TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING

May 19, 2009

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

10:00 a.m. – May 19, 2009

5806 Mesa Drive
Austin, Texas 78731

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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, May 19, 2009
10:00 a.m.
AGENDA

1.	**Call to Order**	**José Cuevas, Jr.**
2.	**Approval of Commission Meeting Minutes of April 28, 2009**	**José Cuevas, Jr.**
3.	**Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements**	**Alan Steen**
4.	**Follow-Up to "State of the Alcoholic Beverage Industry" Presentations**	**Alan Steen**
5.	**Approval of Internal Audit of TABC Travel Policy and Procedures**	**Russell Gregorczyk**
6.	**Follow-Up Review of the Status of Implementation of Prior Years' Internal Audit Recommendations**	**Russell Gregorczyk**
7.	**Legislative Update**	**Carolyn Beck**
8.	**National Conference of State Liquor Administrators Best Practices Award—Community Collaboration-Government Agency**	**Randy Motz, Lt.** **Steven Carnes, Sgt.**
9.	**Adoption of Proposed Repeal of Rule §45.121, Delinquent List**	**Joan Bates**
10.	**Adoption of Proposed New Rule §45.121, Credit Restrictions and Delinquent List for Liquor**	**Joan Bates**
11.	**Public Comment**	**José Cuevas, Jr.**
12.	**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)**	**José Cuevas, Jr.**
13.	**Next Meeting Date: Tuesday, July 28, 2009**	**José Cuevas, Jr.**
14.	**Adjourn**	**José Cuevas, Jr.**

Note:

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Renee Johnston at (512) 206-3217 (voice) (512) 206-3203 (fax), or (512) 206-3270 (TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – May 19, 2009

5806 Mesa Drive
Austin, Texas 78731

TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING MINUTES

May 19, 2009

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, May 19, 2009, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING OFFICER:	José Cuevas, Jr.
COMMISSIONERS PRESENT:	Melinda Fredricks Steven M. Weinberg, MD, JD
STAFF PRESENT:	Alan Steen, Administrator Joan Bates, Deputy General Counsel, Legal Carolyn Beck, Public Information Officer, Executive Lou Bright, General Counsel, Legal Services Steven Carnes, Sergeant, Abilene District Enforcement Office Sherry Cook, Assistant Administrator Julie Davis, Technical Writer, Human Resources Division Loretta Doty, Director of Human Resources Division Diana Gonzalez, Director of Tax Division/Education and Prevention Rene Johnston, Executive Assistant, Executive Dexter K. Jones, Assistant Chief of Field Services Jo Ann Joseph, Assistant Director, Licensing Division Charlie Kerr, Director, Business Services Division Richard Maness, Information Resources Division Brenda Meyers, Assistant Regional Supervisor, Austin District Office Joel Moreno, Chief of Field Operations Randy Motz, Lieutenant, Abilene District Enforcement Office Andy Pena, Acting Director of Office of Professional

Responsibility
Gloria M. Reed, Executive Assistant, Executive
Rod Venner, Assistant Chief of Enforcement, Enforcement Division
Jay Webster, Director of Information Resources Division

GUESTS PRESENT:

M L Calcote, Republic National Distributors
Doug DuBois, Attorney, Texas Petroleum Marketers and Convenience Store Association (TPCA)
Alan Gray, Licensed Beverage Distributors
Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants
Charles McGrigg, Central State Counsel, Wine Institute
Fred Morasko, Texas Package Stores Association
Ralph Townes, Licensed Beverage Distributors.

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:04 a.m. by Presiding Officer José Cuevas.

APPROVAL OF COMMISSION MEETING MINUTES OF FEBRUARY 10, 2009

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of April 28, 2009. Commissioner Steven Weinberg so moved to approve the minutes as written and Commissioner Melinda Fredricks seconded. The motion carried.

ADMINISTRATOR'S REPORT

Presiding Officer José Cuevas called upon Administrator Alan Steen to provide the Administrator's report on agency activities, budget issues, and staff achievements.

After welcoming the Commissioners back to Austin for another Commission meeting, Administrator Steen's briefly spoke on the fast approaching end for the 81st Legislative Session. Administrator Steen, the agency's Executive Team and Business Services staff have worked hard starting back in the Fall of 2008 with the intent to familiarize the legislators with the Agency's mission, philosophy and cornerstones. Our objective was to get them to know about the Agency – who we are, what we do, and how well we work for and in the community and for the people in the State of Texas. He feels that each team member played an intricate part in successfully executing their duties in their communications and visits to the senators

and representatives in providing requested information in a timely and accurate manner.

Administrator Steen report highlighted the items under the retention plan (exception items) that will be funded out of the Conference Committee:

- Retention/Succession Plan
- PC Lease – Toughbooks (In-car laptops)
- IT Automation Enhancements
- Longevity/Hazardous Duty Increase
- Data Center Consolidation Increase

He stated that the only item not funded was the request for six full-time employees (FTE) for the Ports of Entry expansion. Administrator Steen stated that with the help of the new POETCS (bar coding) equipment, the bridges will be efficiently managed.

Commissioner Weinberg commented that he noticed in prior reports, the revenues collected at the border locations had dropped. He and Administrator Steen agreed that this could have been some of the reasoning in the denial of the FTEs funding for the Ports of Entry Expansion.

Presiding Officer Cuevas asked if the software on the bar coding equipment could track the flow of business across the border at various times. Administrator Cook responded that Director Diana Gonzalez and her team have the ability to track the volume of sales, traffic flow, and the personnel that are working at the bridge sites.

In reference to the flow of product and/or where people are coming across the border, Presiding Officer Cuevas inquired if there has been a noticeable shift? Administrator Cook stated there has been a shift in the collection of revenues at various bridge sites. Administrator Steen offered a suggestion that the shift may be due to "Winter Texans" or the season of tourism. **Adminstrator Cook will check if there is a particular reason why and where the shifts are occurring and report back to the Commissioner.**

Administrator Steen stated another funding issue pending deals with the pay increase for the law enforcement agents in "Schedule C". He said when this issue is resolved, it will be added to the budget.

Presiding Officer Cuevas complimented in the success in securing the funding in the retention plan. He stated that it benefits the Agency to recruit, hire and retain the best employees.

Presiding Officer Cuevas asked Administrator Steen to elaborate more on the Data Center Consolidation Program. He asked if this program was an option for the Agency.

Administrator Steen stated that the Data Center Consolidation Program was not an option for TABC. TABC and other state agencies are mandated to be a part of this program. He commented that the Agency has had questionable billing problems, however, it has been worked out.

Administrator Steen's report continued:

- During the month of April, all Ports of Entry supervisors and assistant supervisors attended a "Basic Skills for First Time Supervisors" class provided by the National Seminars Group. A follow-up class for Ports of Entry supervisors, which will focus on TABC specific topics and be taught by the agency's in-house trainers, will be offered in May.

- At the last Commission meeting, Administrator Steen reported that the Agency had purchased four cars, Chevrolet Impalas rather than the usual Crown Victorias, for use by supervisors and lieutenants. He stated the Chevrolet Impalas utilize flex fuel and they have a lilttle better gas mileage and are less expensive than the Crown Victorias. The agents will continue to utilize Crown Victorias.

- $200,00 in accrued salary savings were identified and used to prepay additional portions of the Imaging Project.

- Administrator's Conference will be held in Austin July 20th through July 22nd. We will be inviting each of you to speak at one of the three days of the conference.

- Kathy Gersbach has been hired as the Executive Assistant to Joel Moreno, Chief of Field Operations. She has worked for the State of Texas for over 17 years, having worked for the Texas Youth Commission, the Texas Department of Criminal Justice, and the Texas Department of Public Safety. Kathy will also be assisting the Office of Professional Responsibility.

FOLLOW-UP TO "STATE OF THE ALCOHOLIC BEVERAGE INDUSTRY" PRESENTATIONS

During the last commission meeting a question regarding the possibility of allowing permittees to upgrade a permit was posed. In exploring that possibility, we decided to take a look at what it would take to upgrade a permit from a BG (Wine & beer) to a MB (Mixed Beverage Permit).

The areas of concern that could possibly statutorily prohibit an upgrade are:

1. Fees (commission may not increase or decrease a fee set by the code);
2. Refunds (commission may not refund a permit fee);

3. Altering Form of a Business Entity (applies to a newly credited entity continuing with the same permit)
4. Change of License or Permit from on-premise to off-premise, (only applies to those going from on to off premise);
5. The type of permit. (There are different qualifications and statutory cites that address these separate permit).

Administrator Steen reported that after much discussion, it was decided to bring industry back to the table to assist in exploriing the possibility of offering an up-grade option. A meeting is being scheduled for June and the findings will be provided to the Commission during the July meeting.

APPROVAL OF INTERNAL AUDIT OF TABC TRAVEL POLICY AND PROCEDURES

Presiding Officer Cuevas called upon Russell Gregorczyk, TABC's contracted Internal Auditor, to discuss the approval of Internal Audit of the TABC Travel Policy and Procedures. (Attachment 1)

Mr. Gregorczyk briefed the Commission that the primary purpose of the audit was to evaluate the compliance with State of Texas requirements regarding travel, the adequacy of controls over travel and travel payments and the effectiveness and efficiency of procedures for authorizing travel and paying travel expenses.

He outlined the scope of the internal audit work which included the review, analysis, and/or testing of the following areas: travel policies and procedures; travel authorizations and travel vouchers; compensatory per diem payments made to commissioners; travel advance account; and direct pay travel payments made to rental car companies, hotels, and airlines.

In his discussion, Mr. Gregorczyk highlighted some key audit observations:

- TABC has established cost effective travel policies to complement State travel rules and guidelines, however, some of the agency's specific policies regarding cost effective travel have not been formalized.

- The agency has effective and efficient policies and procedures for authorizing travel, remimbursing employees in a timely manner for travel expenes incurred, and complying with State of Texas travel requirements.

- Proper controls are in place to provide reasonable assurance travel expenditures are adequately supported and properly reviewed and approved.

- TABC does nothave an out-of state travel policy, which appears to be a prerequisite to out-of-state tragvel pursuant to Government Code Sec. 660.003, *Applicability,* which provides for a state agency to pay or reimburse a

travel expenses for travel outside the state if the travel is approved in advance in accordance with the policy of the agency.

- Formal policies and procedures are not in place for the payment of Commissioners' compensatory per diem expenses and the payments may not be in comliance with statutory requirements.

- While employees certify on their travel vouchers that the expenes documented on the vouchers are true, correct and unpaid, multiple instances were noted where employees appear to be charging a flat rate for in-state meal expenses, such as $36 per day, rather than actual expenditures up to a maximum of $36 a day as limited by the State Comptroller of Public Accounts.

- Adequate procedures and controls for maintaining the agency travel advance are in place and operating effectively.

- TABC makes direct payments to selected commercial transportation companies, commercial lodging establishments and a credit card issuer, jointly hereafter referred to as direct pay or direct or direct fill vendors, to cover the travel expenses incurred by its employees. The direct payments were tested were accurate and made in a timely manner (within 45 days of the direct pay vendors' billings); however, the supporting documentation for the direct payments is weak.

Mr. Gregorczyk discussed the significant recommendations from the audit:

- The formal travel policies should be expanded to include the specific policies regarding cost effective travel, including policies embedded in the Comptroller's TexTravel website.

- The General Counsel should research the issue of the amount of compensatory per diem to which Commissioners are entitled and provide the Business Services Division a written legal interpretation as the basis for any future payments.

- TABC should recover compensatory per diem payments paid to the TABC commissioners in error.

- TABC should revise its travel policy and procedrues to require employees on agency travel to submit their actual receipts for lodging, airfare and rental cars with their travel vouchers. The policy should also emphasize the requirement that employees must document all travel activities, including the use of direct pay vendors and reservation cancellations, on their travel vouchers.

Commissioner Fredricks moved for approval of the Internal Audit of Travel Policies and Procedures, Commissioner Weinberg seconded. Being no further discussion, the motion carried.

FOLLOW-UP REVIEW OF THE STATUS OF IMPLEMENTING PRIOR YEARS' INTERNAL AUDIT RECOMMENDATIONS

Mr. Gregorczyk reported that five internal audits were completed during the Fiscal Year of 2008. Each of these audits contained recommendations for corrective actions or improvements to agency operations. In addition, four internal audits completed prior to FY 2008 had recommendations that were not complete at the time of the last follow-up review performed in October 2007. Therefore, the status of the implementation of those recommendations will be discussed. (Attachment 2)

Mr. Gregorczyk outlined some key audit observations:

- The performance measures relating to the agency's Strategic Plan 2009-2013, Goal 3, To ensure compliance with the Alcoholic Beverage Code in the manufacturing, importing, exporting, transporting, storing, selling, serving, and distributing of alcoholic beverage, Strategy 1, Compliance Monitoring. The outcome, output and efficiency measures for this strategy do not satisfy the responsive, valid, and relevant criteria.

- The agency has had a difficult time identifying appropriate benchmarks and outcomes to better target and measure the impact of its enforcement activities on public safety. Benchmarks will help the agency identify best practices for detecting serious public safety violations and the right outcomes will help the agency assess the impact of its activities on public safety.

