and updating to comply with the national audit standards adopted, as well as actual practices in place for performing excise tax audits.

#### **Management's Response**

TABC management concurs with most findings and recommendations of the audit and will have recommendations addressed and/or implemented as applicable by March 31, 2012. Responsible management party will be Assistant Chief Jones and the Field Operations Administrative Lieutenants. Where management does not concur with a recommendation, the reason is noted in the management response.

## **AUDIT PURPOSE & SCOPE**

The primary purpose of the internal audit were to evaluate the effectiveness of policies and procedures governing key functions performed by the Compliance Division at headquarters and the field offices and determining whether the established policies and procedures are being followed.

The scope of internal audit work included review, analysis, and/or testing of the following policies and functions:

- new location inspections;
- open compliance checks;
- food and beverage inspections and analyses;
- private club analyses;
- local distributor audits;
- processing of summary suspensions;
- processing of administrative cases;
- audits of purchase of evidence funds;
- cash and credit law inspections and investigations;
- marketing practices audits;
- excise tax audits; and
- quality control system for audits.

Specific audit objectives for each of these audit areas were developed and coordinated with TABC management.

Audit fieldwork was performed at the Austin headquarters office and at regional and district offices in Abilene, Dallas, Austin, Houston and San Antonio.

## **AUDIT RESULTS AND RECOMMENDATIONS**

The results and recommendations of the internal audit work are presented in this section for each of the twelve audit objectives that were established and coordinated with TABC management.

***Audit Objective 1:** Determine if there are effective and efficient procedures and adequate internal controls for managing confiscated property at the field offices and if established procedures are being followed in managing confiscated property.*

Procedures and internal controls for managing confiscated property at the field offices are effective and with some minor exceptions are being followed in managing confiscated property. Comprehensive, detailed procedures have been established for managing and reporting on confiscated property. An Automated Seizure Property System is used for tracking and reporting on all confiscated property and the system is an effective tool for managing confiscated property.

Audit testing indicated that all confiscated property rooms tested are secure, and are being managed in accordance with established procedures. Testing of selected liquor and non-liquor items on the confiscated property reports indicated that all but two items could be located in the property room or the chain of evidence form indicated that the confiscated property had been transferred out of the property room. The two exceptions were items that had been disposed of per the regional office records but they items were still being carried on the

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Automated Seizure Property System. One exception to established procedures was noted after testing was complete. Region 5 (San Antonio) takes photographs of liquor obtained in purchase of evidence fund activities and destroys the physical evidence. This has apparently been the practice of the region for many years, but per the confiscated property procedure this is not allowed for purchase of evidence items. This information is also not being entered into the Automated Seized Property System. Even when evidence is allowed to be photographed (as discussed below), it must be entered into the automated system for tracking purposes.

Several regions indicated that using photographs of evidence in lieu of the actual evidence would make property room management more efficient. The procedures manual does allow photographs for certain seized property but only with the written approval of the local district attorney. The Legal Department should work with Compliance and Enforcement to determine if the alternative of using photographs of evidence and destroying or disposing of the actual liquor could be done in a manner that would not jeopardize the case. For example, this alternative might be possible in certain types of cases such as administrative cases where there is no associated criminal case or possibly for certain types of cases involving misdemeanors crimes (minor in possession for example). If a standardized procedure could be implemented for all regions to consistently follow, it would decrease the space needed for confiscated property, the time required of the property manager in tracking and disposing of the property and the time required by Enforcement in pursuing case disposition information.

Review of items in the property rooms and safes during audit testing indicated that there is a significant problem related to determining case disposition in a timely manner and disposing of confiscated property that is no longer needed. Confiscated property being maintained in all of the property rooms tested includes many older items (particularly non-liquor items) where the case may have been dismissed and the property should have been disposed of according to established procedures. Although the confiscated property procedures state that the Enforcement Division is responsible for obtaining and communicating final dispositions of cases to the property officer, this is not occurring in the offices reviewed. A concerted effort is needed to determine case disposition for all items maintained in the property rooms when a reasonable time has elapsed since the seizure (6 to 12 months per the confiscated property procedure).

The forms used to document seizures and purchased evidence should be updated. The form for seizures does not have sufficient identifying information in some cases to be able to track the case disposition or to research case disposition. For example, the full name of the defendant and date of birth, and the trade name and permit number where the item was seized (when applicable), would provide useful identifying information when case disposition is being researched. For many of the older items currently being maintained this information was not required on Form 4-49 and it is extremely difficult to determine if a case is still pending or has been dismissed based on the information entered on the form. The Purchase as Evidence Form 4-3 does not have a pre-stamped seizure number, so each property

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room has devised its own method of numbering and referencing items obtained as purchased evidence. In addition to the need to update seizure forms, there is currently no standardized form for the confiscated property managers to use when seeking a judge's approval to dispose of evidence that is no longer needed. Each region appears to have adopted a process and designed a form for this purpose, but the Legal Department should assist Compliance in implementing a standard form and process for obtaining approval to dispose of evidence that is no longer needed.

There appear to be inconsistent procedures for maintaining currency that is seized. The Austin Regional Office indicated that when significant amounts of currency are seized, the funds are deposited in a suspense account at the Comptroller's Office. Other regions were unaware of this option. In some property rooms significant amounts of currency are being held (the Dallas safe contains over \$12,000 in seized currency). A standardized procedure would ensure that all regions deal with seized currency in the same manner.

Although the confiscated property rooms appear to be secure and well-established controls are in place for access to the property rooms, some property rooms have a significant amount of currency, various weapons and illegal drugs stored in the safe. None of the property rooms currently have surveillance cameras in use to monitor the property rooms. Should there be a theft or loss of evidence, pending cases could be jeopardized and TABC could be subject to unwanted publicity. Use of surveillance cameras (at least in the large property rooms) would provide an added layer of security for confiscated property.

***Recommendation 1:*** *Region 5 (San Antonio) should be advised to eliminate the practice of keeping photographs of purchased evidence and follow the approved procedure unless the procedure is revised to allow photographs to be used for purchased evidence.*

**Management Response:** Concur with finding. Will explore issue and make a decision to prohibit the practice in Region 5 or amend the procedure to allow in each Region contingent upon agreement with respective District Attorney Offices throughout the state.

***Recommendation 2:*** *The Compliance Division should work with Legal and Enforcement to determine if the alternative of using photographs of evidence and destroying or disposing of the actual liquor could be done in a manner that would not jeopardize the case for purchase of evidence cases. If it is deemed feasible, then clear guidelines should be developed regarding cases when this alternative may be used.*

**Management Response:** Management concurs with the finding, and will review and amend specific policies related to photographing purchase of evidence as documentation to support a case in lieu of transferring actual purchase of evidence to the property manager for custodial security through case disposition.

***Recommendation 3:*** *Enforcement management in each region (and district office) should develop a process to ensure that Enforcement staff provides case disposition information to Compliance on all items tracked in the Automated Seized Property System when more than a year has lapsed since the seizure. Initially, this may*

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*require a significant time commitment, but once all cases have been researched, it should be possible to purge the confiscated property rooms of evidence that is no longer needed. After purging the property rooms of evidence no longer needed, a report should be provided to Enforcement semi-annually or annually, so that case disposition can be determined and provided to Compliance.*

**Management Response:** Concur with finding. Will work with Enforcement Leadership to develop and implement an effective procedure.

**Recommendation 4:** *The forms used to document seizures and purchased evidence should be updated. Input should be obtained from Enforcement, Compliance and Legal so that the forms contain all information that is needed to effectively track the seizure, ensure that all necessary identifying information is obtained that will be necessary if the evidence is needed in a case and for determining case disposition. Compliance should work with Legal to develop a standardized form and process for obtaining judges' approval to dispose of confiscated property no longer needed.*

**Management Response:** Concur with finding. Will work with Enforcement and Legal to develop and implement a standardized form to ensure seizures are properly documented, accounted for and disposed of as applicable.

**Recommendation 5:** *Compliance should work with Enforcement, Legal and Accounting to develop a standardized procedure for dealing with seized currency that would transfer the funds to an interest bearing suspense account at the*

*Comptroller's Office whenever feasible. A dollar threshold could be established so that small amounts of seized currency could be held in the safe.*

**Management Response:** Concur with finding. Will work with Enforcement and Legal to develop and implement a standardized form to ensure seizures are properly documented, accounted for and disposed of as applicable.

**Recommendation 6:** *The cost and feasibility of using surveillance cameras in the confiscated property rooms should be investigated to determine whether this would be cost effective way to increase security of evidence in the property rooms.*

**Management Response:** Concur with finding. Will explore feasibility of placing surveillance cameras in regional confiscated property rooms.

<p><b>Audit Objective 2:</b> <i>Determine if there are effective and efficient procedures for performing original license and permit inspections and open compliance checks and if established procedures are being followed in performing these inspections.</i></p>
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Review of procedures and testing of new location inspection forms indicates there is an effective, well-documented process for performing new location inspections and auditors are following established procedures in performing these inspections.

Some minor reporting issues were noted during testing of new location inspections. In three instances activity entered as a new location inspection should not have been entered as completed because an inspection

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was not performed but was scheduled for a later date. Other than this minor issue, the process for performing and reporting new location inspections is operating effectively.

There is an effective, well-documented process for performing open compliance checks and auditors are following established procedures in performing these inspections. Some areas for improvement were noted however in performing open compliance checks. The procedures manual does not include a procedure for open compliance checks, but this oversight will be addressed by developing a new procedure.

Several issues were noted in testing open compliance checks that are performed. One change that would be useful on the Form C-706 that is used for open compliance checks is a block for Not Applicable (NA) perhaps placed right after each question number. This would ensure that questions left blank were not applicable rather than implying the auditor skipped the question during the inspection. Several other topics on the form need to be clarified as identified in Recommendation 7.

The second issue that was noted in testing inspections made during FY 2011 relates to the required posting of signs. Some auditors indicated they provided missing signs to the entity without issuing an administrative warning, while others provided the signs and issued a warning. Consistency across the state would be practiced by issuing a warning when required signs are not posted and would document the exception for the next open compliance check that occurs. This issue will be addressed in the procedure for performing open compliance checks that is being developed.

The only other issue noted is that Compliance auditors are not allowed to enter more than one type of inspection performed on a single visit. Currently, the auditor must decide what the primary purpose of the visit is, and only that type of inspection report may be entered into the automated system. If two Compliance auditors conduct a compliance visit to a licensed location, then only one inspection should be claimed; however, when a Compliance auditor conducts and documents two entirely different compliance inspections on a single visit both should be counted and reported. This is the only way that TABC will have a complete record of each type of inspection conducted. Current practices do not allow multiple inspections to be counted for one visit, but review of the agency performance measures definitions does not appear to indicate that entering each type of inspection performed would duplicate information used in reporting performance measures. By allowing auditors to enter multiple types of inspection reports for each physical visit performed, more complete statistics would be available on each type of inspection performed.

***Recommendation 7:*** *Form C-706 should be updated to clarify information on the form. Changes that should be considered include use of a block for Not Applicable (NA) perhaps placed right after each question number. Comments under Question 5 should be used to clarify a No answer and the instructions should instruct the auditor to use Question 17 to provide narrative comments for all areas of non-compliance identified during the inspection. Question 8 should have a Yes or No box to check. The regions should be consulted regarding any areas they have identified that should be*

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*added to, deleted from, or clarified on the form.*

**Management Response:** Concur with finding. Will update Form C706 as recommended to more appropriately reflect validation of inspections.

**Recommendation 8:** *The Compliance Division should work with Roy Hale to determine a method that will allow the Compliance auditors to enter each type of inspection conducted during a visit to a licensed location without duplicating information when reporting performance measures information to the Legislative Budget Board.*

**Management Response:** Will explore feasibility of crediting multiple classes of inspections during a single visit to a licensed location.

**Audit Objective 3:** *Determine if there are effective and efficient procedures for performing food and beverage inspections and analyses and if established procedures are being followed in performing these inspections.*

Audit review and testing indicates there are effective and efficient procedures for performing food and beverage inspections and analyses and established procedures are being followed in performing these inspections and analyses. There are written procedures for performing food and beverage inspections and food and beverage analyses. The procedures identify the specific steps the auditor is to perform in conducting and documenting these inspections and analyses.

Audit testing of 50 food and beverage analyses did not indicate any problems or exceptions to established procedures, although four of the analyses sampled did not have a documented supervisory review and one did not have all required supporting schedules. Food and beverage analyses can be complex and the process is similar to an audit. There is no standard form or process for the supervisors to review these analyses. Although a documented quality review does not appear necessary, use of a checklist for performing the supervisory review would be helpful. The Region 1 Compliance Division Supervisor has a food and beverage analysis checklist that he uses to review food and beverage analyses. Other supervisors may have similar documents. Use of some type of standard procedures documented in a checklist should be considered to ensure consistency in performing the supervisory review and to provide guidance for new supervisors in performing these supervisory reviews.

**Recommendation 9:** *A checklist should be considered for use in conducting supervisory reviews of food and beverage analyses (and one for private club analyses). Input from the regions that may use some type of checklist should be obtained in developing the checklist. Supervisors should use the checklist in performing their reviews of food and beverage analyses (and private club analyses) and should document their review by signing all forms, but there should be no need to complete a checklist form each time a supervisory review is performed.*

**Management Response:** Will solicit input from Region 1 regarding use of recommended checklist. Based on input will explore feasibility of standardizing a

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checklist for supervisory review of food and beverage analyses and private club analyses.

***Audit Objective 4: Determine if there are effective and efficient procedures for issuing and serving summary suspensions and if established procedures are being followed in issuing and serving summary suspensions.***

The Comptroller of Public Accounts sends a notification to Compliance via email requesting a permit be summarily suspended for failure to file and/or pay mixed beverage, sales, hotel, and/or franchise tax under the Texas Tax Code. There are effective and efficient procedures for issuing and serving summary suspensions and established procedures are being followed in issuing and serving summary suspensions.

The process is performed at headquarters by an administrative assistant in the Compliance Division who receives an email from the Comptroller requesting that a license or licenses be summarily suspended. The administrative assistant creates a complaint in ARTS and the next day the LicenseEase system is used to obtain the documents (dockets) needed to issue the summary suspension. An email and a PDF of the documents are sent to the Compliance Regional Supervisor to be served. The supervisor distributes the information to a staff member to be served. Summary suspension releases are not served. They are sent to the field office and permittee via U.S. mail.

Testing of a sample of summary suspensions in progress indicated that all were processed accurately and timely. Some problems were noted in the files however. The administrative assistant waits until she

receives the original signed or notated copy by the server if no signature could be obtained before she moves the case to the summary suspensions served files. Until that time it is in the summary suspensions processed file. There are some old files in the processed but not served file that appear to be incorrect. Testing of the summary suspensions served files indicated entities whose licenses or permits have expired, been cancelled, etc. These need to be purged from the files.

***Recommendation 10: The administrative assistant should research all of the old summary suspensions in her files and purge those that are not current by sending them to Licensing for imaging.***

**Management Response:** Concur with finding. The Summary Suspension file has been researched and purged in accordance with the recommendation as of July 27<sup>th</sup>, 2011. The current file will be maintained in accordance with prescribed records retention rules and/or record disposition as applicable.

***Audit Objective 5: Determine if there are effective and efficient procedures for performing private club analyses and if established procedures are being followed in performing these analyses.***

Audit review and testing indicates there are effective and efficient procedures for performing private club analyses and established procedures are being followed in performing these analyses. There are written procedures for performing private club analyses. Private club analyses are documented using a number of different forms and there are also a number of exhibits attached to the procedures that

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provide templates and examples of information that auditor should collect or provide to the entity during the audit.

Audit testing of 40 private club analyses indicated that all but three had all completed forms, schedules and documented supervisory review. Three did not have a documented supervisory review and one that was not reviewed by the supervisor also did not have a transmittal form attached. There is no standard form or process for the supervisors to review these analyses. Although a documented quality review does not appear necessary, use of a checklist for performing the supervisory review would be helpful.

**Recommendations:** See Recommendation 9.

**Audit Objective 6:** Determine if there are effective and efficient procedures for performing local distributor audits and if established procedures are being followed in performing these audits.

There is an effective, well-documented process for performing local distributor audits and auditors are following established procedures in performing these audits. Audits are conducted on local distributor permit holders to verify compliance with the Alcoholic Beverage Code and Rules. Local distributor (LP) permits are issued as a subordinate permit only to a holder of a package store permit. LPs are permitted to sell alcoholic beverages to mixed beverage and private club permittees. Audits conducted on LP accounts focus on these sales transactions and on the integrity of cash/credit law reporting.

Audit testing indicated that of the 60 Local Distributor Audits tested, 57 had a complete Form C-707. For the three other audits, one form was not fully completed and two had problems documented but no administrative warning or other explanation was provided.

**Recommendation 11:** Auditors should note in the comments section of Form C-707 what actions were taken when problems were noted during the audit, including why an administrative notice or warning was not issued when problems are found.

**Management Response:** Concur with finding. Will amend audit procedures relating to Local Distributor Audits to require auditors to document if verbal warnings are given to gain voluntary compliance as applicable.

**Audit Objective 7:** Determine if there are effective and efficient procedures for processing administrative cases and if established procedures are being followed in processing administrative cases.

The procedures for processing administrative cases are effective and established procedures are being followed in processing administrative cases.

There is a documented process for processing administrative cases by the field and headquarters staff. Once an administrative case is settled (whether the permit/license holder agrees to a fine or suspension or requests a hearing) it is submitted to headquarters for review and to issue an order (docket). The regional supervisor or assistant regional supervisor and in some cases auditor V's are authorized to settle all administrative cases. The

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Quality Control Supervisor at headquarters reviews all cases submitted to headquarters for all required supporting documents. This procedure was implemented by Compliance because two orders had to be vacated after the orders were issued due to errors in the settlement agreement and waiver form signed by the licensee/permittee.

There are instances when it is difficult to meet in person with the permittee/licensee to obtain an original signature on the settlement agreement and waiver, and it would be much more effective to obtain a signed waiver by mail or fax, but this is not allowed by current procedures.

***Recommendation 12:*** *The Compliance Division should work with Legal to determine if there are circumstances when a signed settlement agreement and waiver form could be submitted by mail or fax, including determining what documentation would be necessary to substantiate that the signature is that of the licensee/permittee.*

**Management Response:** Concur with finding. Management will work closely with Legal to determine if it is feasible to allow settlement agreements and waivers to be mailed or faxed and identify criteria by which to allow.

***Audit Objective 8:*** *Determine if there are effective and efficient procedures for performing purchase of evidence funds audits and if established procedures are being followed in performing these audits.*

Detailed procedures have been developed for performing purchase of evidence funds audits. There are effective and efficient procedures for performing purchase of

evidence funds audits. For the audits that were completed and reviewed, each audit was performed in accordance with the procedures; however, not all regions are performing these audits every six months as required by the established procedures.

Each Enforcement District Office purchase of evidence funds are to be audited twice during the fiscal year, in February and August. The purpose of these audits is to determine whether records are accurate and factual, complete, and submitted in a timely manner. The ultimate goal of the auditor is to ensure funds are spent as authorized under the authority of Article V-5 of the General Appropriations Act.

Only Regions 1 and 4 are in compliance with the requirement for audits every six months. Region 2 has brought the purchase of evidence audits up to date, but the audits had not been done at the Arlington office for three years and at the Dallas office for over a year until recently. Regions 3 and 5 are delinquent in completing their audits. At the time of audit fieldwork, both regions were working on audits covering a twelve month period. The regional supervisors need to do a better job of monitoring the completion of the required audits. One change that should be considered is performing the audits for the six-month periods ending February 28<sup>th</sup> and August 31<sup>st</sup> each year. Currently the procedures state the audits should be performed in February and August each year.

***Recommendation 13:*** *Regions delinquent on purchase of evidence audits should complete the audits as soon as possible. A notification process should be incorporated into the procedure to require each region to notify headquarters when the purchase of*

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*evidence audits are completed every six months. Regions not completing the audits by the established deadlines should inform headquarters of the reason the audit was not completed, when it is expected to be completed and when it is completed.*

**Management Response:** Concur with finding. As of August 5<sup>th</sup> 2011, all regions are current on the purchase of evidence audits. Management will amend purchase of evidence audit procedures to require audits and/or notification of delinquency be performed in accordance with the recommendation.

**Recommendation 14:** *The procedures should be revised to clarify that the audits will be performed every six months for the periods ending 28<sup>th</sup> and August 31<sup>st</sup> each year. The procedures should also specify that if any problems are found that information should be brought to the attention of headquarters.*

**Management Response:** Concur with finding. As of August 5<sup>th</sup> 2011, all regions are current on the purchase of evidence audits. Management will amend purchase of evidence audit procedures to require audits be performed in accordance with the recommendation.

**Audit Objective 9:** *Determine if there are effective and efficient procedures for performing cash/credit law investigations and if established procedures are being followed in performing these investigations.*

There are effective and efficient procedures for performing cash/credit law inspections and investigations and established

procedures are being followed in performing these inspections and investigations.

The system for reporting cash/credit law violations is administered through a web-based data entry system. Detailed procedures have been developed for performing cash and credit law inspections and investigations. These procedures outline supervisor and auditor duties regarding the investigation of cash/credit law violations. Regional supervisors run a report twice a month on the 5<sup>th</sup> and 20<sup>th</sup> to determine permittees who have three or more cash or credit law violations. Once a business has three or more violations, a site visit is scheduled to conduct a cash/credit law inspection or investigation. During the inspection or investigation, the auditor advises the retailer that the purpose of the investigation is in regards to cash and/or credit law violations and informs the retailer that the Commission will impose an administrative penalty or suspension in the event a 7<sup>th</sup> cash/credit law violation occurs within a 12 month period as per TAC §34.3 – Schedule of Sanctions and Penalties.

Testing of cash and credit law inspections indicated that the auditors are performing the inspections and completing the forms in accordance with established procedures. Eighty of 86 cash and credit law inspections were complete and performed in accordance with established procedures. The remaining six inspections had either incomplete forms or no comments on the outcome of the inspection as required by the instructions. These were the only minor problems noted during testing.