- By developing the appropriate measures, reporting them regularly, and using them as a basis for assessing and improving performance, the agency should derive operational benefits and establish a history of data and usage with the measures that will be useful in working with the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning and Policy (GOBPP) in obtaining approval for the measures for strategic planning, performance monitoring, and legislative appropriations requests purposes.

There were significant recommendations outlined by Mr. Gregorczyk:

- Management should work with the LBB and the GOBPP to establish key performance measures for Goal 3, to ensure compliance with the Alcoholic Beverage Code in the manufacturing, importing, exporting, transporting, storing, selling, serving, and distributing of alcoholic beverage, Strategy 1, Compliance Monitoring, that satisfy the criteria for good performance measures as specified in the *Guide to Performance Measure Management*.

- TABC should work with the LBB and appropriate staff members of the Legislative Appropriations Committee of the 82nd Legislative Session to revise the agency's appropriation budget structure, including its performance measures, to better align with its operational organization.

- Management should establish an initiative to identify and collect external data for the purposes of identifying benchmarks and outcomes to help the agency identify best practices for detecting serious public safety violations and measure the impact of its enforcement activities on public safety.

Mr. Gregorczyk discussion concluded with performance measures as being an important part of an agency. He believes that TABC working with the LBB, criteria can be established to meet the essential performance measures.

The following recommendations were discussed by Commissioner Fredricks:

1. Internal Audit of Licensing Division-Licensing Processing, Recommendation 1
2. Internal Audit of the Office of Professional Responsibility, Recommendation 6 and Recommendation 8
3. Internal Audit of the Education and Prevention Division, Recommendation 8
4. Internal Audit of the Marketing Practices Section, Recommendation 1

Presiding Officer Cuevas posed a question relating to the Internal Audit of the Marketing Practices section, Recommendation #1 of Mr. Gregorczyk's follow-up report.

Chief Joel Moreno deferred the question to Assistant Chief Dexter Jones to respond. Assistant Jones stated a letter was mailed out to the industry relating to cooler wraps. He said the letter was clear and sufficiently addressed the Agency's position on the issue. The statute and rules provide that upper tier members may not provide anything of value to a retailer and further state that upper tier members may not paint, improve or remodel a retailer's premise or finance any improvements. The letter was sent out to raise awareness of industry members that the practice is not consistent and exceed limitations of the statutes. Considering that the cooler wraps issue is a violatile and sensitive matter, the Agency will conduct a series of meeting with industry members to further discuss cooler wraps to ensure statewide consistency.

Before the motion was moved, Commissioner Weinberg commented on his preferral of the explanation in the Executive Summary rather than the chart with legend illustrations. Commissioner Fredricks moved to accept the Follow-up Review of the Status of Implementation of Prior Years' Internal Audit Recommendations and Commissioner Weinberg seconded.

LEGISLATIVE UPDATE

Presiding Officer Cuevas called upon Carolyn Beck, Public Information Officer, to present the Legislative Update.

Ms. Beck's 81st Legislative Session Update included a powerpoint presentation. (Attachment 3)

NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS BEST PRACTICES AWARD – COMMUNITY COLLABORATION-GOVERNMENT AGENCY

Presiding Officer Cuevas called upon Lieutenant Randy Motz and Sergeant Steven Carnes for their presentation. (Attachment 4)

Before the presentation, Chief Joel Moreno briefly spoke on this presentation. He announced that the National Conference of State Liquor Administrators (NCSLA) has announced that the Agency had won the organization's "Best Practices Award." The category being awarded for the Agency's collaborative efforts with the Goodfellow Air Force Base in the creation of alcohol awareness/alcohol incident resolution program targeting the young airmen stationed at the base.

Chief Moreno stated that the team will present their exhibit and accept the "Best Practices Award" at NCSLA's Annual Conference in Nashville, Tennessee in June.

ADOPTION OF PROPOSED REPEAL OF RULE §45.121, DELINQUENT LIST

Presiding Officer Cuevas called upon Deputy Counsel Joan Bates to speak on the adoption of proposed repeal of Rule §45.121. Deputy Counsel Bates presented a powerpoint presentation and discussed the repeal and proposed rules. (Attachment 5)

Deputy Counsel Bates requested that the Commissioners move that Agenda item 9, Adoption of Proposed Repeal of Rule , Section §45.121, and Agenda Item 10, Adoption of Proposed New Rule, Section §45.121, be withdrawn.

Presiding Officer Cuevas called for a motion to withdraw the adoption of proposed repeal of Rule §45.121 and the adoption of proposed new Rule §45.121. Commissioner Weinberg so moved and Commissioner Fredricks seconded. There being no further discussion, the motion carried.

ADOPTION OF PROPOSED NEW RULE §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR

Deputy Counsel Joan Bates asked the Commissioners to move that the revised rule text submitted for consideration under Agenda Item 10 be published as a proposed new rule in the Texas Register for a 30-day comment period. (Attachment 6)

Presiding Officer Cuevas called for a motion to allow the proposed new rule text to be published in the Texas Register for a 30-day period. Commissioner Fredricks so moved and Commissioner Weinberg seconded. There being no further discussion, the motion carried.

PUBLIC COMMENT

Presiding Officer Cuevas opened the floor for public comment. Being no persons commenting, he made the announcement for an executive session.

EXECUTIVE SESSION

Presiding Officer Cuevas polled the Commissioners for an Executive Session. A unanimously consensus of the Commissioners deemed an Executive Session was unnecessary.

NEXT MEETING

Presiding Officer Cuevas announced the next meeting date is scheduled for Tuesday, July 28, 2009. There will not be a meeting in June.

ADJOURNMENT

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned.

Attachment 1

Approval of Internal Audit of TABC Travel Policy and Procedures

Texas Alcoholic Beverage Commission Internal Audit of Travel Policies and Procedures

Final Draft Report

May 12, 2009

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

May 12, 2009

Commission Members
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit of Travel Policies and Procedures.

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 purposes of the internal audit were to evaluate: compliance with State of Texas requirements regarding travel, the adequacy of controls over travel and travel payments and the effectiveness and efficiency of procedures for authorizing travel and paying travel expenses.

Key Audit Observation

- TABC has established cost effective travel policies to complement State travel rules and guidelines; however, some of the agency's specific policies regarding cost effective travel have not been formalized.
- The agency has effective and efficient policies and procedures for authorizing travel, reimbursing employees in a timely manner for travel expenses incurred, and complying with State of Texas travel requirements.
- Proper controls are in place to provide reasonable assurance travel expenditures are adequately supported and properly reviewed and approved.
- TABC does not have an out-of-state travel policy, which appears to be a prerequisite to out-of-state travel pursuant to Government Code Sec. 660.003, *Applicability*, which provides for a state agency to pay or reimburse a travel expense for travel outside the state if the travel is approved in advance in accordance with the policy of the agency.
- Formal policies and procedures are not in place for the payment of Commissioners' compensatory per diem expenses and the payments may not be in compliance with statutory requirements
- While employees certify on their travel vouchers that the expenses documented on the vouchers are true, correct and unpaid, multiple instances were noted where employees appear to be charging a flat rate for in-state meal expenses, such as $36 per day, rather than actual expenditures up to a maximum of $36 a day as limited by the State Comptroller of Public Accounts.
- Adequate procedures and controls for maintaining the agency travel advance are in place and operating effectively.
- TABC makes direct payments to selected commercial transportation companies, commercial lodging establishments and a credit card issuer, jointly hereafter referred to as direct pay or direct bill vendors, to cover the travel expenses incurred by its employees. The direct payments tested were accurate and made in a timely manner (within 45 days of the direct pay vendors' billings); however, the supporting documentation for the direct payments is weak.

Significant Recommendations

- The formal travel policies should be expanded to include the specific policies regarding cost effective travel, including policies embedded in the Comptroller's TexTravel web site.
- The General Counsel should research the issue of the amount of compensatory per diem to which Commissioners are entitled and provide the Business Services Division a written legal interpretation as the basis for any future payments.
- TABC should recover compensatory per diem payments paid to the TABC commissioners in error.

- The travel advance fund bank reconciliations should be performed on a monthly basis to provide reasonable assurance of the accuracy of the accounting and bank records as well as to identify travel reimbursements due from employees.
- Business Services should ensure that the travel advance fund is reimbursed by TABC employees on a timely basis by notifying the employee and if necessary the employee's supervisor when excess funds are not returned by the established deadline.
- TABC should revise its travel policy and procedures to require employees on agency travel to submit their actual receipts for lodging, airfare and rental cars with their travel vouchers. The policy should also emphasize the requirement that employees must document all travel activities, including the use of direct pay vendors and reservation cancellations, on their travel vouchers.
- The Business Services Division should develop a procedure to provide reasonable assurance that direct pay vendors are not reimbursed without the same level of proof that would be required as the supporting documentation for the reimbursement of a state employee for the same expense, as required by Textravel.

Management's Response.

Management concurs with all recommendations in the report. Employee responsibilities and target dates for completion of all recommendations have been established by management.

AUDIT PURPOSE & SCOPE

The primary purposes of the internal audit were to evaluate: compliance with State of Texas requirements regarding travel, the adequacy of controls over travel and travel payments and the effectiveness and efficiency of procedures for authorizing travel and paying travel expenses.

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

- travel policies and procedures;
- travel authorizations and travel vouchers;
- compensatory per diem payments made to commissioners;
- travel advance account; and
- direct pay travel payments made to rental car companies, hotels and airlines;

All audit fieldwork was performed at the Austin headquarters office.

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

AUDIT RESULTS AND RECOMMENDATIONS

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

Audit Objective 1: *Determine if agency travel policies and procedures have been developed and implemented for ensuring cost effective travel by agency employees.*

TABC uses its internal travel policy and procedures, the Texas Comptroller of Public Accounts' web site, *Textravel, Rules of the Road on the Web,* and unwritten policies to ensure cost effective travel by agency employees.

TABC's travel policy and procedures consist of the types of travel expenses an employee may be reimbursed, receipt requirements, employee's procedures for filing travel vouchers and references to regulations set forth by the State Travel Management Program. The policy also has a paragraph regarding division directors conserving funds by maximizing economy and efficiency when planning and/or approving the travel of their employees. The directors are referred to the agency's Energy Conservation Plan for adopted policies that may reduce energy-related travel expenditures and the State of Texas Travel Allowance Guide, which has been superseded by *Textravel*, for current statutes.

The Energy Conservation Plan was developed in January 2008 in response to the State Agency Energy Savings Program of the Governor's Office and Executive Order RP-49. The Plan identifies TABC's energy conservation methods throughout the state and addresses polices and goals regarding various aspects of energy conservation, including travel. The Plan establishes into policy the use of interactive video conferencing technology and telephone conferences to the greatest extent possible. The Plan also makes reference to the State of Texas Travel Allowance Guide, which specifies a state agency must minimize the amount of travel expenses reimbursed by ensuring that each travel arrangement is the most cost-effective considering all relevant circumstances. The Conservation Plan also refers to the four-per-car rule, which specifies when employees from the same agency travel on the same dates with the same itinerary, they must coordinate travel. When four or fewer employees travel on the same itinerary, only one may be reimbursed for mileage. When more than four employees travel on the same itinerary, only one out of every four may be reimbursed for mileage.

The TABC has established the following general policies regarding cost effective travel policies:

- A state agency shall minimize the amount of travel expenses paid or reimbursed by the agency.
- The agency shall ensure that each travel arrangement is the most cost-effective considering all relevant circumstances.
- The agency shall use teleconferencing and other telecommunications technologies to reduce agency travel expenditures.
- If meals are included in the costs of the lodging or event, maximum meal reimbursement may be reduced.

- Division directors shall conserve funds appropriated by the Legislature by maximizing economy and efficiency when planning and/or approving the travel of their employees.

Other policies regarding cost effective travel are also in place such as an employee not being eligible for meal reimbursements unless the meals are incurred in connection with overnight travel and employees using the TABC' fleet vehicles rather than their personal vehicles under certain circumstances. However, some of the agency's specific policies regarding cost effective travel have not been formalized. Employees become aware of the specific policies through travel training that is periodically provided, their supervisor's travel approval (or rejection) process, and experience with processing their travel vouchers through Financial Services.

Recommendation 1: *The formal travel policies should be expanded to include the specific policies regarding cost effective travel, including policies embedded in the Comptroller's TexTravel web site. TABC should also update its travel policies to include current references to the state's travel laws and rules provided by the State Comptroller of Public Accounts.*

TABC Management Response: Management concurs with the recommendation. The agency will have relevant travel policies added to the policies manual.

Responsible employee title: Director of Policy
Target date for completion: 8/31/09

Audit Objective 2: *Determine if the agency has effective and efficient policies and procedures for authorizing travel, reimbursing employees in a timely manner for travel expenses incurred, and complying with State of Texas travel requirements.*

The agency has effective and efficient policies and procedures for authorizing travel, reimbursing employees in a timely manner for travel expenses incurred, and complying with State of Texas travel requirements.

Proper controls are in place to provide reasonable assurance travel expenditures are adequately supported and properly reviewed and approved. An electronic travel request and voucher generation system is used. A travel request documenting the purpose and estimated costs of the travel is prepared by the employee and approved by the employee's supervisor and an accountant in the Business Services Division (BSD). Upon completion of the travel, a State of Texas Travel Voucher is prepared that is approved, again by the employee's supervisor and an accountant in the BSD.