In addition to determining if the cash and credit law violations are valid and not the result of bank error or a mistake by the

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wholesaler in reporting the violation, a secondary purpose of a cash/credit law investigation is to check for a possible subterfuge operation. In examining the bank statements, bank account signature cards, utility bills, and tax filings, the auditor checks for differences in ownership. This analysis may un-cover a subterfuge operation. One of the procedures in performing cash and credit law investigations that is not currently specified in the procedures is to check the Comptroller's franchise and sales tax information to see if the business is current in paying sales taxes and if the corporate ownership is correct. This would help to identify subterfuge as quickly as possible. This is the only area identified that would increase the efficiency and effectiveness of cash/credit law investigations.

**Recommendation 15:** *The cash/credit law investigation procedures should be revised to include a step for the auditor to check the Comptroller's franchise and sales tax information to see if the corporate ownership is correct and if the business is current in paying sales taxes and before the on-site inspection/investigation is performed.*

**Management Response:** Management does not concur with this finding. The Comptroller inquiry is being conducted as part of the at-risk review as applicable. It does not appear to be as critical during a routine cash/credit law inspection/investigation to verify Comptroller information.

**Audit Objective 10:** *Determine if there are effective and efficient procedures for performing marketing practices audits and if established procedures are being followed in performing these audits.*

Established procedures are being followed in performing marketing practices audits, but the second level audit reviews and quality control reviews are not being performed in a timely manner. Detailed procedures and guidelines have been established for performing these audits, but the overall effectiveness of these audits is questionable given the amount of time and effort that is required to perform the audits and the few marketing practices violations that are found.

Procedures have been developed and are included in the *Excise Tax Audit Manual* for performing marketing practices audits. The marketing practices audit procedures provide guidance to the auditor in designing and performing tests for marketing practice compliance. The procedures are divided into two parts: marketing practices as they apply to liquor wholesalers (Wholesalers, Class B Wholesalers, Wineries, Wine bottlers); and marketing practices as they apply to beer distributors (all classes)

Audit testing indicated that of the 40 marketing practices audits tested, only 12 had all required forms, schedules and the documented supervisory and quality control reviews performed or performed timely. The other 28 audits had some type of omission or did not follow all established procedures including timely second level reviews and quality control reviews. For 21 of the audits no quality control review was performed or the review was performed at least 90 days

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after the audit completion date. For the audits tested, most audits did not reveal any marketing practices violations. The overall effectiveness marketing practices audits is questionable since the average time required to complete the marketing practices audits tested was approximately 20 hours, but marketing practices violations are rarely found when conducting these audits.

Based on the results of audit testing and interviews with regional office supervisors and assistant supervisors, marketing practices audits that are being performed are not cost effective. While the audits may serve as a deterrent, they generally do not result in identifying marketing practices violations. While there is a need to continually educate wholesalers and distributors regarding marketing practices, this could be done more cost effectively through educational efforts and marketing practices investigations based on complaints, rather than selecting wholesalers and distributors for audits based on a risk assessment and performing the audits based on current procedures.

**Recommendation 16:** *The current process for performing marketing practices audits should be revised to move to complaint-based marketing practices investigations rather than risk-based audits. The procedures should be revised to move from an audit-based process to an investigation process. This would significantly reduce the time required to complete the investigations since the process would no longer be an audit. The process should include an education component for providing standardized training and presentations to wholesalers and distributors regarding marketing practices rules and potential violations.*

**Management Response:** Management feels that it is necessary to continue the marketing practices audit, and will explore enhancing the audit to more efficiently review trade issues that displaces competitions or affects public safety.

**Recommendation 17:** *If management determines that the current procedures for marketing practices audits will continue to be used, then the second level audit reviews and quality control reviews should be performed in a timely manner to ensure the audits were conducted in accordance with established procedures, to provide feedback to the auditor and to ensure that all findings and conclusions are accurate.*

**Management Response:** Concur with finding. The divisions practice is to conduct supervisory review of all completed audits within 15 days of audit completion. Will amend the marketing practices audit procedures to codify the practice and require the quality control supervisory review be conducted within 15 days of the completion of the audit.

<p><b>Audit Objective 11:</b> <i>Determine if there are effective and efficient procedures for selecting entities for excise tax audits, assigning and monitoring staff performance of these audits, and performing excise tax audits and if established procedures are being followed in performing these audits.</i></p>
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There are effective procedures for selecting entities for excise tax audits, assigning and monitoring staff performance of these audits. There are also effective procedures for performing excise tax audits although the procedures are not up-to-date. Procedures are being followed in performing excise tax

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audits; however, the quality review process is not being performed in a timely manner and changes should be made to comply with certain sections of the Alcoholic Beverage Code regarding excise tax audits.

Entities are selected off the “At Risk” list report for excise tax audits. This was done to comply with a State Auditor’s Office recommendation that excise tax audits should be performed based on a risk analysis. This appears to be an effective way to select entities for excise tax audits. Assignment and monitoring of staff is done based on reports from the SSRS system and are used by the regional office supervisors and by the Quality Control Supervisor at headquarters to track the work performed on excise tax audits.

Procedures have been developed and are included in the *Excise Tax Audit Manual* for performing excise tax audits. The procedures were last updated in 2008 and do not reflect the decentralization of the process, which resulted in excise tax audits being reviewed by the regional offices rather than headquarters.

All new auditors attend a week long new auditor academy where they receive training on the procedures for conducting an excise tax audit and they participate in a case study of an excise tax audit. They also are mentored during their training by observing an excise tax audit being conducted by an experienced auditor and by having their initial audit or audits observed by a senior auditor.

Audit testing indicated that of the 52 excise tax audits tested, only 18 had all required forms, schedules and the documented supervisory and quality control reviews

performed or performed timely. The other 34 audits had some type of omission or did not follow all established procedures including a timely second level audit review and quality control review. Most of the deficiencies were because no quality control review was performed or the review was performed at least 90 days after the audit completion date. Based on the results of audit testing, there appears to be an effective process for performing excise tax audits and auditors are generally following established procedures in performing these audits, but the process for reviewing these audits needs to be improved because some secondary reviews were performed 90 days or later after the audit completion, quality control reviews are not being performed or they are performed using the wrong form and in some cases letters to the permittees are sent before the secondary or quality control reviews are performed.

The Alcoholic Beverage Code §206.08 (b) “requires the commission to annually updated and review all audit manuals to ensure compliance with national auditing standards and impartiality.” The Compliance Division does not review and update the audit manual annually as required. The *Excise Tax Audit Manual* has not been updated since 2008 and does not reflect the changes in the Compliance Division organizational structure that have occurred regarding the quality control structure of the division.

TABC has adopted the American Institute of Certified Public Accountants (AICPA) attestation standards as the national auditing standards the agency will follow. These standards are intended for CPAs in public practice and while some of the standards may provide useful guidance to TABC in

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conducting excise tax audits, there would appear to be some provisions in these standards that would be difficult for auditors and TABC to follow. A more relevant national standard would appear to be the Governmental Auditing Standards as issued by the Comptroller General of the United States.

**Recommendation 17:** *A new audit committee should be appointed by the Compliance Division Director to update the Excise Tax Audit Manual. One of the first duties of the committee should be to determine the most relevant national auditing standards that TABC should adopt. The Manual should be updated as soon as possible to comply with the requirement for an annual review and updating to comply with the national audit standards adopted, as well as actual practices in place for performing excise tax audits. A process should be established to ensure the Excise Tax Audit Manual is reviewed and updated annually to comply with the national auditing standards adopted by TABC.*

**Management Response:** Concur with finding. A new audit committee has been assigned and recommendation will be completed by December 31, 2011.

**Recommendation 18:** *Second level audit reviews and quality control reviews should be performed in a timely manner to ensure the audits were conducted in accordance with established procedures, to provide feedback to the auditor and to ensure that all findings and conclusions are accurate.*

**Management Response:** Concur with finding. The divisions practice is to conduct supervisory review of all completed audits

within 15 days of audit completion. Will amend the excise audit procedures to codify the practice and require the quality control supervisory review be conducted within 15 days of the completion of the audit.

**Audit Objective 12:** *Determine if there are effective and efficient quality control procedures at Headquarters and the regional office for reviewing Compliance Division audits and if established procedures are being followed in performing these quality control reviews.*

There are effective and efficient quality control procedures at headquarters and the regional office for reviewing Compliance Division audits, but established procedures are not being followed in performing these audit reviews. The second level audit reviews and quality control reviews are often performed more than 90 days after the audit completion date.

Audit testing indicated that for some audits a thorough review was not performed because there are no review notes and some required signatures and required documents were not present. In other regions, the secondary review was well documented with notes to the auditor for corrections that were needed and a clear indication that a thorough review was performed. For the quality control reviews, most are only documented by completion of the quality control checklist and the signature of the reviewer; however, this is adequate since these reviews are performed after the audit file has been corrected and the process is complete.

One unnecessary step in the quality control process was noted. The current procedures require a letter to be sent to the business

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stating that a quality control review of the audit has been performed. This is usually well after the business has been sent a letter describing any audit findings. There does not appear to be any reason for this second letter to be sent since the quality control review should be an internal process of TABC.

The Quality Control Supervisor plans to conduct in-depth quality control reviews of regional and district offices. Thus far only a quality control review of Region 2 has been completed. Review of the Quality Control Audit for Region 2 indicated that the review was very comprehensive and thorough. The review found numerous areas where corrective actions were necessary for the region to comply with various Compliance Division policies and procedures. It would appear that if similar audits of the other four regions occur as planned, then the quality control review process implemented by the Compliance Division will be very effective in ensuring that established policies and procedure are being followed and should ensure consistency among the regions in performing audit, inspection and investigation work.

***Recommendation 19:*** *The quality control letter sent to the permittee/licensee should be discontinued.*

**Management Response:** Concur with finding. The quality control letter will be discontinued as recommended considering that this information is provided to the permittee/licensee during the audit exit conference

*See also Recommendations 17 and 18.*

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# **Attachment 4**

**Internal Audit of Bond Processing by the  
Licensing Division**

**Texas Alcoholic Beverage Commission  
Internal Audit of Bond Processing  
by the Licensing Division**

Final Report

As Approved by the Commissioners on

August 23, 2011

As Prepared by  
Jansen & Gregorczyk  
Certified Public Accountants

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**Jansen & Gregorczyk  
Certified Public Accountants**

Telephone  
(512) 268-0070

P. O. Box 601  
Kyle, Tx. 78640

August 23, 2011

Commission Members  
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit of Bond Processing by the Licensing Division.

The internal audit was conducted in accordance with generally accepted government auditing standards and *Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors.

**Signed Copy on File**

Jansen & Gregorczyk  
Certified Public Accountants

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## **EXECUTIVE SUMMARY**

### **Audit Purpose**

The purposes of the internal audit were to evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing Division for processing for bonds required for alcoholic beverage license and permit applications and renewals.

### **Key Findings**

- Licensing is in compliance with the Alcoholic Beverage Code (ABC) and agency administrative rules governing the various types of bonds required by TABC; however, the administrative rules related to bonds need to be reviewed and updated to ensure that current bond requirements and procedures comply with the Alcoholic Beverage Code.
- TABC should consider whether permit and tax bonds should be waived by administrative rule as allowed by the statute since permit bonds are not being required and tax bonds are not cost effective for TABC to administer.
- The Versa Regulation system has automated controls in place for determining the type of bond required before a license or permit may be issued. A number of manual controls are also used to ensure the correct type and amount of each bond that is required by law before a license or permit may be issued. Overall, the combined automated and manual controls are adequate to ensure the accurate determination of the type and amount of bond required for various types of licenses and permits.

- Verification of a statistical sample of applications processed with bonds would enable management to determine the accuracy of staff in processing bonds without burdening the limited staff resource by reviewing every application.
- Licensing has effective processing procedures to ensure that all conduct surety bonds required by law are received and verified.
- Licensing has effective processing procedures to ensure that all performance bonds required by law are received and verified.
- Audit testing of liquor tax bonds indicated that most bonds were processed correctly with all required supporting documentation; however, testing of beer tax bonds indicated numerous problems and omissions in the documentation submitted and processed.
- Licensing has an effective procedure for approving bond exemptions and bond exemption withdrawals.
- Licensing has adequate internal controls and effective procedures for adequately securing and maintaining all types of bonds and related surety instruments.
- Licensing has an effective procedure for collection on forfeited bonds for conduct surety purposes.
- It is not cost effective for TABC to process liquor and/or beer tax bonds. Tax Division staff and Licensing staff agree that collecting liquor and beer tax bonds, including processing exemptions, serves no useful purpose for the agency or the public. No revenue is generated and no licensee/permittee has ever been requested to forfeit his/her bond.

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**Significant Recommendations**

- Licensing should work with Legal to review and update sections of the TAC relating to bonds to address the following issues:
  - a. An administrative rule should be adopted waiving the requirement that a licensee or permittee furnish a bond under Chapter 204 based on a determination by the commission that submission of bonds under Chapter 204 are no longer necessary. This would eliminate the need for TABC to collect permit bonds or tax bonds.
  - b. If recommendation 1a is implemented, Chapter 33, Subchapter B, §33.21(a) and Chapter 33, Subchapter B, §33.22 of the Texas Administrative Code would also need to be updated or eliminated.
- Licensing should review the Applications Procedures Manual, Licensing Procedures Manual, documents such as the Bond Table, the Versa Regulation User's Guide, renewal forms and Applications Guides for Retailers and Wholesalers, Distributors and Manufacturers to ensure that all these references contain consistent, up-to-date information about bonds that are required to be submitted.
- Licensing should review the new combined application processing procedures for both retailers and wholesalers to ensure that information is accurate and there is sufficient detail to complete bond processing correctly.
- Licensing should review the checklists and dropdown boxes in the VR system to ensure that only appropriate selections are included in the review of an application.

- Licensing Division management should select a statistical random sample of applications from each region to review each month to determine if required bonds are being processed accurately.
- Licensing should develop a reporting system from the Versa Regulation system to obtain information about the current status of all licenses and permits that require bonds and those that are exempt. These reports should be used to monitor the accuracy of information included and to evaluate the performance of employees.
- Licensing should establish a review process of the bond activity conducted at the regional offices to ensure that bond names, addresses, dates, signatures, time frames and required documents are accurately recorded to adhere to legal requirements.
- TABC should eliminate the requirement for permittees and licensees to submit liquor tax and beer tax bonds with their original and renewal applications through the adoption of a new administrative rule specifying that these bonds are no longer necessary.

**Management's Response**

TABC management concurs with the findings and recommendations of the audit and will implement all recommendations by the target dates indicated in the management response. Amy Harrison, Licensing Division Director, will be the responsible party for implementing all recommendations.

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## **AUDIT PURPOSE & SCOPE**

The purposes of the internal audit were to evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing Division for processing for bonds required for alcoholic beverage license and permit applications and renewals.

The scope of audit work included review, analysis, and/or testing of the following areas:

- Alcoholic Beverage Code provisions and agency administrative rules related to bonds and similar surety instruments;
- procedures for processing performance bonds, conduct surety bonds and tax security bonds;
- Procedures for forfeiting, cancelling, securing and collecting on bonds;
- procedures manuals, guidelines and training for processing bonds required for license and permit applications; and
- cost effectiveness of requiring tax security bonds.

Specific audit objectives for each of these audit areas were developed and coordinated with TABC management.

All audit fieldwork was performed at the Austin headquarters office.

## **AUDIT RESULTS AND RECOMMENDATIONS**

The results and recommendations of the internal audit work are presented in this section for each of the nine audit objectives that were established and coordinated with TABC management.

***Audit Objective 1:** Determine if bond requirements and bond processing procedures comply with the Alcoholic Beverage Code and agency administrative rules governing the various types of bonds required by statute and administrative rule.*

Licensing is in compliance with the Alcoholic Beverage Code (ABC) and agency administrative rules governing the various types of bonds required by TABC; however, the administrative rules related to bonds need to be reviewed and updated to ensure that current bond requirements and procedures comply with the Alcoholic Beverage Code. TABC should also consider whether permit and tax bonds should be waived by administrative rule as allowed by the statute since permit bonds are not being required and tax bonds are not cost effective for TABC to administer as discussed in Audit Objective 9.

There are a number of different types of bonds required under the Alcoholic Beverage Code. Chapter 204 of the ABC allows TABC to require bonds for permits issued by the agency. Chapter 33, Subchapter B, §33.21(a) of the Texas Administrative Code (TAC) outlines the administrative rules that TABC has adopted related to bonds required for permits. Staff refers to these as “permit bonds” but this terminology is not used in the law or the

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administrative rules. Even though the statute and administrative rule imply these bonds are required, TABC does not require permit bonds from applicants. Chapter 204, §204.07 of the ABC allows the commission to waive the requirement that a licensee or permittee furnish a bond under this chapter if the commission by rule determines that the submission of the bond is no longer necessary, but TABC has not adopted an administrative rule under Chapter 204, §204.07 determining that these bonds are no longer necessary.

Chapter 11, §11.61 of the ABC requires persons applying for a license or permit for on-premise consumption of beer exclusively or beer and wine exclusively (no food or beverage certificate) in counties with a population of 1.4 million or more (currently Tarrant, Dallas and Harris) to file a “surety bond.” The agency renamed this surety bond as a “performance bond” in TAC Chapter 33, Subchapter B, §33.21 to avoid confusion with conduct surety bonds, which are also required of some businesses.

Chapter 11, §11.11 of the ABC requires an applicant for a permit or a holder of a permit issued under Chapters 22, 24, 25, 26, 28, or 31 to submit a “surety bond” conditioned on the applicant’s or holder’s conformance with the ABC. Chapter 61, §61.13 of the ABC requires an applicant for a permit or a holder of a permit issued under Chapter 69 to submit a “surety bond” conditioned on the applicant’s or holder’s conformance with the ABC. These bonds are known as “conduct surety bonds.” Associated administrative rules covering these bonds have been developed in TAC Chapter 33, Subchapter B, §33.24.

Chapter 204 of the ABC allows TABC to require bonds on entities that pay taxes for

distilled spirits (§201.03), taxes for vinqus liquor (§ 201.04), taxes on ale and malt liquor (§201.42) and taxes on beer (§203.1). These are referred to as “tax bonds.” TAC Chapter 33, Subchapter B, §33.22 addresses tax bonds to insure the payment of the tax on beer, ale and malt liquor. The administrative rule does not address the requirements for tax bonds required for the sale of distilled spirits/liquor, although TABC requires tax bonds for the sale of distilled spirits/liquor.

Licensing staff are provided extensive training and various manuals, charts and procedures to assist in the correct processing of bonds. Some of these resources include:

- Versa Regulation (VR) System User’s Guide;
- Bond Table (from Tax Security and Conduct Surety Bonds section of the Licensing Application Manual);
- Licensing Application Manual, Section on Tax Security and Conduct Surety Bonds, which is in the process of being updated; and,
- Licensing Procedures Manual Section on Conduct Surety Bonds, Performance Bonds and Tax Security Procedures, which is also being updated.

The last revision of the Licensing Application Manual Section on Tax Security and Conduct Surety Bonds was in 2002. The document in use contains several errors and omissions. We noted that:

- Performance Bonds are not included;
- the list of classes requiring permit bonds does not match the Bond Table list or the list in the TAC (the TAC list has 13 classes; the Bond Table had 15 classes and the Application Procedures Manual has 16 classes listed);

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- the list of classes requiring a liquor tax bond does not match the Bond Table (DS needs to be added to the Application Manual);
- three classes are missing from the TAC Permit Bond list (MR, PT and DS);
- the title “Tax Security Changes” used for identifying Bond Changes is misleading since the section addresses all bonds including Conduct Surety Bonds; and
- some information on the Bond Table is incorrect (classes G and DS can be exempt after 36 continuous months of satisfying the requirements of the laws and regulations); class DS was not included in the Tax Security section; and, Performance Bonds classes and requirements are not included.

Recently, the application for retailers and the application for wholesalers were combined into one application. The combined applications processing procedure has been condensed with reference to other manuals and documents and does not provide the level of processing details that was included in the procedures previously used for processing individual applications.

The application guides provided to Retailers and Wholesalers, Distributors or Manufacturers provide extensive information about the application process but they do not include any information about bond requirements.

***Recommendation 1:*** Licensing should work with Legal to review and update sections of the TAC relating to bonds to address the following issues:

- a. *An administrative rule should be adopted waiving the requirement that a licensee or permittee furnish a bond under Chapter 204 based on a determination by the commission that submission of bonds under Chapter 204 are no longer necessary. This would eliminate the need for TABC to collect permit bonds or tax bonds.*
- b. *If recommendation 1a is implemented, Chapter 33, Subchapter B, §33.21(a) and Chapter 33, Subchapter B, §33.22 of the Texas Administrative Code would also need to be updated or eliminated.*
- c. *If recommendation 1a is not implemented for tax bonds, then Chapter 33, Subchapter B, §33.22 of the Texas Administrative Code should be amended to include liquor tax bonds or a new administrative rule should be adopted dealing with liquor tax bonds.*
- d. *Chapter 33, Subchapter B, §33.21(b) of the Texas Administrative Code should contain language that links the term “surety bond” in Section 11.61 b-1 of the ABC to the use of the term “performance bond” in the TAC.*

**TABC Management Response:** Management agrees. TABC will implement Audit Recommendations 1(a) and (b).

**Target date for completion:** No later than March 2012 based on schedule of General Counsel’s office and scheduled Commission meetings and agendas.

***Recommendation 2:*** Licensing should review the Applications Procedures Manual, Licensing Procedures Manual, documents such as the Bond Table, the Versa

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*Regulation User's Guide, renewal forms and Applications Guides for Retailers and Wholesalers, Distributors and Manufacturers to ensure that all these references contain consistent, up-to-date information about bonds that are required to be submitted.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** 30 days after rule adoption.

**Recommendation 3:** *Licensing should review the new combined application processing procedures for both retailers and wholesalers to ensure that information is accurate and there is sufficient detail to complete bond processing correctly.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** 30 days after rule adoption.