The TABC Travel Policy and Procedures state that travelers must comply with the regulations set forth by the State Travel Management Program and the Texas State Travel Directory and provides general guidance on reimbursable expenses, receipt requirements and filing travel vouchers. TABC has also provided guidance to employees using the electronic Lotus Notes Travel System on the Business Services Division's web page of the agency's intranet. The guidance includes the basis steps for using the Lotus Notes Travel System with an example of the use of the system. However, the policies and

procedures and the travel system do not document agency policies that may be more restrictive than the State requirements, in an effort to conserve limited travel funds, such as the following policies that have been communicated to employees by email:

- partial per diem of $8 for breakfast, $12 for lunch and $16 for dinner.
- reimbursing airport parking at the long-term rate and hotel parking at standard rate regardless of whether employee used parking at a higher rate such as valet.
- reimburse headquarters personnel at $0.15/mile for use of personal vehicle for work related miles.

Additionally, TABC does not have an out-of-state travel policy, which appears to be a prerequisite to out-of-state travel pursuant to Government Code Sec. 660.003, *Applicability*, which provides for a state agency to pay or reimburse a travel expense for travel outside the state if the travel is approved in advance in accordance with the policy of the state agency that proposes to pay or reimburse the expense.

Testing of travel vouchers substantiates the vouchers are generally being processed in accordance with established procedures, State travel rules and control policies that have been established; however, in one instance a traveler charged mileage on a personal vehicle at a reduced rate of $0.20 per mile plus the cost of gasoline. Gasoline is not a reimbursable expense for transportation in a personal motor vehicle pursuant to Government Code Sec. 660.041, *Reimbursement Requirement*.

While employees certify on their travel vouchers that the expenses documented on the vouchers are true, correct and unpaid, multiple instances were noted where employees appear to be charging a flat rate for in-state meal expenses, such as $36 per day, rather than actual expenditures up to a maximum of $36 a day as limited by the State Comptroller of Public Accounts. For example, one employee certified on his travel voucher that the employee departed at 8:00 a.m. from overnight travel and arrived at his home duty station at 1:00 p.m. The employee charged $36.00 in meal expense for the day returned to his home duty station. The same employee had 19 continuous days previous to his return date that also charged $36 per day for actual meal expenses.

Travel vouchers are processed in a timely manner. In all instances except one, travel reimbursements were made within 30 days of the employee's travel service dates. In one instance, the employee delayed the submission of the travel voucher by almost three months. Once the employee prepared and submitted the travel voucher, payment was paid 14 days later.

Formal policies and procedures are not in place for the payment of Commissioners' compensatory per diem expenses and the payments may not be in compliance with statutory requirements. TABC pays compensatory per diem to Commission members in the amount of $30 for each commission meeting attended pursuant to the State's General Appropriations Act, Art. IX, Sec. 5.09, *Travel and Per Diem of Board or Commission Members*. However, TABC's enabling legislation, 5.08, *Per Diem, Expenses*, states, "Members of the commission receive per diem of $10 a day, for not more than 60 days a year, plus actual expenses, while attending commission meetings or otherwise engaged in the performance of their duties." The General Counsel needs to make a legal interpretation

of the amount of compensatory per diem that may be paid to Commission members so that Business Services can correctly pay Commissioners the amounts they are due for compensatory per diem

Inadequate internal controls resulted in the following errors noted during the test of compensatory per diem payments.

- A $20 meal payment made in connection with a compensatory per diem payment was made without a supporting travel voucher.
- An extra compensatory per diem payment for the November 2008 Commission meeting was made to two commissioners, which resulted in a total of $120 in per diem payments to the two commissioners for the November meeting.
- Compensatory payments for the January 2009 Commission meeting were recorded as payments for the December 2008 Commission meeting.

Recommendation 2: *TABC should develop travel policies and procedures for those policies it would like to have in place to conserve limited travel funds or for other purposes that may be more restrictive than the State general travel policies. The agency's travel policy should include examples of the types of expenditures that are not reimbursable such as gasoline for the use in a personal vehicle and flat rates for meal expenses that are not based on actual costs. TABC should also develop and implement a policy and procedures regarding out-of-state travel.*

TABC Management Response: Management concurs with the recommendation. The agency has recently proposed paying partial per diem for non-overnight travel and will incorporate this policy with other internal policies that are more restrictive than the general policies of the State. An out of state travel policy will also be developed.

Responsible employee title: Policy Director
Target date for completion: 8/31/09

Recommendation 3: *Supervisors should question employees whose travel vouchers charge meal expenses that do not appear to be based on actual meal expenses.*

TABC Management Response: Management concurs with the recommendation. The director of Business Services will send out a memo reminding supervisors to scrutinize travel vouchers before approving.

Responsible employee title: BSD Director
Target date for completion: 5/31/09

Recommendation 4: *The General Counsel should research the issue of the amount of compensatory per diem to which Commissioners are entitled and provide the Business Services Division a written legal interpretation as the basis for any future payments.*

TABC Management Response: The agency will research the issue on compensatory per diem and will reduce the per diem reimbursement to the amount currently in statute until such time a legal interpretation is made.

Responsible employee title: General Counsel
Target date for completion: 8/31/09

Recommendation 5: *A policy and procedures for the payment of Commissioners' compensatory per diem*

should be developed to provide reasonable assurance the payments are correct and adequately supported. Processing procedures should include a secondary review and approval of all pending compensatory payments by a responsible employee other than the preparer of the compensatory payments. The review and approval should include consideration of the completeness and accuracy of the payments including the payments being in compliance with statutory requirements, adequately supported, and posted to the proper period.

TABC Management Response: Management concurs with the recommendation. The division has implemented a second review procedure to validate payment accuracy and will develop a written policy for the payment of Commissioner's compensatory per diem.

Responsible employee title: Director of BSD and Director of Policy
Target date for completion: 8/31/09 for formal policy. Review has been implemented.

Recommendation 6: *TABC should recover compensatory per diem payments paid to the TABC Commissioners in error.*

TABC Management Response: The duplicate payments for compensatory per diem made for the November 2008 Commission meeting will be recovered by not paying the two Commissioners compensatory per diem until the overpayments are recovered.

Responsible employee title: BSD Director
Target date for completion: 8/31/09

Audit Objective 3: *Determine if there are adequate procedures and controls for maintaining the agency travel advance fund in accordance with established agency procedures and State of Texas requirements.*

Adequate procedures and controls for maintaining the agency travel advance are in place and operating effectively. Travel requests support the travel advance checks and once the actual travel expenses are incurred, which are supported by a State of Texas Travel Voucher and appropriate supporting documentation, the travel advance fund is reimbursed. However, the procedures regarding the issuance of travel advance checks are not current and need to be revised to reflect current practices. There are no procedures for the deposit of travel advance reimbursements to the travel advance bank account.

There is an adequate separation of duties for the travel advance fund among the accounting function and the custody function (i.e., employees with access to travel advance funds by means of being an authorized signature on the travel advance account). A third employee prepares the reconciliation between the accounting records and the travel advance bank statement. The reconciliation is reviewed by an employee other than the preparer. A review of a monthly reconciliation indicates the reconciliations are properly performed and documented, but the reconciliations are not necessarily performed on a timely basis. While the most recent reconciliation was timely and considered current, of the six reconciliations completed for fiscal year 2009 (September through January), two of the reconciliations were performed beyond 60 days of the bank statement closing date. Procedures state that the travel advance bank

account should be reconciled on a monthly basis.

While TABC maintains a travel advance account, it is seldom used. Five travel advance checks have been written since October 2007; all written in September 2008. The travel advance fund has been fully reimbursed with the exception of one employee's reimbursement still due to the fund. Over four months have lapsed since the employee submitted the related travel voucher documenting the actual travel expenditures, which is used as a basis for determining the amount of the reimbursement due from the employee. Business Services needs to ensure prompt reimbursement of amounts due back from employees that receive travel advances.

Recommendation 7: *The travel advance fund procedures should be updated to reflect current practices regarding the issuance of travel advance checks and should include procedures for the deposit of travel advance reimbursements to the travel advance bank account.*

TABC Management Response: Management concurs with the recommendation. A policy will be developed.

Responsible employee title: Director of Policy
Target date for completion: 8/31/09

Recommendation 8: *The travel advance fund bank reconciliations should be performed on a monthly basis to provide reasonable assurance of the accuracy of the accounting and bank records as well as to identify travel reimbursements due from employees.*

TABC Management Response: Management concurs with the recommendation.

Responsible employee title: Director-BSD
Target date for completion: Implemented

Recommendation 9: *Business Services should ensure that the travel advance fund is reimbursed by TABC employees on a timely basis by notifying the employee and if necessary the employee's supervisor when excess funds are not returned by the established deadline.*

TABC Management Response: Management concurs with the recommendation. A directive will be distributed advising supervisors approving such payments that they will be responsible for ensuring the timely return of excess funds. Business Services will follow up on all delinquent reimbursements.

Responsible employee title: All Directors/Supervisors
Target date for completion: 5/31/09

Audit Objective 4: *Determine if there are adequate procedures and controls for using the agency corporate account used for paying travel expenses of the agency in accordance with established agency procedures and State of Texas requirements.*

TABC makes direct payments to selected commercial transportation companies, commercial lodging establishments and a credit card issuer, jointly hereafter referred to as direct pay or direct bill vendors, to cover the travel expenses incurred by its employees. The direct payments tested were accurate and made in a timely manner (within 45 days of the direct pay vendors'

billings); however, the supporting documentation for the direct payments is weak.

The supporting documentation consists of billings from the direct pay vendors. While the travel accountant attempts to obtain actual receipts to substantiate the billings, the expectation of employees to provide supporting receipts is not established in written policy and procedures, and employees do not necessarily provide receipts with their travel vouchers. In the absence of actual receipts, the travel accountant attempts to use the employees' travel itineraries to help substantiate the direct bill charges but, again, the employees do not necessarily submit their travel itineraries with their travel vouchers in which case the travel accountant refers to the employees' travel requests for documentation that may support the reasonableness of the direct bill charges. However, instances were noted where the travel requests, which were used as supporting documentation, were dated after the actual travel dates; further bringing into question the quality of the support for the travel expenditures.

In instances, inferences have to be drawn from the supporting documentation or the historical knowledge of the travel accountant is necessary to substantiate travel expenses billed by the direct pay vendors. For example, the travel accountant explained in one case a customary $14.75 airline flight process fee was incurred for an employee who had cancelled a scheduled flight. However, there was no supporting documenting that a flight was planned or cancelled.

Rental car transaction fees are being accepted and paid without documentation in direct support of the fees. The travel accountant attempts to match the fees with the applicable employee's travel voucher. In instances, the voucher will document the usage of a rental car but in other instances, the travel accountant infers the reasonableness of the fees because the employee's travel voucher does not charge mileage, indicating a probable rental car was used. In one of these instances, gasoline expenses were incurred (presumably for a rental car); however, documentation was not located to support a rental car was in use.

The review of one direct bill statement disclosed an airfare credit of $255.50 for an employee of the TABC Human Resources Division that had cancelled a reservation. The credit was associated with and posted to the travel expenses of one of the commissioners, which understates the Executive Division's travel expenses and overstates the Human Resources Division's travel expenses while overstating the available travel budget of Executive and understating the available travel budget of Human Resources.

Textravel, the State's travel guidelines issued by the State Comptroller of Public Accounts, requires the supporting documentation for a direct payment to a commercial lodging establishment, a credit card issuer or a travel agency for a lodging or a transportation expense must include the same receipts, statements, and other information that would be required in the supporting documentation for the reimbursement of a state employee for that expense.

Textravel requires an employee must provide proof that a lodging, car rental or commercial air transportation expense was incurred. Textravel states proof normally

takes the form of a lodging receipt for lodging expenses, a receipt issued by the rental company for car rental expenses, and a complete passenger receipt issued by the commercial airline company or an itinerary issued by the company or a travel agency. Requiring employees to thoroughly document their planned and actual use of direct pay vendors and submit their direct pay vendor receipts with their travel vouchers in a timely manner would enable the travel accountant to process the direct bills in a timely manner while assuring payments and credits are adequately supported and properly posted to the accounting records.

Recommendation 10: *TABC should revise its travel policy and procedures to require employees on agency travel to submit their actual receipts for lodging, airfare and rental cars with their travel vouchers. The policy should also emphasize the requirement that employees must document all travel activities, including the use of direct pay vendors and reservation cancellations, on their travel vouchers.*

TABC Management Response: Management concurs with the recommendation. A formal policy will be developed requiring receipts on direct billed travel.

Responsible employee title: Policy Director
Target date for completion: 8/31/09

Recommendation 11: *The Business Services Division should develop a procedure to provide reasonable assurance that direct pay vendors are not reimbursed without the same level of proof that would be required as the supporting documentation for the reimbursement of a state employee for the same expense, as required by Textravel. One strategy the agency may want to consider is an addition to the standard travel voucher that documents all planned and actual use of direct pay vendors and establishes the formal expectation that employees must complete the addition and attach all related direct pay vendor receipts before travel reimbursements are made to the employee.*

TABC Management Response: Management concurs with the recommendation. The division will develop a method to ensure sufficient documentation is presented with all travel vouchers and that employees are required to submit receipts for all direct billed travel.