**Audit Objective 2:** *Determine if there are adequate automated and manual controls in place for determining what type and amount of bond is required before a license or permit may be issued.*

The Versa Regulation system has automated controls in place for determining the type of bond required before a license or permit may be issued. A number of manual controls are also used to ensure the correct type and amount of each bond that is required by law before a license or permit may be issued. Overall, the combined automated and manual controls are adequate to ensure the accurate determination of the type and amount of bond required for various types of licenses and permits. However, some

changes to strengthen the automated and manual controls were identified.

There are potential problems that could occur even though there are automated controls in place. For example, a processor or data entry person could enter the wrong class or enter bond information where there was no bond as supporting documentation, the documentation was incomplete or the wrong type or amount of bond was selected. As a result, the automated controls in VR are not sufficient without manual controls to ensure accurate processing of bonds when licenses and permits are issued. Much of the bond processing is done manually by staff that receive extensive training and have many written procedures to use as a reference. The district office staff, the data entry staff and the processors review portions of each application. This provides an important control since the responsibility for correctly processing and entering information about the required type and amount of bond is not made by a single person.

Processors do extensive manual review of documents to determine if requirements are met. For the bond portion of the application, the processor manually checks the surety company, the class, whether names and signatures match, whether the trade name differs from the application name, the amount of the bond, whether documents are notarized, power of attorney included, whether there is an assignment of a certificate of deposit in lieu of the actual bond. Once the processor is satisfied that all requirements are met, the processor hand writes bond information on the front of the Agency Reporting and Tracking (ARTS) summary page and returns it to the data entry staff for completion. The data entry staff enter bond information in VR based on

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the handwritten summary from the processor and reviews the rest of the application. They do not review the electronic image or the paper copy of bond requirements attached to the application. As noted in audit objective 3, several errors were noted in the VR system regarding the amount of the bond submitted as a result of not verifying information entered against the imaged information regarding the bond submitted.

Data entry staff enter information about an applicant into VR including all names, addresses, file number, business structure, telephone numbers, class, Federal ID, dates, percentage of ownership, etc. VR determines if a bond is required or whether it is exempt based upon the class entered and the time frames required. Staff are trained to enter specific information into VR that is required for all bonds. Applications cannot be approved until VR has all required information. One potential problem was noted in the VR system controls. The VR system has no built in controls for approving a liquor or beer tax bond. The decision rests solely with the processors. The VR checklist and drop down box for processing an application sometimes lists two different bond types (liquor bond and tax bond) to approve rather than listing only the correct bond type for the class being processed. Ensuring that the checklists and dropdown boxes in the VR system only have appropriate selections would help to ensure that the right type of bond is entered into the VR system.

A number of different procedures and instructions are available to staff as a resource in processing bonds. While these documents are generally excellent reference materials we noted that the Original Applications procedure that attempts to combine the requirements for retailers and

wholesalers and refers to other procedures has inconsistencies and errors in the procedure that were brought to the attention of management during the audit.

Although the automated and manual controls are generally sufficient, no one checks the work of the processor and data entry staff that enters the bond information in the VR system. Verification of a statistical sample of applications processed with bonds would enable management to determine the accuracy of staff in processing bonds without burdening the limited staff resource by reviewing every application. Licensing management was provided information about how this could be done.

***Recommendation 4:*** *Licensing should eliminate the current step in the review process where the processors hand write bond information on the summary page of the Agency Reporting and Tracking System form. The Data Entry staff should retrieve bond information that is stored electronically or review the paper document attached to the application to enter bond information in the VR system.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** October 1, 2011

***Recommendation 5:*** *Licensing should review the checklists and dropdown boxes in the VR system to ensure that only appropriate selections are included in the review of an application. For an application that requires a liquor tax bond, liquor tax bond should be included in the checklist and, if possible, only liquor tax bond should be included in the dropdown boxes. This recommendation assumes that TABC will continue to collect tax bonds. If a decision*

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*is made not to collect tax bonds as discussed in Audit Objective 9, then the VR system will need to be changed to eliminate any references to tax bonds.*

**TABC Management Response:**  
Management agrees and will make the necessary changes to the VR system when tax bonds are eliminated.

**Target date for completion:** 30 days after rule adoption.

**Recommendation 6:** *The Original Applications processing procedure should be updated to include correct and up-to-date information for staff to use as a resource in processing bonds.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** 30 days after rule adoption.

**Recommendation 7:** *Licensing Division management should select a statistical random sample of applications from each region to review each month to determine if required bonds are being processed accurately.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** October 1, 2011

**Audit Objective 3:** *Determine if there are adequate internal controls and effective processing procedures for ensuring that all conduct surety bonds required by law are received and verified in a timely manner.*

Licensing has effective processing procedures to ensure that all conduct surety

bonds required by law are received and verified. The district offices receive the applications and enter scanned information into the Neubus system so that Headquarters staff and the district office staff can be working the application at the same time. All applications are reviewed for required bond information. Audit testing of a sample of 36 original and renewal application files received from September 1, 2010 through May 31, 2011 that required conduct surety indicated that all 36 submitted some kind of surety, i.e., bond, certificate of deposit or letter of credit for the correct amount. All had surety document numbers, the name, address and telephone number of the surety company or bank. All surety documents were signed, dated, and notarized and all bond sureties included a power of attorney. All steps required in the Verification of Conduct Surety Documents procedure were followed; however, six BQ applications had the wrong amounts recorded in the VR system (three for \$1,000 and three for \$5,000, where the correct amount was \$10,000). This indicates a need for some type of additional control or review to ensure the accuracy of information recorded in the VR system for surety bonds.

There is no means of verifying whether surety bonds are processed timely in VR because bonds are just one component of the application. Information may be missing from other parts of the application which holds up the approval process. All applications are monitored with the Neubus queuing system and the hard copy pending files to ensure that applications are processed as soon as the application is complete.

**Recommendation 8:** *Licensing should develop a reporting system from the Versa Regulation system to obtain information*

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*about the current status of all licenses and permits that require bonds and those that are exempt. These reports should be used to monitor the accuracy of information included and to evaluate the performance of employees.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** October 1, 2011, dependent on IRD resources.

**Recommendation 9:** *Licensing should establish a review process of the bond activity conducted at the regional offices to ensure that bond names, addresses, dates, signatures, time frames and required documents are accurately recorded to adhere to legal requirements.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** October 1, 2011

**Audit Objective 4:** *Determine if there are adequate internal controls and effective processing procedures for ensuring that all performance bonds required by law are received and verified in a timely manner.*

Licensing has effective processing procedures to ensure that all performance bonds required by law are received and verified. Only regions two and four process performance bonds because they are the only regions that have cities with populations of 1.4 million or more (Dallas, Tarrant and Harris counties). Starting in September 2011, Bexar County will be added because their population has reached the 1.4 million or more residents threshold.

The written procedure reflects current processing procedures. Requirements that staff is responsible for checking include the type of surety, amount of surety, the surety number assigned, the name, address and telephone number of the surety company or bank, whether the surety document was signed and dated, whether the applicant matched the principle on the surety document, whether the surety instrument was notarized and included a power of attorney statement where appropriate.

Testing of a sample of original and renewal applications requiring performance bonds indicated that all of the steps in the verification process were followed. All information in the VR system was correct except for one BG that submitted a certificate of deposit, but bond was shown in the VR system.

**Recommendations:** *None.*

**Audit Objective 5:** *Determine if there are adequate internal controls and effective processing procedures for ensuring that all liquor and/or beer tax bonds required by law are received and verified in a timely manner.*

There are not adequate internal controls or effective processing procedures for ensuring that all liquor and/or beer tax bonds required by law are received and verified in a timely manner. Audit testing of liquor tax bonds indicated that most bonds were processed correctly with all required supporting documentation; however, testing of beer tax bonds indicated numerous problems and omissions in the documentation submitted and processed.

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Testing of a sample of applications that submitted liquor tax bonds indicated that each included a bond, certificate of deposit or letter of credit for the correct amount and only minor issues were noted in the documentation. Testing of a sample of applications that submitted beer tax bonds indicated various types of problems and omissions. Three bonds were misnamed in the VR system; four bonds were attached to other license classes where the licensee had multiple classes under a license; seven licenses had cumulative amounts instead of the current bond amount required; four applications were recorded as exempt in the VR system but showed a bond amount on the report used to determine applications with a beer bond; one beer tax bond was for \$1,000 instead of the required \$500; and dates on the surety bonds did not match the date the surety was notarized in some instances.

There is no way to determine whether tax bonds are processed timely in VR because bonds are just one section in the application. Information may be missing from other parts of the application which holds up the approval process. All applications are monitored with the Neabus queuing system and the hard copy pending files to ensure that applications are processed as soon as the application is complete.

***Recommendation 10:*** *If Licensing continues to process liquor and beer tax bonds, a quality control process should be implemented to ensure that all information is recorded correctly in the VR system and all supporting documentation is complete and accurate. Management should develop a reporting system out of the VR system that will enable statistical sampling of applications with tax bonds to ensure that the tax bonds are processed accurately and*

*to evaluate the performance of staff in processing tax bonds.*

**TABC Management Response:** Management agrees. Adoption of Audit Recommendation 1(a) and (b) and Audit Recommendation 12 will eliminate the need for this recommendation.

***Audit Objective 6:*** *Determine if there are adequate internal controls and effective processing procedures for ensuring that all bond exemptions and bond exemption withdrawals are processed in accordance with state law and in a timely manner.*

Licensing has an effective procedure for approving bond exemptions and bond exemption withdrawals. Licensees must submit an Exemption Request form to the Tax Division for approval. The Tax Division forwards the approved or disapproved exemption request to Licensing for processing. If it is approved, the processors update the information in the VR system, send the documents for imaging and notify the licensee concerning the approval. An exemption remains in effect until the Tax Division submits a request to Licensing to forfeit the exemption and requests the licensee to post the correct bond or until the licensee does not renew. VR is again updated and the licensee receives a communication from Licensing. The agency has approximately 50 exemption requests per year and has had less than five requests to withdraw an exemption in the past ten years. Adequate internal controls are in place for processing bond exemptions.

***Recommendation:*** *None.*

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***Audit Objective 7:*** Determine if there are adequate internal controls and effective procedures for adequately securing and maintaining all types of bonds and related security instruments in accordance with state law.

Licensing has adequate internal controls and effective procedures for adequately securing and maintaining all types of bonds and related surety instruments including cancellation of tax security by insurer and conduct surety by insurer, request of increase in amounts of tax security, conduct surety and tax security replacements, bond reinstatements for conduct surety and tax security, tax security bank listings/mergers/closing and cancellations/reinstatements by docket order for conduct surety.

Some procedures are not up-to-date as follows:

- Cancellation of Tax Security by Insurer dated 7/24/2001
- Tax security Replacements dated 11/01/1988
- Tax Security Bond Reinstatements dated 7/25/2001
- Bank Listings/Mergers/Closings for Conduct Surety dated 7/26/2001

***Recommendation 11:*** The procedures referenced above should be reviewed and updated once a decision is made regarding whether TABC will continue to require tax bonds.

**TABC Management Response:**  
Management agrees.

**Target date for completion:** 30 days after rule adoption.

***Audit Objective 8:*** Determine if there are effective procedures for collecting on bonds when necessary and cancelling bonds when they are no longer required.