Responsible employee title: Director-BSD
Target date for completion: 8/31/09

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Attachment 2

Follow-Up Review of the Status of Implementation of Prior Years' Internal Audit Recommendations

Texas Alcoholic Beverage Commission
Follow-up Review of the Status of Implementing Prior Years' Internal Audit Recommendations

Final Draft Report

May 14, 2009

As Prepared by
Jansen & Gregorczyk

Certified Public Accountants

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May 14, 2009

Commission Members
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit follow-up review of recommendations made in the following internal audit reports:

- Agency-wide Contract Management System
- License Division License Processing
- Legal Services Division Administrative Case Processing
- Ports of Entry Operations
- Office of Professional Responsibility
- Education and Prevention Division
- Marketing Practices Section
- Protest Process
- Executive Office

The follow-up review 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

Five internal audits were completed during FY 2008. Each of these audits contained recommendations for corrective actions or improvements to agency operations. In addition, four internal audits completed prior to FY 2008 had recommendations that were not complete at the time of the last follow-up review performed in October 2007. The purpose of this report is to indicate the status of implementation of recommendations made in these internal audit reports. The chart below summarizes the status of implementing the recommendations in each report. Implementation status categories are those developed by the State Auditor's Office and include the following:

- **Fully Implemented (FI):** Successful development and use of a process, system, or policy to implement a prior recommendation.
- **Substantially Implemented (SI):** Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.
- **Incomplete/Ongoing (IO):** Ongoing development of a process, system, or policy to address a prior recommendation.
- **Not Implemented (NI):** Lack of a formal process, system, or policy to address a prior recommendation.

Recommendation Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Agency-wide Contract Management System- 9/26/06			IO																					
Licensing Division-License Processing- 11/17/06	IO		IO					FI																
Legal Services Division-Administrative Case Processing- 1/26/07																				FI		FI		FI
Ports of Entry Operations- 4/30/07				FI																				
Office of Professional Responsibility- 1/25/08	FI	FI	FI	FI	FI	SI	IO	IO																
Education and Prevention Division- 4/30/08	IO	IO	FI	FI	FI	FI	FI	NI	FI	FI	FI	IO	FI	NI	NI	FI								
Marketing Practices Section- 4/30/08	IO	IO	IO																					
Protest Process- 5/23/08	FI	FI	FI	FI	FI	FI	FI	FI	NI	FI	FI	IO												
Executive Office- 5/23/08	FI	IO																						

Internal Audit of the Agency-wide Contract Management System

Final Report Approved by the TABC Commissioners on
September 26, 2006

Recommendation 3: *The Business Services Division should develop a basic closeout form to be used in conjunction with the final payment of all formal contracts. The form should address the nature of the procurement and a certification that all of the requirements of the contract have been met.*

TABC Management Response: The division has created a "certification" form to be completed by the contract manager or by a purchaser for documenting that all of the requirements of a formal contract have been met. The form will be filed with the vendor file containing the purchase order, receiving report and payment voucher.

Status: ***Incomplete/Ongoing.***
The Business Services Division (BSD) has prepared a Contract Monitoring and Close Out Certification Form; however, the form has not been fully incorporated into the agency's business practices. The BSD needs to incorporate use of the form into agency policy and assess under what conditions and contract types the form is applicable. For example, the form may not be applicable for ongoing contract services such as those provided under security and maintenance contracts.

The Director of BSD prepared an Intern-Office Communications memo with a listing of all FY 2009 contracts to date in January 2009 for applicable division heads or designees to sign by initialing contracts under their responsibility to provide the BSD assurance the purchased services have been or are being received as ordered. Similar stop-gap measures will be used until the form is in full use.

Internal Audit of Licensing Division-License Processing

Final Report Approved by the TABC Commissioners on
November 17, 2006

Recommendation 1: *Reports that allow reconciliation between revenues received in the Business Services Division's cashier's office and the permits processed and issued in the Licensing Division should be considered a high priority in the development of reports from the LE system. Once the necessary reports are developed, a monthly revenue reconciliation should be conducted.*

Status: ***Fully Implemented.***
Management reports to enable monitoring of the Licensing Division's workload and workflow have been developed.

Internal Audit of Legal Services Division Administrative Case Processing

Final Report Approved by the Commission on
January 26, 2007

Recommendation 20: *A future training session by Legal Services should include training on Protests.*

TABC Management Response: Management concurs. Protests were included in the Law Conference conducted by Legal Services in September 2006. An agency-wide analysis of the protest process is underway and should be finalized by the fall 2007. Additional training will be conducted based on the results of that analysis.

Status: ***Fully Implemented.***
The Director of Policy and Planning of the Legal Services Division provides protest training periodically and as needed. Although rosters of attendance have not been maintained, the Director reports that all employees of the Legal Services Division have received the protest training and as new employees join the division, they receive the training. The most recent training was provided to each of the five regions in connection with the Licensing re-engineering out-reach briefings in November and December 2008. The training curriculum consists of the TABC Application Protest Policy and the Protest Reporting and Tracking Procedures ARTS (Automated Reporting and Tracking System) Manual.

Recommendation 21: *The training materials for Legal Services training of Enforcement staff should include case comparison studies from actual administrative cases where the legal case was "weak" as compared to an actual case where the legal case was "strong."*

TABC Management Response: Management concurs. This will be done in formal and informal training ventures throughout the year.

Status: ***Fully Implemented.***
Formal training provided by Legal Services to Enforcement staff consists primarily of training provided in connection with New Agent training that is provided on an annual basis to all new agents employed by the Commission. In addition to formal training, the General Counsel considers training to extend beyond formal settings and encourages

TABC Management Response: Management agrees. The agency has been working on reports for all divisions to better track their outputs and the revenue processing section has asked for cash reconciling reports. This should be completed by IRD by August 2007.

Status: ***Incomplete/Ongoing.***
The Information Resources Division (IRD) has prepared reports for reconciliation purposes; however, the Financial Services Section is still unable to reconcile cash received each month with the actual permits issued because of timing differences. Permits may not be issued for many months, and possibly years, from the time the cash was actually received. There are also limitations in the LE System on how cash is assigned. An actual monthly reconciliation will not be possible until the licensing system has been updated to address this issue and correct how cash is assigned. Funds have been requested during the 81st legislative session for the required upgrades.

Recommendation 3: *A report should be developed through the LE system to identify temporary receipts that have been outstanding for a significant amount of time (for example over 90 days). Once the outstanding temporary receipts are identified, the appropriate counties should be contacted to determine their status. Identification and reconciliation of outstanding temporary receipts should be conducted on a monthly basis.*

TABC Management Response: Management agrees. Reports have been prioritized to ensure the most vital reports are completed first considering the needs of all divisions. These reports should be in place by end of FY07 providing IRD resources are available to meet these needs.

Status: ***Incomplete/Ongoing.***
The Information Resources Division has developed a report to identify temporary receipts in the LE system that have not been associated with a license or permit application. The Licensing Division Director plans to remove temporary receipts issued prior to January 1, 2008 from the LE system and solicit from the counties information regarding the status of all receipts issued since January 1, 2008 in order to reconcile and account for the status of these receipts. It is the Director's goal to have the outstanding temporary receipts reconciled by August 31, 2009 and to reconcile future temporary receipts on a monthly basis.

Recommendation 8: *The reports necessary to monitor Licensing Division workload and workflow should be considered a high priority in the LE report development process.*

TABC Management Response: Management agrees. Reports have been prioritized to ensure the most vital reports for the agency as a whole are completed first. These reports should be in place by end of FY07 providing IRD resources are available to meet these needs.

open, informal communications and greater interaction between the legal staff and the enforcement staff as strategies of providing ongoing training. As a result of more informal communications, the enforcement staff has become more comfortable contacting legal staff to discuss the circumstances of a potential case or of cases they are developing.

In the formal training settings as well as in informal training and day-to-day communications, the legal staff discuss and reference both strong and weak cases they have experienced, or have become familiar with through their experiences, as they relate to cases the agents may be working on or specific topics included in formal training such as search and seizure and courtroom demeanor.

Recommendation 22: *Future training sessions for the Legal Services staff should include sharing of "best practices." Specific topics for discussion should be established in advance so the attorneys can prepare to discuss practices they have found to be effective.*

TABC Management Response: Management concurs, and this is being implemented.

Status: ***Fully Implemented.***
A Legal Services Division Attorneys Conference was held in September 2008. There were several topics that included discussions of strategies and tactics used on various cases. In connection with these topics, there were discussions of strategies and tactics that were successful (i.e. best practices), not only in connection with the specific cases but also of cases with related issues. Similar discussions are also held in connection with in-service training that the Legal Services Division staff receives at least annually as related to the in-service training topics.

In addition to formal training, discussion of best practices comes up frequently in informal settings such as those discussed below, which the General Counsel also considers training.

The General Counsel and legal staff meet on a periodic basis, approximately monthly, to discuss and focus on ongoing case litigation, internal processes and other related issues. Issues and challenges of ongoing case litigation often include discussions of strategies and techniques, or best practices, which have been successful in prior cases with related issues.

By policy, informal docket reviews are performed by the senior attorney on a quarterly basis. The senior attorney will meet with attorneys to review their individual dockets for overall case management purposes, including suggestions for trial strategies. Practices that have been successful in the past are often discussed and used as strategies for current cases.

Recommendation 24: *Legal Services should request that Information Resources revise the Pending Administrative Cases report to show the last action and the date the action was performed. Alternatively, a new report with this information could be requested. The General Counsel and the Deputy General Counsel should use this report to monitor the work of the attorneys in processing administrative cases. This would also provide an incentive to the attorneys and legal support staff to update the LE system each time an activity occurs.*

TABC Management Response: Management concurs. This information is now available in Cognos reporting.

Status: ***Fully Implemented.***
The LE System Pending Administrative Cases report has been enhanced to include the last action and the date the action was performed. It is necessary for the attorneys or their assistants to post actions to the LE system as they occur because many of the related correspondences are prompted by the postings. The report, in addition to other reports, is used to monitor the work of the attorneys in processing administrative cases.

Internal Audit of the Ports of Entry Operations

Final Report Approved by the Commission on
April 30, 2007

Recommendation 4: *Management should conduct analyses, on at least an annual basis, using available data, to ensure staffing at the various POEs remains appropriate. Documentation of all analyses conducted should be maintained.*

TABC Management Response: Management conducts periodic reviews of staffing needs and will begin documenting such reviews immediately. Staffing needs are determined at various bridges with reference to bridge operation hours, hours of duty-free stores, tourist attractions, vehicular traffic volume, pedestrian traffic volume, bus traffic volume, and proximity to CBP.

Status: ***Fully Implemented.***
With the full implementation of the automated Ports of Entry Tax Collection System, effective December 1, 2008, the Ports of Entry (POE) management has readily available data regarding the number of alcoholic beverage and tax stamps issued at each POE location. The data can be retrieved by calendar intervals, such as on a quarterly basis. The number of tax stamps issued can also be assessed by the hour of day for any particular calendar interval. This information is being used by management with a comparison to the number of Tax Collection Officers staffed at each POE location to ensure staffing levels at the various POE locations are appropriate.

Internal Audit of the Office of Professional Responsibility

As Approved by the Commissioners on
January 25, 2008

Recommendation 1: *The Administrator and executive team should revise the employee misconduct policy to reduce and better define the types of complaint cases assigned to OPR. In making this determination, other law enforcement agencies' internal affairs*

polices should be consulted to determine which cases they consider appropriate for internal affairs versus those handled through other means.

TABC Management Response: OPR agrees with the recommendation. OPR is in the process of re-writing policy to reduce and better define the types of complaint cases assigned to OPR. OPR is utilizing the Department of Public Safety Internal Affairs policy as a template. The Director of OPR has begun a process of meeting with Division Heads to work out issues that may directly affect them individually and explain the recommended changes in detail. The new OPR policy is being written by the OPR Director and is set for completion and implementation by February 1, 2008.

Status: ***Fully Implemented.***

The employee misconduct policy was updated with an effective date of April 9, 2008. The updated policy requires any misconduct by agency personnel to be identified, thoroughly investigated and properly resolved. Related policies of the Department of Public Safety and the Texas Parks and Wildlife were considered in updating the policy as well as relevant portions of the Sunset Advisory Commission Staff Report, dated November 2006, and the internal audit recommendation.

Recommendation 2: *OPR should develop investigation procedures for use by all persons performing employee complaint investigations. Investigation checklists for each major type of complaint should be developed for use by field investigators.*

TABC Management Response: OPR agrees with the recommendation. OPR has already developed new forms that include a checklist for investigators that have been assigned an administrative inquiry or formal complaint. The OPR Director will be responsible for the development. Eight new procedures and forms have been developed and the implementation should be no later than February 1, 2008.

Status: ***Fully Implemented.***

The updated Employee Misconduct policies and procedures, effective April 9, 2008, provide general information regarding the conduct of an employee complaint investigation. The policy makes reference to standardized forms applicable to the various phases of a complaint investigation, including an Administrative Inquiry Outline form, the supporting Administrative Investigation Checklist form, the Compliant Investigation Outline form and the supporting Complaint Investigation Checklist form.

Recommendation 3: *An outside legal opinion should be sought from the Attorney General's Office regarding the adequacy of the notice to the accused provisions in the employee complaint policy. In addition, TABC's practice of converting anonymous complaints into formal cases brought by the agency should also be part of the opinion request. Before seeking the opinion, both TABC executive management and the TABC Officer's Association should agree to abide by the outside decision.*

TABC Management Response: OPR partially agrees with the recommendation. An opinion from the Attorney General's (AG's) Office would give a creditable source to the question of anonymous complaints, but the reality is that all complaints must be addressed, anonymous are not. The information received by an anonymous complaint at a bare minimum could serve management as a heads up to a specific issue that otherwise would go unnoticed. The validity or honesty of the anonymous complaint may or may not be verified with an administrative inquiry but the effort on management's part cannot be underestimated. OPR will meet with the TABC Officer's Association representatives to discuss the pros and cons of not investigating anonymous complaints and the concept of "*the police policing themselves.*" The Administrator will request the AG's opinion. The Director of OPR will conduct the meeting with TABC Officers Association. The opinion from the Attorney General's Office and the meeting with the TABC Officer's Association will be completed by February 1, 2008.

Status: ***Fully Implemented.***
In researching the need to request an Attorney General's Opinion, the Office of Professional Responsibility identified an existing AG opinion, GA-0251, that speaks to the issues regarding anonymous complaints and the requirements of Government Code Section 614.022 that requires complaints against a law enforcement officer to be in writing and signed by the person making the compliant.

While GA-0251 relates to whether school district superintendents may exercise their duty pursuant to the Education Code to evaluate and initiate the termination or suspension of an employee such as a police officer of the school district policy department, the AG opinion states that the authority of a head of police department to discipline is not limited to complaints filed by a citizen under government Code section 614.022 and that a superintendent of the school district or others may initiate disciplinary action by filing a signed compliant, or complaints may prompt an internal investigation and report by the policy department sufficient to satisfy the requirements of chapter 613 of the Government Code.

The OPR reached consensus with the president of the TABC Officer's Association that the Attorney General's Opinion and the policies and procedures established by the OPR regarding employee misconduct were sufficient to satisfy the concerns or the Association regarding TABC's practice of converting anonymous complaints into formal cases brought by the agency.

Recommendation 4: *A deadline of thirty working days to complete investigations should be considered, with a provision for extending the deadline if approved by the TABC Administrator.*

TABC Management Response: Management agrees with the recommendation. Management also believes a provision is necessary for extending the deadline by 10 days

if approved by the appropriate division head. The completion of the new OPR policy will be the responsibility of the OPR Director, and its implementation should be no later than February 1, 2008.

Status: ***Fully Implemented.***
The updated Employee Misconduct policies and procedures, effective April 9, 2008, requires complaints investigated by the Office of Professional Responsibility to be completed and submitted to the appropriate division director within twenty-eight days, unless an extension is granted by the administrator.

Recommendation 5: *The process wherein the General Counsel reviews the OPR investigation before the file is released to the division director should be formally amended into the policy, including specifying the types of cases when this will occur.*

TABC Management Response: Management agrees with the recommendation. The OPR Director will be responsible for writing the new policy, including the role of the General Counsel's review of the new process. The new OPR policy is set for completion and implementation by February 1, 2008.

Status: ***Fully Implemented.***
The updated Employee Misconduct policies and procedures, effective April 9, 2008, requires the investigation reports to be submitted to the Office of General Counsel for review. After any necessary consultation with the Office of the General Counsel, OPR will forward the investigation report to the proper division for disposition.

Recommendation 6: *Reporting on OPR cases should be revised. IAPro should be used to generate reports for the Administrator and Commission on a monthly basis, or when requested on an ad hoc basis. The Administrator and Commission members should be polled to determine what current information is useful, what current information is not needed and any new information that would be useful (for example, time to complete investigations, trends in complaints, employees with repeat complaints, historical trends over time, etc.).*

TABC Management Response: Management agrees with the recommendation. OPR management will be responsible for implementation of the IA-Pro software, and it will be completed by February 1, 2008.

Status: ***Substantially Implemented.***
The Employee Misconduct policies and procedures state that monthly reports will be provided to the Administrator and quarterly reports will be provided to the Commission members. Reports are being provided to the Administrator by the Acting Director of OPR and by the Administrator to the Commissioners. While IAPro is being used to generate reports, the OPR Acting Director has been working with the research analyst of

the agency to obtain a better understanding of the source and meaning of some of the numbers and statistics being reported. The Administrator has provided input regarding the type of information that should be reported; however, the Commission members have not been polled or solicited to determine their information needs. The Administrator should discuss with the Commissioners whether they would like to see any additional or different information other than the information currently provided.

Recommendation 7: *The IAPro software should be utilized by OPR as soon as training and customization of the program can be finished. A reasonable goal for full implementation by OPR should be set and monitored by the Administrator.*

TABC Management Response: Management agrees with this recommendation and the work is currently underway. OPR management and a representative from IRD are responsible for the implementation of the IA-Pro software. This will be completed by February 1, 2008.

Status: ***Incomplete/Ongoing.***
The IAPro system is currently in use and the OPR Acting Director believes the software is sufficiently customized to satisfy his needs. However, there may be additionally customization necessary to satisfy any information needs that may be identified by soliciting input from the Commission members as discussed in the status of Recommendation 6 above. There has not been any recent training on IAPro and the two employees who were knowledgeable on the system have transferred to other divisions. The Acting Director is currently the only employee of the OPR and while he has an administrative assistant position, the position is currently vacant.

Recommendation 8: *An OPR training budget should be planned and funded. OPR staff should receive the training necessary to perform their investigation duties effectively. Staff assigned to perform investigations should also be trained in investigative techniques, particularly those staff who are not law enforcement officers.*

TABC Management Response: OPR agrees with the recommendation. The Director of OPR and it's investigators have attended the most up-to-date schools that are directly associated with internal affairs. Additional training in IA-Pro, Interview and Interrogation, Use of Force, Ethics and others are scheduled in the near future.

OPR has offered its services to all division heads to assist in the training of complaint investigations, interview and interrogations, ethics, use of force, and report writing. Division heads are expected to interject OPR's assistance during in-service training, district and regional meetings. This recommendation has already been implemented and is currently available to TABC.

Status: ***Incomplete/Ongoing.***

The OPR does not have a separate training budget and training that is obtained by the OPR staff is currently funded out of the Executive budget or other available sources of funds. The OPR Director is currently the only employee of OPR and has stated that his requests for training are honored. The OPR Directors training records document investigation courses he has taken and those courses with other related courses suggest he is well trained for his position.

The OPR Director works with field staff captains, lieutenants, sergeants, captions and supervisors to identify field staff to conduct investigations because of the limited resources of the OPR Division, while the Director serves as a consultant to the investigations or as the lead investigator on particularly complex or major investigations. To be considered for an investigation assignment, the field staff have to have training as a supervisor, have attended the training developed and provided by the OPR Director, and understand the Complaints and Investigations policy and procedures; however, these minimum criteria staff must satisfy to conduct an investigation have not been formalized in policy or reduced to writing.

The OPR Director has three phases of training planned for field staff that will be conducting investigations; beginner, intermediate and advanced training in investigation policies and procedures, techniques and reporting however, these requirements have not been established in policy or reduced to writing. While the Director has provided Phase I of the required training to field staff; documentation of the participants that attended the training was not accumulated and maintained.

Internal Audit of the Education and Prevention Division

As Approved by the Commissioners on
April 30, 2008

Recommendation 1: *TABC should require schools to obtain their curriculums from TABC to ensure up-to-date information and consistency among schools teaching seller training in a classroom setting and those offering online seller training courses. This would eliminate a significant amount of work involved in reviewing and approving courses offered by seller training schools.*

TABC Management Response: Agree. The General Counsel's Office has determined that a rule change will be required. We will proceed with developing a curriculum and amending Chapter 50 of the rules. Target completion date March 2009.

Status: ***Incomplete/Ongoing.***

While TABC has not required or established rules to require schools to obtain their curriculums from TABC to ensure up-to-date information and consistency among schools teaching seller training, management is considering how to best move forward with the process.

The Seller Training and Education Grants Section of the Tax Division has requested an exceptional item in the agency's Legislative Appropriation Request that, if granted, will be used to implement a more effective means to educate the seller/servers of alcoholic beverages and to provide a system upgrade to the current method of reporting persons trained in seller/server classes. Any required standardized curriculums for use by the schools would include on-line curriculum as well as traditional classroom curriculum and, before requiring or establishing a rule to require the schools to use standardized curriculum, management has delayed establishing the requirements recognizing the value of having a clear vision has to how the on-line curriculum would interface with the system upgrade if funds are provided or with the existing system if funds are not provided.

Recommendation 2: *TABC should require all schools to issue computer-generated certificates rather than having the option to issue manually prepared certificates.*

TABC Management Response: While in theory we agree, an analysis should be conducted of the impact this would cause to small business owners. Many of the schools send trainers to retail locations to conduct classes. For these schools, it may not be feasible to issue computer-generated certificates. In addition, the analysis should include the determination of whether certificates are in fact necessary. Target completion of analysis April 2009.

Status: ***Incomplete/Ongoing.***
TABC has not required the schools to issue computer-generated certificates for the same reasons as discussed in the Status section of Recommendation 1. Management believes delaying consideration of the recommendation until they know the outcome of the exceptional legislative request is a prudent approach as the outcome will affect how the issuance of computer-generated certificates will interface with the system upgrade if funds are provided or with the existing system if funds are not provided. Before a final decision is made, management also recognizes the value of soliciting input from the schools and conducting an analysis as to how the schools would be affected by requiring them to issue the computer-generated certificates.

Recommendation 3: *A process should be developed for importing information into the eGateway system without the need for seller training schools to re-enter information which has already been entered into their systems for issuing certificates to successful trainees.*

TABC Management Response: A system change was requested and the work is in progress. The proprietary owner of the computer software is conducting the change. Target completion date is September 2008.

Status: ***Fully Implemented.***
TABC has developed two methods for the schools to enter their data into the eGateway System, which has improved the efficiency and effectiveness of the TABC processes.

The first method allows the schools direct access to enter the relevant data into eGateway system. The second method allows the seller training schools to post relevant data on an Excel spreadsheet that is uploaded into eGateway where the data is saved in format that allows for posting the data to the TABC system.

Recommendation 4: *Seller Training and the Information Resources Division should develop a reporting process from the eGateway system to generate needed reports for schools, trainers, trainees and certifications.*

Status: ***Fully Implemented.***
Reports have been develop to effectively track and report information such as the number of certified trainings, sessions and trainees reported by certified schools during a time period; the number of school, program and trainer applications received, approved, denied or pending, the number of trainee reports, certificates issued and sold, and the number of sessions monitored during a time period; and a school and program activity report of training sessions scheduled, cancelled and the number of trainees reported by the schools during a time period. Reports have also been developed of certified trainees committing sales to minors and intoxicated persons violations, pending seller training enforcement actions, and disposition of seller training enforcement actions during a period of time.

Recommendation 5: *In order to ensure the submission of timely, accurate and adequately documented performance reports to grantor agencies, the Education and Prevention Division should:*

- *maintain documentation of the date required reports are sent to grantor agencies;*
- *incorporate procedures into the onsite review of EUDL subgrantees to review how performance information is compiled and accurately reported;*
- *develop quality control procedures for compiling performance measure information for the MAP grant so that information reported on MAP training sessions and retail managers trained agrees with the supporting documentation; and*
- *develop a consistent, documented process for compiling and reporting public information and education materials provided to retailers.*

TABC Management Response: Agree. Target completion date is September 2008.

Status: ***Fully Implemented.***
The Seller Training, Education, and Grants Section of the Tax Division has established various policies and procedures to provide reasonable assurance of the submission of timely, accurate and adequately documented performance reports to grantor agencies. Procedures are in place to provide reasonable assurance management and staff are aware of report due dates. The procedures, including quality control procedures, provide reasonable assurance that subgrantee performance information is compiled and accurately reported. Processes have also been developed for compiling and reporting public information and education materials provided to retailers.

Recommendation 6: *The Education and Prevention Division should develop and provide to TABC executive management and the Commission a semiannual or quarterly report on the status of each grant. This report should include financial, performance and narrative information summarized in a brief one to two page document for each grant.*

TABC Management Response: Agree. Target completion date is September 2008.

Status: ***Fully Implemented.***
Status report information for the education grants is compiled, as of April 16, 2009, for the Administrator to present to the Commissioners. The complied information includes financial and performance information for the grants. The status of the grants information is compiled with information from other divisions for a comprehensive report to the Commissioners. The Seller Training Education Grants section of the Tax Division plans on providing the grants status information to the Administrator for consideration and reporting to the Commissioners on a semi-annual basis.

Recommendation 7: *The Business Services Division should enhance its grants accounting, budgeting and reporting by including additional information on the monthly grant budget summary report for the amount of the federal portions of the Managers Awareness Program and Shattered Dreams grant and providing the Education and Prevention Division grants administrator spreadsheet reports each month on the detailed expenses for each grant program.*

TABC Management Response: We will include the amount of federal portion at the time the grant budgets are established. Grants are now under a new division and all accounting spreadsheets are made available to that department.