Licensing has an effective procedure for collection on forfeited bonds for conduct surety purposes. Reports are available through the agency's SSRS reporting system that indicate the detail for each forfeiture including the dollar amounts collected. Licensing processes from five to ten forfeiture requests every month. Licensing has collected an average of \$37,700 per month year to date for FY 2011 for conduct surety forfeitures.

Licensing has an outdated procedure for collecting on tax bonds that is no longer applicable; however, since no forfeiture on tax bonds has ever been requested, there is no need to update the procedure unless TABC decides to continue to require tax bonds.

***Recommendations:*** None.

***Audit Objective 9:*** Determine if it is cost effective for TABC to process liquor and/or beer tax bonds and if not, what alternatives are available to reduce the number of applicants required to submit these bonds.

It is not cost effective for TABC to process liquor and/or beer tax bonds. Tax Division staff and Licensing staff agree that collecting liquor and beer tax bonds, including processing exemptions, serves no useful purpose for the agency or the public. No revenue is generated and no licensee/permittee has ever been requested to forfeit his/her bond. The Tax Division collects all excise taxes due without having

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to use the bonds. An estimate of the costs or processing tax bonds was computed during the internal audit, but it was based on estimates of the time to process tax bonds and average staff salaries for those processing tax bonds and as a result the estimated costs are not reliable; however, since no tax bonds have been forfeited it is clearly not cost effective for TABC to continue to require tax bonds of applicants. Chapter 204, §204.07 of the ABC allows the commission to waive the requirement that a licensee or permittee furnish a bond under this chapter if the commission by rule determines that the submission of the bond is no longer necessary. Since tax bonds are authorized under Chapter 204, the commission by rule could eliminate the requirements for submission of tax bonds.

***Recommendation 12:** TABC should eliminate the requirement for permittees and licensees to submit liquor tax and beer tax bonds with their original and renewal applications through the adoption of a new administrative rule specifying that these bonds are no longer necessary.*

**TABC Management Response:**  
Management agrees.

**Target date for completion:** No later than March 2012 based on schedule of General Counsel's office and scheduled Commission meetings and agendas.

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# **Attachment 5**

**FY 2012 Internal Audit Plan**

**Texas Alcoholic Beverage  
Commission  
Internal Audit Plan  
for FY 2012**

As Approved by the TABC Commissioners

on

August 23, 2011

As Prepared by  
Jansen & Gregorczyk  
Certified Public Accountants

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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**Jansen & Gregorczyk  
Certified Public Accountants**

Telephone  
(512) 268-0070

P. O. Box 601  
Kyle, Tx. 78640

August 23, 2011

Commission Members,  
Texas Alcoholic Beverage Commission

The following document presents the fiscal year 2012 Internal Audit Plan for consideration and approval by the Commission. In accordance with the Texas Internal Auditing Act, the Commission approves the annual audit plan. Chapter 2102 of the Government Code requires that the internal audit plan include areas identified through risk assessment. This document presents the risk assessment results and the audit plan based on the results of the risk assessment.

This document also includes the internal auditing guidelines and internal audit charter under which the TABC internal audit program will operate. Approval by the Commission signifies approval of the internal audit plan, the internal audit guidelines and the internal audit charter for FY 2012.

**Signed Copy on File**

Jansen & Gregorczyk  
Certified Public Accountants

**SECTION 1:  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
INTERNAL AUDITING GUIDELINES**

Certain operating guidelines are necessary for an effective internal auditing program. The purpose of this Section is to establish policies and guidelines to govern internal audits of all operations of the Texas Alcoholic Beverage Commission. The internal audit guidelines are reviewed for compliance with appropriate standards and updated as necessary each fiscal year. These guidelines, as well as the FY 2012 Internal Audit Plan, are approved by the Commission each year.

**I. INTERNAL AUDIT CHARTER**

The *Standards for the Professional Practice of Internal Auditing* state that the Internal Audit Charter should make clear the purposes of the internal auditing department, specify the unrestricted scope of its work, and declare that auditors are to have no authority or responsibility for the activities they audit.

The Internal Audit Charter is an extremely important document that sets out the statement of purpose, authority, and responsibility for the internal auditing department. It is an agreement between the TABC Commissioners and the TABC Internal Auditor, which establishes the guidelines for an effective internal auditing program.

Although the Internal Audit Charter can include all relevant policies and procedures, a concise document is preferable. A concise document increases the likelihood that all parties will understand the purpose, authority, and responsibility of the internal auditing department. Exhibit 1 presents the TABC Internal Audit Charter.

**II. INTERNAL AUDITING STANDARDS**

**A.** The Internal Auditor shall conduct his/her activities in a manner that is consistent with the most recent edition of the *Standards for the Professional Practice of Internal Auditing*, *Certified Internal Auditor Code of Professional Ethics*, and the *Statement of Responsibilities of Internal Auditing*.

**B.** Sufficient and relevant evidence shall be obtained to afford a reasonable basis for the auditor's findings and recommendations. A written record of the auditor's work shall be retained in the form of working papers.

C. Standards of conduct for the Internal Auditor require that the Internal Auditor shall:

1. be free from personal or external impairments to independence in order that opinions, conclusions, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.
2. be prudent in the use of information acquired in the course of his/her duties.
3. conduct all activities in accordance with the laws regarding confidentiality.
4. not use any information obtained in an audit for any personal gain nor in a manner, which would be detrimental to the welfare of the TABC, the Commissioners, or TABC employees.

### **III. INTERNAL AUDITING POLICIES**

A. The Internal Auditor shall be responsible for performance audits of the TABC. Performance audit is defined as an independent appraisal activity performed by the Internal Auditor which includes determining whether the entity being reviewed is acquiring, protecting, and using its resources economically and efficiently, identifying the causes of inefficiency or uneconomical practice, and determining whether the entity has complied with laws, riders, rules and regulations.

B. The Commission shall appoint the TABC Internal Auditor.

1. The Internal Auditor shall report directly to the Commissioners.
2. The TABC Administrator shall be responsible for the administrative supervision of the Internal Audit program.
3. The Commission shall ensure the independence of the internal audit function.
4. The Commission shall monitor the internal audit function to assure compliance with the requirements of the Internal Auditing Charter and all Internal Auditing Guidelines and provide guidance to the Internal Auditor on any issues not specifically addressed by the Charter or the Guidelines.
5. The Internal Auditor shall submit to the Commission for approval, the annual audit plan, which shall be based on risk analysis and which shall identify individual audits to be performed during the year.

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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**6.** On at least a quarterly basis, the Internal Auditor shall meet with the Commission to present audit reports, discuss the status of implementing the Internal Audit Plan, including exceptions to the timely accomplishment of the plan; the status of management's resolution of audit findings and other significant issues involving the internal audit function.

**D.** Special audit projects not included in the approved annual audit plan may be authorized by the Commission.

**E.** The Internal Auditor's activities in reviewing, appraising and reporting established policies, plans and procedures shall not in any way relieve TABC personnel of responsibilities assigned to them.

**F.** The implementation of, or action taken on, the Internal Auditor's recommendations shall be the duty of the TABC Administrator. The Internal Auditor will perform follow-up audits to determine what corrective action was taken and whether it is achieving the desired results.

#### **IV. INTERNAL AUDITING PROCEDURES**

**A.** The Internal Auditor prior to beginning an audit will inform the Administrator and the appropriate assistant administrators and division directors of the audit and its objectives by conducting an entrance conference.

**B.** The Internal Auditor will conduct an exit conference with the Administrator and appropriate assistant administrators and division directors, at which time exceptions noted during the course of the audit, will be discussed.

**C.** The Internal Auditor will independently make a determination on the results of the audit and issue a draft report to the Administrator, or the Administrator's designee for management response. A management response will be made within 14 calendar days of the issuance of the draft report.

**D.** The Internal Auditor will add the management response to the body of the report and issue a final draft report to the Administrator, and the appropriate assistant administrators and division directors within 14 calendar days of receiving the management response. After approval by the Commission, the final report will be prepared.

**E.** If, during the course of an audit, the Internal Auditor detects situations or transactions that could be indicative of fraud or other illegal acts, or receives information from external sources alleging such actions, the Internal Auditor will:

**1.** Provide all pertinent information to the Administrator and members of the Commission.

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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2. Formally request approval from the Commission to expand audit procedures or perform an investigation.
  
3. Upon approval, the Internal Auditor will extend audit procedures or perform an investigation to obtain sufficient evidence to determine whether in fact such acts have occurred and, if so, the cause of the problem and the possible effect on the TABC's operations and programs.
  
4. Provide the Administrator and the Commission a formal report on the results. Upon receipt of evidence of illegality, the Administrator will forward findings to the appropriate legal entity.

**SECTION 2:  
TEXAS ALCOHOLIC BEVERAGE COMMISSION RISK ASSESSMENT**

This section presents the results of the TABC Risk Assessment, and establishes the foundation for the Internal Audit Plan presented in the next section.

**Purpose**

One of the key findings in the State Auditor's Office report, *Statewide Review of Internal Auditing*, was that the scope of internal auditing is often limited in state agencies. The report states, "Because significant financial and operating risks to the agency may be overlooked if the scope of the internal auditors work is limited, we recommend that internal auditors:

- Document, in writing, a risk assessment that considers all the major systems and controls of the agency as part of the audit universe. The audit universe refers to all auditable subjects, activities, units, issues and functions within the organization.
- Identify the risk factors that affect the audit universe and weights that may be applied to the risk factors.
- Establish a method for combining and assigning risk factors and weights to develop a prioritized annual audit work plan.
- Develop an audit plan and work schedule based on the results of the risk assessment.
- Obtain written approval for the plan from the highest level within the organization.
- Implement the plan. Significant deviations from the audit plan should be supported by reasonable, documented explanations.

The purpose of conducting a Risk Assessment for the TABC was to incorporate all these recommended elements in an objective assessment of the agency. This should ensure that the scope of internal audit work at the TABC is not limited and that the Internal Audit Plan for FY 2012 is based on documented, written findings.

**Concept of Risk**

The concept of risk is fundamental in internal auditing. Given the importance of the concept of risk, it is necessary to define what risk is, describe types of risk and describe how risk was measured in performing the TABC Risk Assessment.

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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Risk is a measurement of the likelihood that an organization's goals and objectives will not be achieved. Since controls are anything that improve the likelihood that goals and objectives will be achieved, controls and risk are inversely related by definition. Better control means less risk. The Risk Assessment was designed to detect and evaluate the controls in place to reduce different types of risk exposure.

The TABC Risk Assessment was designed to measure different types of "risk exposure" and to assess the controls in place to compensate for different levels of risk. The types of risk exposure, which are relevant to the TABC, are:

- *Financial Exposure:* Financial exposure exists whenever an audit area is susceptible to errors or defalcations that affect the general ledger and financial statements or the integrity and safekeeping of agency assets, regardless of the financial statement impact.

- *Regulatory Exposure:* Regulatory exposure exists whenever an event in an audit area could cause the agency to fail to comply with regulations mandated by state or federal authorities, irrespective of whether financial exposure exists.

- *Information Exposure:* An information exposure exists whenever there is information of a sensitive or confidential nature, which could be altered, destroyed, or misused.