Status: ***Fully Implemented.***
The Business Services Division has enhanced its grants accounting, budgeting and reporting by including information on the monthly grant budget summary report for the amount of the federal portions of the Managers Awareness Program and Shattered Dreams grants. The summary report is supported by detailed expenses for each grant

program that are reported at the line-item level, i.e., salaries, travel, consumable supplies, etc.

Recommendation 8: *Management should determine whether establishing a minimum class size for MAP grant training sessions would result in more cost effective use of funds available for teaching these classes.*

TABC Management Response: Agree. Management will implement where appropriate. In some cases MAP training is part of a settlement, in which case there may only be one student per class.

Status: ***Not Implemented.***
Management and staff have concluded that establishing minimum class sizes for MAP grant training sessions is, in instances, not possible and may not be necessary. MAP training may be part of a settlement of an administrative case and there may be a time limit as to when the respondent can take the training, in which case there may only be one student in the class and a required minimum class size is not possible.

A minimum class size may not be necessary because the agents have inherent motivation to provide training to as many participants as reasonable at a time, which negates the need for minimum class sizes. The grant requires a specified number of participants to be trained and there is a limit on the amount of overtime that can be paid to trainers under the grant terms. If the trainers fall behind on the required number of trainees and overtime funds are exhausted, the trainers will have to provide training without receiving the benefit of overtime pay.

Management also questions the necessity of trying to establish minimum class sizes because the MAP grant funding ends at the end of the current fiscal year and future MAP grant funds are not anticipated. Although not implemented, internal audit considers this issue resolved.

Recommendation 9: *The Business Services Division and the Education and Prevention Division should identify all employees who should be involved in the grant development and grant award process so that the oversight and reporting responsibilities and needs of each division are clearly identified at the grant inception.*

TABC Management Response: Agree; monthly meetings have been implemented with all appropriate employees. The meetings are held the third Thursday of every month with the initial meeting held in March 2008. Completed/Ongoing.

Status: ***Fully Implemented.***
The Business Services Division and the Seller Training, Education, and Grants Section of the Tax Division have a regularly scheduled monthly meeting that is supported by formal policy and held if there is a need. The meeting participants include Education and

Prevention staff and Business Services staff. The meetings are designed, as stated in policy, to ensure that all personnel are aware of the new grant and requirements at the grant development stage and to ensure all personnel are aware of the status of the grants and to address any changes or to discuss any issues.

Recommendation 10: *The research specialist should develop a system to document project requests and the approval of those projects by the division director when the request is completed by the research specialist. Dates of receipt, completion and approval should be included in the process. Routine requests not requiring division director approval should be identified and excluded from this tracking system.*

TABC Management Response: Agree, will implement an approval checklist and tracking list. Target completion date September 2008.

Status: ***Fully Implemented.***
Policies and procedures have been developed to sufficiently document project requests and the approval of those projects by the division director when the request is completed by the research specialist. A research tracking form is also in place that documents the nature and purpose of the requests and the requestor and supervisory approval for the research specialist to respond to the request.

Recommendation 11: *The education specialist should develop a system to document approval of projects by the division director and public information officer when new training materials are completed or revised.*

TABC Management Response: Agree. Target completion date September 2008.

Status: ***Fully Implemented.***
Policies and procedures have been developed to document approval of projects by the division director and public information officer when new training materials are completed or revised. The procedures require the assistant director, director and public information officer approve the draft of training materials and the Assistant Director to approve the final product. The policies and procedures include a PI&E (Public Information and Education) form that was developed to track the approval process.

Recommendation 12: *The Education and Prevention Division should establish a plan with timelines for completing prioritized program training needs of the division and the agency. Formalizing a plan should identify the actions and resources needed to develop curriculum guides and lesson plans and conduct program evaluations for each training program that is developed.*

TABC Management Response: Agree. Target completion date September 2008.

Status: ***Incomplete/Ongoing.***

A formalized plan was never developed for the creation of curriculum guides, lesson plans and the conduct of program evaluations of the Education and Prevention Division' programs; although the related activities were completed, many of them at the time of the audit. The Director of the Division reports that formal plans will be developed for the grants applied for in February 2009 if they are awarded. Although not implemented, internal audit considers this issue resolved.

Recommendation 13: *The annual report regarding program evaluation should be completed each year as a documented means of assessing the overall effectiveness of the training programs that are developed and implemented by the Education and Prevention Division.*

TABC Management Response: Agree. Will ensure annual reports are prepared as required. Ongoing.

Status: ***Fully Implemented.***
The annual report program evaluations have been completed for the most recent program year (2008) for each of the Seller Training, Education, and Grants Section of the Tax Division's programs that are developed and implemented by the division as a documented means of assessing the overall effectiveness of the training programs.

Recommendation 14: *The Proofs Tracking system should include information about the quantities of materials received in the division office, quantities distributed to each of the five regions and the number of copies submitted to the Texas State Library and Archives as required by state law. This would document each product from inception of the idea to delivery of the products to the public. Retaining this information might also provide information necessary to analyze what products are effective in the various regions and would provide a history of the division's marketing activities from year to year.*

TABC Management Response: Agree. Target completion date September 2008.

Status: ***Not Implemented.***
While documentation is maintained regarding the quantities of materials received in the Division office and the quantities distributed to each of the five regions, the Division has not been submitting copies to the Texas State Library and Archives as required by the Texas Administrative Code §3.2, *Standard Requirements for State Publications in All Formats.* The Division Director believes that TABC may be exempt from the requirements under TAC §3.7, *Special Exemptions.* A legal interpretation has been requested from the Deputy General Counsel.

Recommendation 15: *Education and Prevention should establish acceptable percentages for deciding when the result of a survey question is acceptable and when the result of a survey question indicates a change or deletion to the survey question should be made.*

TABC Management Response: At the present time, the section does not have the resources or expertise. An assessment to identify resources will be conducted. Target completion date January 2009.

Status: ***Not Implemented.***
Although management recognizes the value of establishing acceptable percentages for deciding when the result of a survey question is acceptable and when the result of a survey question indicates a change or deletion to the survey question should be made, management has not implemented the practice because it believes there are inherent limitations to the survey process that need to be addressed.

Management believes it is inherently difficult to obtain honest responses in instances where the training classes are presented by law enforcement officers who are requesting evaluations of trainees who are not voluntarily participating but are in attendance because of administrative requirements or sanctions.

Management conducted a test with a series of survey questions where each question was rated from 1 to 3, with the rating 3 generally being a positive response. On occasion, the survey questions were designed where the positive response rating was 1 rather than 3. However, a great majority of participates rated all survey questions as a 3, the presumptive positive response, even in instances where the rating 1 was the positive response. Accordingly, management concluded the survey responses from their trainees were not reliable. Management believes reliable responses from traditional survey tools are unlikely in these training situations.
Management continues to investigate evaluation input tools that will provide reasonable results and, in the meantime, has moved from surveying trainee participants to soliciting input from the officers providing the training.

Although not implemented, internal audit considers this issue resolved.

Recommendation 16: *The Education and Prevention Procedures Manual should be updated to reflect all current practices.*

TABC Management Response: Agree. Target completion date January 2009.

Status: ***Fully Implemented.***
The most recent update and revision of the Education and Prevention Manual was completed in February 2009. The Manual appears to address significant aspects of the activities of the Seller Training, Education, and Grants Section of the Tax Division and the Director and Assistant Director of the Tax Division report that the manual accurately reflects the current practices of the section.

As Approved by the Commissioners on
April 30, 2008

Recommendation 1: *The TABC should continue its efforts to seek changes necessary to update and clarify the Alcoholic Beverage Code. While this is a daunting task, relations between the industry and TABC seem to have improved greatly in recent years on marketing practices matters. This presents an opportunity to work with the industry to close some of the holes and broad definitions currently affecting the market practices provisions of the Code.*

TABC Management Response: The agency is prohibited from lobbying for legislative changes to the Alcoholic Beverage Code. However we will continue to enhance communication with the industry by availing ourselves to open dialogue to discuss modernization of laws and regulations with industry practices. Where applicable we will utilize our broad rulemaking authority to address public safety initiatives and industry concerns.

Status: ***Incomplete/Ongoing.***
TABC properly asserts that it is prohibited from lobbying for legislative changes to the Alcoholic Beverage Code; however, the probation does not extend to providing public information or providing information responsive to a legislative request.

TABC continues communication with the industry by issuing Marketing Practices Bulletins (MPBs) that are designed to clarify ambiguity of statues or rules and to identify rules that may need to be proposed and adopted. Two MPBs have been issued since the release of the internal audit; MPB026, *Charitable, Religious or Civic Organizations Serving Alcoholic Beverages at Fund Raising Events,* and MPB027, *Refunds, Credits or Exchanges.*

The agency also recognizes its broad rulemaking authority to address public safety initiatives and industry concerns. TABC has proposed one marketing related rule since the release of the internal audit. TABC filed a proposal in January 2009 for the repeal and replacement of TAC §45.121, *Delinquent List.* The rule relates to credit law violations by retailers, wholesalers and distributors. The proposed section, which will replace the repealed section, reorganizes the content of the existing rule and updates the text of the rule to a plan language standard and equalizes the duties of seller and retailers for avoiding credit law violations.

TABC periodically sends information to the industry members on their mailing list as necessary to clarify ambiguous issues. For example, in March 2009, a letter was emailed to the agency's industry members email list regarding the legality of signage referred to as

cooler wraps, which is a term used to describe certain signage provided by upper-tier members to retailers for in-store advertising. A follow-up meeting was conducted with industry members in early April 2009 to address industry members' questions and concerns regarding the cooler wrap letter and related issues.

Recommendation 2: *TABC Marketing Bulletins should be reviewed every few years and a determination made regarding whether one or more of the Bulletins should be codified into the TABC rules.*

TABC Management Response: We concur. We will establish a procedure to review Marketing Practices Bulletins each legislative year to determine codification into TABC Rules.

Status: ***Incomplete/Ongoing.***
TABC has developed formal policies and procedures regarding the review of marketing practices, *Marketing Practices Policy Decisions,* effective 12-15-08, which requires that policy decisions be reviewed every two years to determine if they should be adopted into administrative rule, modified or eliminated in accordance with the mission of the agency. The first planned review of marketing practices policy decisions using the recently developed policies and procedures is after the 81st Legislature that concludes June 1, 2009, which will enable consideration of any changes to relevant law during the session.

Recommendation 3: *Current TABC Rules' 45.106 and 45.117 should be reviewed in the near future to determine if there are any changes that can be made to better regulate game promotions and the gifts which manufacturers and distributors are giving retailers and consumers of alcoholic beverages. Because of the creativeness and frequent changes in the promotions associated with these rules sections, a review of these rules should be conducted annually.*

TABC Management Response: TABC Rule 45.106 was revised February 2006 in accordance with Legislative Amendments relating to sweepstakes contests. We will implement a procedure to review these rules annually to ensure the provisions are effective.

Status: ***Incomplete/Ongoing.***
The intent of the formal policies and procedures regarding the review of marketing practices referred to in the status section of Recommendation 2 above is to gather input from a diverse group of representative of the alcoholic beverage industry for the Marketing Practices Policy Committing, a committee of appropriate TABC senior level staff, to consider for the purposes of the Committee recommending and approving Marketing Practices Bulletins to further clarify ambiguity of statutes or rules and to identify rules that may need to be proposed and adopted to clarify provisions and statutes.

As discussed at Recommendation 2 above, the first planned review of marketing practices policy decisions using the recently developed policies and procedures is after the 81st Legislature that concludes June 1, 2009, which will enable consideration of any changes to relevant law during the session.

Internal Audit of the Protest Process

As Approved by the Commissioners on
May 23, 2008

Recommendation 1: *The errors and unclear portions of the current website and brochure on protests should be corrected. A decision should be made and followed as to whether a sworn statement or only a written statement must be submitted and the criteria for what constitutes an actionable protest (that is, one that will be accepted for investigation and otherwise acted upon by the TABC) should be clearly defined and followed.*

TABC Management Response: A new Protest Policy has been drafted that addresses each of these issues. Once the policy is approved and implemented, the website will be updated with the new protest form and instructions. This is expected to be fully implemented by August 31, 2008.

Status: ***Fully Implemented***
The TABC Licensing page on its website has a link to the Protest Process, Policy and Form. The link provides information to interested persons regarding the policy, process, form, and directions to object to the issuance of an alcoholic beverage license or permit based upon legal grounds established under the Texas Alcoholic Beverage Code or other law. The protest form provides a means to object to TABC issuing or renewing a permit to sell alcoholic beverages based on a written statement of the protestant and provides a listing of the grounds or criteria for protest.

Recommendation 2: *The procedures, processes and guidelines relating to receipt of a protest and the initiation of an investigation should be documented, with the roles, responsibilities and timelines for each division clearly stated.*

TABC Management Response: The new Protest Policy that has been drafted addresses each of these issues. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***
The TABC Application Protest Policy, effective 12-15-08, includes a section regarding the filing and receiving of a protest that documents the agency's procedures relating to the

receipt of a protest. The policy includes a section regarding the roles and responsibilities of the protestant, the applicant and agency staff. The policy also includes a section regarding the initiation of investigation that includes documentation standards and a further discussion of the roles, responsibilities and timelines for each division.