- *Efficiency Exposure:* An efficiency exposure exists whenever agency resources are not being utilized in an effective or efficient manner.

- *Human Resource Exposure:* A human resource exposure exists whenever an area is managing human resources in a way, which is contrary to agency policy.

- *Environmental Exposure:* An environmental exposure exists whenever internal or external factors pose a threat to the stability and efficiency of an audit area. Examples of factors that affect environmental exposure are:

- Recent changes in key personnel
- Changing economic conditions
- Time elapsed since last audit
- Pressures on management to meet objectives
- Past audit findings and quality of internal control

- *Political Exposure:* A political exposure exists whenever an event in an audit area could cause the agency to be subjected to adverse political consequences.

- *Public Service Exposure:* A public service exposure exists whenever an event in an audit area could jeopardize existing public services or new public services.

The TABC Risk Assessment Survey was designed to measure various types of risk ranging from the risk of loss of assets to the risk of adverse publicity due to erroneous information. The survey instrument allows meaningful comparisons among very different activities and types of risk by assigning all potential auditable topics a numeric score.

### **Methodology**

The risk variables utilized for the TABC Risk Assessment combined measures of the various controls and exposure types described in the previous section. Exhibit 2 presents the risk survey instrument utilized. Fifteen risk variables or risk factors were selected to provide a cross-section of overall risk. These fifteen factors were weighted according to their perceived importance, i.e. the higher the weighting, the higher the risk. The risk variables and their weightings are presented in Exhibit 3.

The first step in conducting the Risk Assessment involved defining the potential audit universe. To be in compliance with the Texas Internal Auditing Act, all potential auditable subjects, activities, units, issues and functions were determined. The universe of potential audit topics was developed through material such as the agency's legislative appropriation for FY 2012, previous years' internal audit risk assessments and audit plans, the organizational chart, and agency reports and publications such as the strategic plan.

The second step in the process was to utilize the survey instrument to assess the risk for each potential audit topic. This step was completed by updating the risk variables in the FY 2011 risk assessment.

The third phase of the Risk Assessment involved scoring and ranking the answers to the survey questions. By weighting the values of the different risk indicators, the survey was individualized for the TABC.

The final step in conducting the Risk Assessment was to rank and categorize every potential auditable topic. Based on the average score and the standard deviation of the potential audit universe, the potential auditable topics were categorized as follows:

High Risk	- Over 199
Moderate Risk	- 176 to 199
Low Risk	- Below 176

## **Results**

Exhibit 4 presents the results of the Risk Assessment for each potential audit topic. Six potential audit topics are rated as high risk within the agency as follows:

### **High Risk**

- Business Services Division- Accounting
- Information Resources Division
- Licensing Division- License Processing
- Legal Services Division
- Enforcement Division- Operations
- Licensing Division- Revenue Processing

Ten other topics are ranked as moderate risk and five topics are ranked as low risk as shown on Exhibit 4.

**SECTION 3:  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 INTERNAL AUDIT PLAN**

The Texas Internal Auditing Act requires certain audits to be performed on a periodic basis. Required audits include audits of the agency's accounting systems and controls, administrative systems and controls, electronic data processing systems and controls, and other major systems and controls. In addition, five general types of audits are required by the *Standards for the Professional Practice of Internal Auditing* as follows:

- **Reliability and Integrity of Information** - Internal Auditors should review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.

- **Compliance with Policies, Plans, Procedures, Laws, and Regulations** - Internal auditors should review the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations which could have a significant impact on operations and reports, and should determine whether the organization is in compliance with them.

- **Safeguarding of Assets** - Internal auditors should review the means of safeguarding assets and, and as appropriate verify the existence of such assets.

- **Economical and Efficient Use of Resources** - Internal auditors should appraise the economy and efficiency with which assets are employed.

- **Accomplishment of Established Objectives and Goals for Operations and Programs** - Internal auditors should review operations or programs to ascertain whether results are consistent with established objectives and goals, and whether the operations or programs are being carried out as planned.

The FY 2012 Internal Audit Plan for the TABC is based on the results of the risk assessment presented in the previous section, audits required to be performed on a periodic basis by the Internal Auditing Act and the audit history over the past ten fiscal years as shown on Exhibit 5. For FY 2012, the following topics will be audited:

- Information Services Division (High Risk)
- Legal Resources Division (High Risk)
- Licensing Division- Revenue Processing (High Risk)

The reason these topics were selected for inclusion in the FY 2012 Internal Audit Plan is all of these topics are in the high risk category and they have not been audited in the past five years. The other three topics in the high risk category that were not selected for audit have been audited in the past three years.

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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In addition to these audits, a follow-up audit review will be performed on prior year audits to determine the status of implementation of recommendations made in those audits. In addition to these proposed audits and audit work, the risk assessment will be updated and an audit plan developed for FY 2013.

The proposed time estimates and time frames for the FY 2012 audit work are:

- Prepare Annual Internal Audit Report for FY 2011 – 10 hours (September 2011)
- Audit of Licensing Division- Revenue Processing – 120 hours (September to October 2012)
- Audit of Information Resources Division – 200 hours (November 2011 to January 2012)
- Audit of Legal Services Division-Support – 140 hours (March to April 2012)
- Follow-up Review of Prior Years' Audit Recommendations – 40 hours (May 2012)
- Update Risk Assessment and Prepare FY 2013 Audit Plan – 10 hours (July 2012)

The total budgeted time for FY 2012 audit work is 520 hours; total estimated costs are \$50,000.

**EXHIBIT 1  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
INTERNAL AUDITING CHARTER**

**PURPOSE**

Internal Auditing is an independent appraisal activity established to conduct reviews of operations and procedures and to report findings and recommendations to the TABC Administrator and Commission of the Texas Alcoholic Beverage Commission.

**AUTHORITY**

The Internal Auditor reports directly to the TABC Commission. This reporting relationship ensures independence, promotes comprehensive audit coverage and assures adequate consideration of audit recommendations.

The Internal Auditor, in the performance of audits and with stringent accountabilities of safekeeping and confidentiality, will be granted unlimited access to all TABC activities, records, property, and staff members.

The Internal Auditor will have no responsibilities assigned other than those related to developing and implementing the internal audit program for TABC.

**RESPONSIBILITIES**

The Internal Auditor is responsible for assessing the various functions and control systems in the TABC and for advising the Administrator and Commission concerning their condition. The fulfillment of this accountability is not confined to but includes:

- Appraising the effectiveness and application of accounting systems and controls, administrative systems and controls, information resources systems and controls, and other major systems and controls, so as to ensure that all the major systems and controls are reviewed on a periodic basis.
- Evaluating the sufficiency of and adherence to TABC plans, policies, and procedures and compliance with all governmental laws and regulations.
- Performing special reviews requested by the Administrator and Commission.
- Conducting appraisals of the economy and efficiency with which resources are employed.
- Coordinating audit planning and scheduling activities with the State Auditor's Office.

**EXHIBIT 2  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 RISK ASSESSMENT**

**1. Annual Dollars Involved**

The dollar amount per year of assets, receipts, or disbursements involved in the program or for which the auditable unit is responsible. The auditable unit has responsibility if it identifies, measures, classifies, reports, or monitors the assets, receipts, or disbursements. Dollar amounts can be included in determining the evaluation for more than one auditable unit.

<u>Evaluation</u>	<u>Points</u>
Less than \$500 thousand per year, or not applicable	1
At least \$500 thousand per year but less than \$1 million per year	2
At least \$1 million per year but less than \$5 million per year	3
More than \$5 million per year	4

**2. Transaction Volume**

The number of transactions for which the auditable unit is responsible. The auditable unit has responsibility if it identifies, measures, classifies, reports, or reconciles the transaction. A transaction can be included in determining the evaluation for more than one auditable unit. Also, some auditable units are responsible for only summary transactions while others are responsible for the detailed transactions that make up the summary transactions.

<u>Evaluation</u>	<u>Points</u>
Less than 1,000 per year, or not applicable	1
Greater than 1,000 but less than 5,000 per year	2
Greater than 5,000 per year	3

**3. Safeguarding Assets**

Personnel in the auditable unit safeguard assets if they control access to assets. Access to assets includes both direct physical access and indirect access through the preparation and processing of documents that authorize the use or disposition of assets.

<u>Evaluation</u>	<u>Points</u>
No access to assets, or not applicable	1
Limited access to assets	2
Some access to assets	3
Substantial access to assets	4

**EXHIBIT 2  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 RISK ASSESSMENT**

**4. Impact of Adverse Publicity**

This factor includes those circumstances that increase the adverse impact of errors. An auditable unit's visibility results from several sources, including: 1.) the Commission's or management's interest in the auditable unit's activities; 2.) involvement of outside groups, such as an advocacy group or the Legislature; or 3.) direct interaction with the public or clients.

<u>Evaluation</u>	<u>Points</u>
Little visibility, or not applicable	1
Some visibility	2
High visibility	3

**5. Time Since Last Audit or Review**

The number of years between the date of the previous audit or review and the date of the risk assessment.

<u>Evaluation</u>	<u>Points</u>
One year or less	1
Two to three years	2
More than three years	3

**6. Results of Last Audit or Review**

Auditor's evaluation of the results of the previous audit or review.

<u>Evaluation</u>	<u>Points</u>
Positive findings or no findings	1
No prior audit or more than three years ago	2
Negative findings	3

**7. Operational Changes**

Auditor's evaluation of the impact on the auditable unit from changes in its operations, including changes in staff, size, funding, budget, responsibilities, or processing data. Changes include those made within the last year or anticipated to be made in the next year.

<u>Evaluation</u>	<u>Points</u>
Few changes, or not applicable	1
Some changes	2
Extensive changes	3

**EXHIBIT 2  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 RISK ASSESSMENT**

**8. Personnel Turnover**

In the last 12 months, the number of personnel leaving the auditable unit.

<u>Evaluation</u>	<u>Points</u>
Low turnover (6% or less), or not applicable	1
Average turnover (6% to 12%)	2
High turnover (more than 12%)	3

**9. Policies and Procedures**

The existence of policies and procedures documenting the auditable unit's activities.

<u>Evaluation</u>	<u>Points</u>
Written procedures current or not applicable	1
Written procedures, but not current	2
No written procedures	3

**10. Training**

Auditor's evaluation of the auditable unit's staff training, including cross training.

<u>Evaluation</u>	<u>Points</u>
Substantial training, or not applicable	1
Some training	2
Little training	3

**11. Work Complexity**

Auditor's evaluation of the work needed to complete assignments including amount of time, number of steps, and familiarity with agency laws, policies, and rules.

<u>Evaluation</u>	<u>Points</u>
Low work complexity, or not applicable	1
Medium work complexity	2
High work complexity	3

**EXHIBIT 2  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 RISK ASSESSMENT**

**12. Work Load Fluctuations**

Auditor's evaluation of the fluctuations in the auditable unit's workload.

<u>Evaluation</u>	<u>Points</u>
Steady workload, or not applicable	1
Some fluctuations in work load	2
Substantial fluctuation in work load	3

**13. Sensitivity of Data**

Auditor's evaluation of the type of data collected, processed, and prepared by the auditable unit.

<u>Evaluation</u>	<u>Points</u>
Little sensitive or confidential data, or not applicable	1
Some sensitive or confidential data	2
Most data sensitive or confidential	3

**14. Impact of Inaccurate Data**

Auditor's evaluation of the impact of incorrect data processed by the auditable unit or supplied to organizations outside of the agency.

<u>Evaluation</u>	<u>Points</u>
Little data provided outside the agency, or not applicable	1
Some data provided outside the agency	2
Most data provided outside the agency	3

**15. Management Review**

Auditor's evaluation of the review given by upper management (Administrator, Support Services Assistant Administrator, Chief of Field Operations, Chief of Staff, or Division Director) of the auditable unit's activities.

<u>Evaluation</u>	<u>Points</u>
Frequent or detailed review, or not applicable	1
Some direct review	2
Little direct review	3

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**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

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**EXHIBIT 3  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 RISK ASSESSMENT AND RISK FACTOR WEIGHTINGS**

<b>RISK FACTOR:</b>	<b>Weight</b>	<b>*</b>	<b>Points</b>	<b>=</b>	
<b>Score</b>					
1. Annual Dollars Involved	7.75	*	4	=	31.00
2. Transaction Volume	5.00	*	3	=	15.00
3. Safeguarding Assets	7.25	*	4	=	29.00
4. Impact of Adverse Publicity	7.50	*	3	=	22.50
5. Time Since Last Audit or Review	5.75	*	3	=	17.25
6. Results of Last Audit or Review	5.00	*	3	=	15.00
7. Operational Changes	6.75	*	3	=	20.25
8. Personnel Turnover	6.50	*	3	=	19.50
9. Policies and Procedures	5.00	*	3	=	15.00
10. Training	5.25	*	3	=	15.75
11. Work Complexity	7.00	*	3	=	21.00
12. Work Load Fluctuations	5.75	*	3	=	17.25
13. Sensitivity of Data	7.75	*	3	=	23.25
14. Impact of Inaccurate Data	7.75	*	3	=	23.25
15. Management Review	<u>5.00</u>	*	<u>3</u>	=	<u>15.00</u>
<b>Maximum Score</b>					<b>300.00</b>

**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

**EXHIBIT 4  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
FY 2012 AUDIT UNIVERSE RISK ANALYSIS WEIGHTED SCORES**

POTENTIAL AUDIT TOPIC	WEIGHTED RISK ASSESSMENT SCORES															RISK SCORE	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
<b>HIGH RISK (ABOVE 199)</b>																	
1	BUSINESS SERVICES DIVISION-ACCOUNTING	31	15	29	15	12	5	20	7	5	11	21	12	23	23	10	238
2	INFORMATION RESOURCES DIVISION	31	15	29	15	17	5	7	7	10	5	21	12	23	23	5	225
3	LICENSING DIVISION-LICENSE PROCESSING	31	15	22	15	6	5	14	13	10	5	21	12	23	23	5	219
4	LEGAL SERVICES DIVISION	16	5	15	23	17	10	20	20	10	5	21	6	23	16	10	215
5	ENFORCEMENT DIVISION-OPERATIONS	31	15	22	23	6	10	14	7	5	11	14	12	16	16	10	208
6	LICENSING DIVISION-REVENUE PROCESSING	31	15	29	15	17	10	14	13	5	5	7	12	8	16	10	206
<b>MODERATE RISK (176 TO 199)</b>																	
7	HUMAN RESOURCES DIVISION	16	10	15	8	6	5	20	20	5	11	14	12	23	23	5	191
8	COMPLIANCE DIVISION-OPERATIONS	31	15	15	15	6	10	14	7	5	5	21	6	23	8	10	189
9	ENFORCEMENT DIVISION-LIC. STDS. INVEST.	8	5	7	15	17	15	14	7	10	11	21	12	23	16	10	189
10	EXECUTIVE ADMINISTRATION	31	5	22	15	17	5	7	7	5	5	21	12	16	16	5	187
11	TAX DIV.-SELLER TRAINING, EDUC. & GRANTS	16	15	15	23	17	10	7	13	5	5	14	12	16	16	5	186
12	LICENSING DIVISION-BOND PROCESSING	16	10	15	15	6	10	14	13	10	11	14	12	16	16	10	184
13	TRAINING DIVISION	8	5	7	23	17	10	20	20	5	5	14	12	16	16	5	181
14	BUSINESS SERVICES DIVISION-SUPPORT SERVICES	23	15	22	15	6	5	20	7	5	11	14	12	8	8	10	179
15	OFFICE OF PROFESSIONAL RESPONSIBILITY	8	5	15	23	17	10	7	7	10	11	14	17	23	8	5	178
16	COMPLIANCE DIVISION-MARKETING PRACTICES	8	5	7	23	17	10	7	7	10	11	14	12	16	23	10	178
<b>LOW RISK (BELOW 176)</b>																	
17	TAX DIVISION-OPERATIONS	23	10	22	15	12	5	7	13	5	5	14	12	16	8	10	175
18	TAX DIVISION-PORTS OF ENTRY	23	15	29	15	17	5	7	7	5	5	7	12	8	8	10	172
19	INSPECTIONS DIVISION	8	5	7	8	17	10	14	7	10	11	7	12	23	8	5	150
20	TABC COMMISSION OPERATIONS	8	5	7	23	12	5	7	7	5	5	7	6	16	16	5	131
21	AGENCY-WIDE PERFORMANCE MEASURES	8	5	7	15	12	10	7	7	5	5	7	6	8	23	5	129

**AVERAGE SCORE: 186**

**STANDARD DEVIATION: 27**

**Texas Alcoholic Beverage Commission - FY 2012 Internal Audit Plan**

**EXHIBIT 5  
TEXAS ALCOLHOLIC BEVERAGE COMMISSION  
AUDIT RISK RANKING AND INTERNAL AUDIT HISTORY**

	POTENTIAL AUDIT TOPIC	RISK SCORE	FY12 PLAN	INTERNAL AUDIT HISTORY								
				FY 11	FY 10	FY 09	FY 08	FY 07	FY 06	FY 05	FY 04	FY 03
1	BUSINESS SERVICES DIVISION-ACCOUNTING	238				X					X	
2	INFORMATION RESOURCES DIVISION	225	X					X				
3	LICENSING DIVISION - LICENSE PROCESSING	219			X				X			X
4	LEGAL SERVICES DIVISION	215	X						X			
5	ENFORCEMENT DIVISION - OPERATIONS	208			X					X		
6	LICENSING DIVISION - REVENUE PROCESSING	206	X						X			
7	HUMAN RESOURCES DIVISION	191		X					X			
8	COMPLIANCE DIVISION - OPERATIONS	189		X						X		
9	ENFORCEMENT DIVISION - LIC. STDS. INVEST.	189							X			
10	EXECUTIVE ADMINISTRATION	187					X					
11	TAX DIV. - SELLER TRAINING, EDUC. & GRANTS	186					X					X
12	LICENSING DIVISION - BOND PROCESSING	184		X					X			
13	TRAINING DIVISION	181										
14	BUSINESS SERVICES DIV. - SUPPORT SERVICES	179		X							X	
15	OFFICE OF PROFESSIONAL RESPONSIBILITY	178					X					
16	COMPLIANCE DIV.- MARKETING PRACTICES	178					X					
17	TAX DIVISION - OPERATIONS	175				X						X
18	TAX DIVISION - PORTS OF ENTRY	172						X				
19	INSPECTIONS DIVISION	150										
20	TABC COMMISSION OPERATIONS	131			X							
21	AGENCY-WIDE PERFORMANCE MEASURES	129				X						

# **Attachment 6**

**Approval to Adopt Amendment to §45.121, Credit  
Restrictions and Delinquent List for Liquor**



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

José Cuevas, Jr.  
*Presiding Officer-Midland*

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

Melinda S. Fredricks  
*Member-Conroe*

Alan Steen  
*Administrator*

## COMMISSION MEETING

TUESDAY, AUGUST 23, 2011

8:30 A.M.

***RULE FOR REVIEW AND APPROVAL OF THE COMMISSIONERS  
TO PUBLISH***

PRESENTED BY  
MARTIN WILSON  
ASSISTANT GENERAL COUNSEL

**TEXAS ALCOHOLIC BEVERAGE COMMISSION – HEADQUARTERS**

5806 Mesa Drive, Austin, Texas 78731  
Mail: P.O. Box 13127, Austin, Texas 78711  
(512) 206.3333 – Information

Complaint Line: 1.888.THE.TABC | Texas Relay: TDD (512) 1.800.735.2989

**AGENDA, ITEM 8: APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR [INCLUDING HB 2012]**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.121, relating to Credit Restrictions and Delinquent List for Liquor.

H.B. 2012, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code (“Code”) §102.32 to specify that, for purposes of credit restrictions and reporting delinquencies, a holder of a winery permit is considered a retailer when purchasing wine from a Chapter 19 wholesaler for resale to ultimate consumers in unbroken packages. Because 16 T.A.C. §45.121 currently does not include wineries in the definition of “retailer”, it should be amended to conform to H.B. 2012.

In addition, when this section was originally adopted in 2009, the commission indicated that it would periodically review it and shorten the time allowed from the end of the reporting period to the date of publication of the Delinquent List. The commission proposes to amend the section to give retailers two fewer days to pay a delinquent bill before their names appear on the Delinquent List. When a retailer’s name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full, pursuant to Code §102.32(d).

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

The proposed amendment 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. Jones has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the discrepancy between the rule and the Code, as amended, will be eliminated. In addition, the regulatory scheme established in the Code to encourage prompt payment of bills will be further promoted. This regulatory scheme is designed to protect the three-tier system, whereby the interests of retailers and wholesalers are distinguished and protected.

Comments on the proposed amendment 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) 206-3480. They may also be submitted electronically through the commission’s public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/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 September 7, 2011 in the Commission Meeting Room on the first floor of the commission’s headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission’s response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to

**AGENDA, ITEM 8: APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR [INCLUDING HB 2012]**

make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.32(f), which requires the commission to adopt rules to give effect to that section.

**Cross Reference:** The proposed amendment affects Alcoholic Beverage Code §5.31 and §102.32.

**§45.121. Credit Restrictions and Delinquent List for Liquor.**

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including , money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 for resale to ultimate consumers in unbroken packages.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

**AGENDA, ITEM 8: APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR [INCLUDING HB 2012]**

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at [www.tabc.state.tx.us](http://www.tabc.state.tx.us).

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with

**AGENDA, ITEM 8: APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR [INCLUDING HB 2012]**

the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent List will be published the 1<sup>st</sup> [~~3<sup>rd</sup>~~] day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of the preceding month. The Delinquent List will be published the 16<sup>th</sup> [~~18<sup>th</sup>~~] day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

# **CERTIFICATION**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – October 18, 2011**

**5806 Mesa Drive  
Austin, Texas 78759**



# 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 August 23, 2011.

A handwritten signature in cursive script, appearing to read "Alan Steen".

Alan Steen  
Administrator

Sworn and subscribed before me this the 12th day of October 2011.



A handwritten signature in cursive script, appearing to read "Gloria Darden Reed".

Gloria Darden Reed  
Notary in and for Travis County, Texas