Recommendation 3: *Written procedures should be developed by the Enforcement Division addressing how protest investigations are to be conducted. The procedures should set the parameters for conducting protest investigations without overly restricting the field agents' investigative methods. Specific issues that should be addressed in the procedures are:*

- *the scope of the investigation (either narrowly focused only on the protest issue or more broad based);*
- *how and whether protest investigations involving nuisance issues will be performed;*
- *how TABC will handle the distance issue in protest investigations; and*
- *when agents are to commence a protest investigation in cases where the protest is received well before the license or permit renewal date.*

TABC Management Response: The new Protest Policy that has been drafted addresses the first three issues. It is expected that the new policy will be finalized and approved by May 31, 2008. The fourth bullet will be addressed in a subsequent project which will establish procedures by which the agency will determine when it should file a protest to the application. This project, headed by the TABC assistant administrator, will begin mid June 2008 with an expected completion date of August 31, 2008.

Status: ***Fully Implemented.***
TABC has developed and implemented the Application Protest Policy, effective December 15, 2008, that includes the agency's protest policies, procedures and standard forms for processing a protest, including how protest investigations are to be conducted and the parameters for conducting protest investigations. General protest information and links to the agency policy have been established on the TABC website.

Recommendation 4: *The process used by the Legal Division in deciding the sufficiency of protests and the investigation reports accompanying them should be fully documented. This includes defining the term protest, establishing procedures for performing the legal review and establishing criteria for determining whether to join the protest as an adverse party to the application or merely facilitating the protest process.*

TABC Management Response: The new Protest Policy that has been drafted addresses each of these issues. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***

The Application Protest Policy, effective December 15, 2008, requires the Legal Division's assigned attorney to agree with an investigator's conclusion that there are insufficient legal grounds to warrant a full investigation. In instances where the investigator concludes there are sufficient legal grounds to warrant a full investigation, the investigator concludes the investigation and prepares the protest investigation report. The content of the report is specified in the policy. The policy also specifies that after review of the report and consultation with the protestant, the reviewing attorney will determine if there is sufficient evidence from which a reasonable person could conclude that legal grounds exist to deny the application.

The policy defines the term protest, provides for the procedures for performing the legal review and specifies the criteria for determining whether the Commission serves as a facilitator and information resource for the judge and parties of a protest or as an advocate in opposition to the application.

Recommendation 5: *TABC should consider changing the timing of when Legal determines if sufficient facts are stated in a citizen protest to warrant investigating it. Moving the review of the written protest materials to a point prior to conducting an investigation may provide the means for making a "sufficiency" call before a significant effort is expended in investigation and delayed processing.*

TABC Management Response: The new Protest Policy that has been drafted addresses this issue. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***
TABC considered the audit recommendation by conducting a pilot project to assess the value of the assigned attorney conducting a legal review of the written protest materials prior to conducting an investigation. The results of the pilot project indicate that the assigned attorney agreed with recommendation of the investigator a great majority of the time and that transferring the protest material to legal for a review of the initial inquiry prior to a full investigation created unnecessary delays. Accordingly, the agency does not plan to implement a legal review of the written protest materials prior to a protest investigation.

Recommendation 6: *TABC should determine whether nuisance-based protests could be processed in a different manner than other types of citizen protests. A system that allows the protestant to have its say before the decision maker, without significantly encumbering the protest process would be ideal.*

TABC Management Response: The new Protest Policy that has been drafted addresses this issue. Nuisance-based protests will be treated as any protest and adhere to the policy

guidelines. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***
TABC management has concluded that nuisance-based protests will be treated as any protest. Policies and procedures require that the investigator conduct an initial inquiry to determine if sufficient object basis for the protest exist to warrant a full investigation. The protestant has an opportunity to provide input regarding his, her or their concern at during the initial inquiry.

The TABC website also makes suggestions regarding resolution of a "nuisance" issue between the applicant and a protestant by suggesting, as an example, "... an applicant may agree to put up a privacy fence between properties or insulate the building to cut down on noise."

Recommendation 7: *The Legal Division should develop guidelines or criteria to determine when legal representation should be available at protest hearings held by county judges.*

TABC Management Response: The new Protest Policy that has been drafted addresses this issue. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***
The Application Protest Policy, effective December 15, 2008, states, "In all contested cases initiated because of a protest filed with the Commission, an attorney representing the Commission will attend the hearing and all proceedings related to the case unless excused from attendance by the administrative law judge or the general counsel."

Recommendation 8: *Licensing and Compliance should develop written processing procedures for inclusion in their processing manuals covering all aspects of processing related to protest cases. As a start, the written processes for placing holds, passing protested applications to Legal and lifting holds (when completed), should be appended to the Licensing Manual. Compliance procedures should clearly establish the point at and criteria for transferring investigations from Compliance to Enforcement.*

TABC Management Response: These issues will be addressed in a procedure separate from the Protest Policy. Procedures will be written to instruct staff on reporting and tracking protests using ARTS, the Agency Reporting and Tracking System. "Holds" will be placed on applications via ARTS. Referrals of protests are documented in the filing and receiving section of the policy. Target completion date for the ARTS component to be fully implemented is August 2008.

Status: ***Fully Implemented.***
The protest policies and procedures are documented in the Application Protest Policy and the Protest Reporting and Tracking Procedures, Automated Report Tracking System (ARTS) Protest Manual, Version 2, April 2009. The policies and procedures cover roles and responsibilities of various TABC positions and offices, including the office that receives the protest, the Licensing Division Director, the Field Operations Chief, the Compliance Regional Supervisor, the Enforcement Regional Captain, and the investigator, as well as the applicant and the protestant. The policies and procedures cover the significant aspects of processing protest cases, including the processes for placing and lifting halts on a location and the license or permit number, and for passing protested applications to Legal.

The Compliance and Enforcement Divisions are currently organized under Field Operations and report to the Chief of Field Operations. The office receiving a protest will refer the protest to the regional captain or his/her designee for processing the protest. The regional caption captain assigns the investigation to either a compliance or enforcement investigator depending of the necessary skill sets and qualifications of staff available to conduct the investigation.

Recommendation 9: *Criteria should be developed to determine how and when a protest can be generated internally by a TABC staff member. In developing these procedures and guidelines, the role of the Licensing Division investigator should be examined to see if the protests he initiates are causing a timing problem in cases where a protest has already been initiated.*

TABC Management Response: The new Protest Policy that has been drafted addresses the first issue. It is expected that the new policy will be finalized and approved by May 31, 2008. The second issue involving the Licensing Division investigator will be addressed in a subsequent project which will establish procedures by which the agency will determine when it should file a protest to the application. This project, headed by the TABC assistant administrator, will begin mid June 2008 with an expected completion date of August 31, 2008.

Status: ***Not Implemented.***
The recommendation is no longer applicable. The Licensing Division investigator has been transferred to Enforcement and, accordingly, the timing of filing of protest is no longer an issue.

Although not implemented, internal audit considers this issue resolved.

Recommendation 10: *The current ad hoc internal communications process dealing with protests should be documented in written internal policies and procedures for each of the operational divisions. Written guidelines should be developed to ensure that investigation reports do not contain substantive recommendations about how to treat a*

protest. These guidelines should also attempt to give investigators guidance on how to communicate the status of a protest investigation without revealing results and predictions on what will ultimately happen to the protest.

TABC Management Response: The new Protest Policy that has been drafted addresses communications issues. It is expected that the new policy will be finalized and approved by May 31, 2008. Field Operations has established guidelines currently for investigative report writing.

Status: ***Fully Implemented.***
Clear roles and responsibilities have been established in the Application Protest Policy. Responsibilities have been assigned insuring all data entry to Automated Report Tracking System (ARTS) is made to allow efficient processing and accurate status reporting. The Protest Reporting and Tracking Procedures, ARTS Protest Manual, Version 2, released April 2009, documents the procedures for updating the status of a protest as it progresses through if various stages of processing. ARTS provides for standardized status categories by means of drop-down menu selections.

The Application Protest Policy provides for the required content of the protest investigation report and for a review and approval of the report by the district captain or his/her designee as well as a review by the agency attorney assigned to the protest. Legal staff of the agency's general counsel's office is responsible for communicating and explaining the disposition of the protest in writing to the protestant and applicant.

These policies and procedures provide reasonable assurance that communications regarding the protest process are occurring as intended by management. The policies and procedures provide reasonable assurance that investigation reports do not contain information not called for or required by the reporting standards. Additionally, ARTS provides standardized status categories for the progress of a protest that investigators can use in their dealings with protestants, applicants and others interested in the status of a protest.

Recommendation 11: *Guidelines need to be developed to ensure that external communications of ultimate decisions on protests come from one source. Since Legal is at the end of the join/not join decision, accountability and responsibility for that communication should be there.*

TABC Management Response: The new Protest Policy that has been drafted addresses this issue. It is expected that the new policy will be finalized and approved by May 31, 2008.

Status: ***Fully Implemented.***

The Application Protest Policy, effective December 15, 2008, establishes the legal staff of the agency's general counsel's office as being responsible for external communications of ultimate decisions on protests.

Recommendation 12: *The Legal Division should develop administrative rules governing the filing and processing of protests. This is clearly authorized, and, in fact, encouraged, by the statute.*

TABC Management Response: After implementation of the internal protest policy, notice and comment rules will be developed to establish the rights of protestants in contested hearing cases. Target date for completion is October 31, 2008.

Status: ***Incomplete/Ongoing.***
The TABC General Counsel believes the adoption of rules governing the filing and processing of protests should be undertaken as the need is identified. General Counsel believes any protest rules adopted should institutionalize the agency's best practices under its Application Protest Policy, which became effective December 15, 2008. However, the agency has not had sufficient experience using the policy to thoroughly identify best practices that can serve as a basis for proposed rules.

Internal Audit of the Executive Office

As Approved by the Commissioners on
May 23, 2008

Recommendation 1: *The General Counsel in conjunction with Human Resources should develop a written job description for the new position of Director, Policy and Planning.*

TABC Management Response: Management concurs and will have the job description written and listed on the job description website by May 30, 2008.

Status: ***Fully Implemented.***
A job description for the Director of Policy and Planning has been developed.

Recommendation 2: *The Administrator and Assistant Administrators should complete all employee evaluations within reasonable proximity to the employee's annual evaluation due date.*

TABC Management Response: The Administrator and Assistant Administrators concur and are taking steps to immediately complete any overdue evaluations and will ensure all future evaluations are completed within a month of the evaluation due date.

Status: ***Incomplete/Ongoing.***
As of April 1, 2009, the Administrator and Assistant Administrators had seven evaluations ranging from approximately two to six months past due. However, effective the same date, April 1, 2009, the agency ceased to perform annual evaluations based upon the anniversary of the employee's date of hire. The annual performance evaluations are now conducted January 1st through January 31st of each year for all agency employees hired prior to July 1st of the preceding year. Additionally, supervisors have the option of completing evaluations that were due prior to April 1, or waiting until January to complete the employee's evaluation. Since this is an ongoing activity, internal audit considers this issue resolved.

****

Attachment 3

Legislative Update

81st Legislative Session Update

May 19, 2009

TABC Commission Meeting

81st Legislative Session

- 7,913 bills filed – as recently as May 8th
- 580 bills tracked by TABC
- 151 are alcohol-related
  - DWI / Sobriety Checkpoints – 41
  - TABC Licensing Issues – 30
  - Local Option Elections – 6
  - Other – 74

Other Aspects of TABC

- CPOs / Law Enforcement – 94
- HR / Training - 63
- General Government – 41
- BSD / Purchasing / Fiscal – 36
- Open Records / Meetings – 33
- Information Technology – 10
- Grants – 1
- Ports of Entry – 1

Related Issues

- Gambling – 40
- Guns and Weapons – 31
- Sexually Oriented Businesses – 21
- Traffic Laws – 21
- Driver's Licenses / ID's – 14
- Human Trafficking – 13
- Cigarettes / Tobacco – 11
- Emergency / Disaster – 6
- Drugs / Controlled Substances – 3

Status of Tracked Bills

As of 5pm Sunday, May 17, 2009

- 251 Passed from Originating Committee
- 149 Passed First House
- 17 Passed Second House
- 10 Sent to the Governor
- 3 Signed by Governor
- 2 Went into Effect Immediately

Bills Signed by Governor

(effective date)

- HB1974 allows free samples at distilleries (5/13/09) Hamilton
- HB2594 extends hours of delivery for wholesalers and distributors (5/5/09) Thompson
- SB731 allows wholesalers to sell ale and malt liquor to private clubs (9/1/09) Mike Jackson

Awaiting Governor's Signature
(effective date)

- HB2560 prohibits a retailer on the D-list from voluntarily canceling, voluntarily suspending, renewing or transferring their permit. A retailer can't obtain a new permit if a previous permit was cancelled or expired and is on D-list. (upon signature) Kuempel
- HB1282 makes theft of a driver's license or ID a class B misdemeanor (the same as theft of $50-$500). (9/1/09) McClendon

Awaiting Governor's Signature
(effective date)

- SB687 entitles state CPO's to Injury Leave, if injured during the course of carrying out his/her duties and due to the nature of those duties. Hegar
- Unless the officer's gross negligence contributed to the injuries or the injury was related to routine office duties.
- Current law provices Injury Leave only if assaulted.
- (9/1/09 for injuries sustained after 1/1/09)

Awaiting Governor's Signature
(effective date)

- SB872 relates to continued health insurance coverage by the spouse and children of CPOs killed in the line of duty. (upon signature) Lucio
- SB2225 creates offense of firearm smuggling and makes it a third degree felony. (9/1/09) Carona
- SB1071 makes income, salary, benefits and bonuses received by employees and trustees of public employee retirement system subject to disclosure under the PIA. (upon signature) Wentworth
- SB1969 is 459 pages of non-substantive changes to various Codes (9/1/09) West

Passed Both Houses

- HB1505 exempts facility owned by a city or county from independent concessionaire requirements and allows a facility to enter into financial arrangements with concessionaires without violating subterfuge ownership prohibitions. Ortiz
- HB2104 Beer Industry Fair Dealings Law Goren
- HB3413 regulates the sale of glassware by wholesalers and distributors, and non-alcoholic beverages by distributors. Thompson
- SB2298 relates to state employees being paid for comp time during a disaster; earning comp time from home; receiving merit pay for performance during a disaster. Watson

Passed out of House
*Also Passed out of Senate Committee

- HB206 Regulating BYOB Clubs Jim Jackson
- HB617 Possession of Alcohol in a Dry Area Berlanga
- HB1084 Wine Shipping* Truitt
- HB1161 Distance Requirements* Goren
- HB1485 Performance Assessments Pitts
- HB1623 Exemption from Bond Requirements Hernandez
- HB2097 Use of State Vehicles Hodge
- HB2237 Possession of AB for Cooking* Hamilton
- HB2757 Culpable Mental State Truitt
- HB3181 Injunctive Relief Thompson
- HB3829 Commissioners Per Diem Thompson
- HB3489 Suspension of Permits Quintanilla
- HB3850 Importation of Alcoholic Beverages Thompson
- HB4498 Local Option Elections Hamilton

Passed out of Senate
*Also Passed out of House Committee

- SB89 Human Trafficking Task Force* Van de Putte
- SB711 Creating Winery Festival Permit* Nelson
- SB529 Texas Wineries and Fruit Brandies* Nelson
- SB538 Wineries Selling to Consumers* Nelson
- SB693 Sale to Minors / Passports and Military ID's* Van de Putte
- SB709 Adds employment of a minor in an SOB, human trafficking and sexual performance by a child to acts that constitute a common nuisance Lucio
- SB1120 Reports on Racial Profiling West
- SB2341 Leave Premises with Open Container* Averitt
- SB2523 Wine and Corkage Fees Williams
- SB2558 Malt Beverage Product Instruction Events Gallegos
- SB2580 Beer Industry Fair Dealing Law Lucio

Passed out of Committee

- HB3732 Physical Fitness Standards Gallego
- HB2105 Regulating Licensing Agencies Geren
- HB1175 Local Option Elections Called by City that Annexed Property Susan King
- HB2094 Brewers and Manufacturers Selling to Tour Participants Farrar
- HB2598 Allowing Cities to Collect $750/year fee from MB's During 1st 3 Yrs Thompson
- HB2720 Liability for Selling/Serving AB to Minors Donna Howard

Left Pending in Committee

Could still end up attached to another bill.

- HB1933 / SB1216 Ownership Restrictions for Package Stores Thompson/Ellis
- HB2096 Keg Registration Bigger
- HB3331 Requiring Liquor Liability Insurance Pierson
- HB815 / SB557 / HB863 Sunday Sales Gonzales / Hinojosa / Gutierrez
- HB1062 / SB754 Sales by Breweries to Consumers Burnam / Davis
- HB2195 Suspending Wholesalers for Non-Payment to Upper Tier Truitt
- SB1220 Local Distributors in Other Counties Shapiro
- SB1333 Wineries Selling Malt Beverages Nelson
- SB2268 Certification Errors Gallegos

What's Next?

- June 1, 2009 – Last Day of the Session
- June 21, 2009 – Governor's Last Day to Sign or Veto Bills
- July 20-22, 2009 – Administrator's Conference
  - Budget Presentation for Employees
  - Legislative Update for Staff and Industry/Community
  - In-depth Legislative Implementation Discussions on Specific Topics for Employees
- September 1, 2009 – Many Bills Become Effective
- October 2009 – Survey of Org Excellence
- January 2010 – Strategic Planning Begins

Summer 2009

- Issue Newsletter to Update Permittees
- Administrator's Conference
- Update Website
- Update AB Code
- Update Peace Officer's Guide
- Update Licensing Publications
- Begin Drafting Rules
- Develop Policies and Procedures
- Train Employees

Attachment 4

National Conference of State Liquor Administrators Best Practices Award--Community Collaboration-Government Agency

TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

Underage Drinking / Over-Consumption Deterrence Program

STATE POLICE

United States Air Force

May 19, 2009

TABC

TABC and Goodfellow AFB

- Sgt. Steven Carnes, Abilene District Office
- Captain Hank Blanchard, Region 1
- Lt. Randy Motz, Abilene District Office
- Agent Shuddell Lindsey, San Angelo Outpost
- Paul Buckingham, Sexual Assault Response Coordinator, Goodfellow AFB
- Col. Richard Ayres, Wing Commander Goodfellow AFB
- Chris Lee, Manager, Graham Central Station

May 19, 2009

TABC

San Angelo, Texas

- TABC Region 1, Abilene District, Tom Green County
- Population 90,000
- San Angelo is home to an Outpost office with three agents.
- San Angelo Outpost conducts licensing activities as well as enforcement
- Goodfellow Air Force Base
- Angelo State University

May 19, 2009

TABC

Goodfellow Air Force Base

- Team Goodfellow
  - home to the 17th Training Wing
  - includes three groups
  - nearly a dozen specialized staff agencies
  - 17 squadrons as well as an Army battalion
  - Navy and Marine Corps training detachments
- Total of 5,000 troops and civilians

May 19, 2009

TABC

Challenges

- Large numbers of young military personnel leave the base and go into San Angelo.
- Local merchants want their business.
- Permitted locations are very popular.
- Many personnel arrive in vans with large groups.
- Many personnel are underage; almost everyone is under 24.
- Bars offer military nights and discounts.

May 19, 2009

TABC

Problems

- Incidents involving military personnel skyrocketed in 2007.
- Graham Central Station began showing concern regarding number of military personnel being asked to leave or arrested by peace officers working security.

May 19, 2009 TABC

Problems

- Servicemen and women were getting arrested for public intoxication at a high rate.
- Many of these personnel are on their first assignment from home and unfamiliar with Texas laws.
- San Angelo PD informed TABC of a high number of incidents involving military personnel.

May 19, 2009 TABC

The First Step

- Sgt. Carnes and Paul Buckingham met in martial arts.
- Goodfellow AFB sexual assault investigator
- Most investigations involved some type of alcohol abuse.
- Paul initiated a meeting with Col. Ayres, Goodfellow Wing Commander.

May 19, 2009 TABC

Information-Sharing

- Met with the Colonel and his staff.
- The command staff were very interested in curbing underage drinking and over-consumption by base personnel.
- TABC informed staff of how many incidents were actually taking place at clubs as opposed to what the command staff knew about.

May 19, 2009 TABC

Discussions Continue

- Arranged meetings with high-ranking command staff on base:
  - JAG officer
  - commanders of the three other branches
  - head of security forces
- Other law enforcement agencies were brought in as the meetings progressed.
- Club owners began to attend meetings.

May 19, 2009 TABC

Bar Manager Takes Lead

- Graham Central Station took the lead.
- Manager Chris Lee was very involved in helping solve the problem and showing that he did care about military personnel and the community.
- Graham instituted the first part of the new program at their San Angelo location, which involved documenting certain activities.

May 19, 2009 TABC

Base Institutes On-Call Program

- Supervisory staff ready to respond to any incident where law enforcement or the bar requested assistance.
- The requests go through the Law Enforcement desk at the base and are documented.
- Supervisors respond to ANY branch of the military and take custody of them if released and get them safely back to their commanders.

May 19, 2009 TABC

Personnel Held Accountable

- Base commanders take appropriate action with personnel including demotion, pay decrease, confinement to base and physical punishments.
- The base created a form and distributed it to the bar owners which documented behavioral problems by their personnel and could be faxed to the Wing.

May 19, 2009 TABC

On-Going Training

- Weekly training scheduled for new recruits assigned to the base.
- Trained 1,500 new airmen with the knowledge to stay out of trouble.
- Promote the good qualities of San Angelo, TABC and local law enforcement agencies during these classes.

May 19, 2009 TABC

Proven Results

- Not only did reported number of underage alcohol violations decrease year to year, the actual contacts in the field have dropped significantly.

May 19, 2009 TABC

Fewer Incidents

- From 2006 to 2007 when the program initiated, underage drinking violations reported on base were reduced by about **24%.**
- From 2007 to 2008 the violations dropped another **30%.**
- Since the program began, the incidents involving underage military personnel has dropped **54%** since 2006.

May 19, 2009 TABC

Additional Benefits

- Developed a strong bond between TABC and Goodfellow AFB.
- Cooperation at this level is *unprecedented* in San Angelo.
- Goodfellow AFB has shown a tight bond with community by encouraging personnel to patronize local businesses without violating the law or causing problems.

May 19, 2009 TABC

The Future

- Quarterly meetings keep all parties informed of how the program is working and how to continually make it better.
- Keep Col. Ayres and his command informed and seek their cooperation.
- Further the mission and the vision of TABC while collaborating with the community, the military and local law enforcement.

May 19, 2009 TABC

The Next Steps

- New base commander coming this summer. We hope for continued support.
- Continue to integrate new personnel and new retailers to the program.
- Actively trying to bring the other branches on base to the weekly training.
- TABC now in the running for a $950,000 federal grant to be used in the San Angelo area.

May 19, 2009 TABC

In Summary

- Create a partnership with the US Military that benefits servicemen and women and the community.
- Help protect young military personnel from making poor and uninformed decisions.
- Help bars conduct successful businesses and offer safe environments.
- Help give permittees and licensees ownership in the process, not just law enforcement.

May 19, 2009 TABC

Thank You!

TABC
TEXAS ALCOHOLIC BEVERAGE COMMISSION
service ★ courtesy ★ integrity ★ accountability

San Angelo Outpost
Abilene District Office
Texas Alcoholic Beverage Commission

May 19, 2009 TABC

Attachment 5

Adoption of Proposed Repeal of Rule §45.121, Delinquent List

Legal Division

Repealed & Proposed Rule

Withdrawn Repeal

Proposed Repeal of §45.121 –Delinquent List--published January 30, 2009.

- Withdrawn by operation of law if not adopted, adopt as amended or withdrawn within six months from proposal. Government Code §2001.027
- NO JUNE COMMISSION MEETING.

Withdrawn Adoption

Proposed Adoption of new §45.121 –Credit Restrictions and Delinquent List for Liquor--published January 30, 2009.

Goals for new Rule:

- Sunset Mandate—TABC shall implement technology solutions to improve performance—internet interactivity (§5.59).
- Eliminate Paper processes and evidence.
- Higher/better use of human resources.

Outstanding Issues at time of Proposed Rule Publication

- Unknown whether and when web-based reporting would be feasible/implemented.
- D-List publication/effective dates not changed to reflect elimination of paper/mail/paper evidence and bank records.
- Multiple or repeat violations not defined/refined

Revised §45.121 Credit Restrictions and Delinquent List for Liquor

Added Definitions:

- Event--One bad payment to Retailer that results in one or more delinquent payments to Seller(s)—cascading effect.
- Incident—single delinquent payment—no cascading effect.

Revised §45.121 Credit Restrictions and Delinquent List for Liquor

Web-based reporting—Mission Accomplished!

- Build it and they *WILL* come: Web-based reporting required.
- Exception: No access to web:
  - Request for paper submission
  - Contract to outsource web-based reporting

Revised §45.121 Credit Restrictions and Delinquent List for Liquor

Penalty for violation.

- The commission may consider whether the repeat violations are the result of an event or incident when initiating an action under this subsection

Revised §45.121 Credit Restrictions and Delinquent List for Liquor

Revised Rule now accurately reflects Code

§102.32(c):

- Sales from 1st to 15th day of month paid on or before 25th day of same month.
- Sales from 16th to last day of month on or before 10th of following month.

§102.32(d):

- Immediate reporting.
- Delinquent when not paid when required by (c)

No paper/no mail/no delays in processing

Implementation and Training Opportunities

Anticipated Final Adoption: July 28 Commission meeting

- Web-based testing;
- Industry training;
- Exception approvals:

Now through August

Please submit written comments to revised rule to:

Joan Carol Bates,
Deputy General Counsel

Joan.Bates@tabc.state.tx.us
P.O. Box 13127, Austin, TX 78711

CURRENT RULE – REPEAL - FOR ADOPTION

§45.121. Delinquent List.

(a) Any package store permittee, wine only package store permittee, private club permittee, mixed beverage permittee, or other retailer who has not fully paid for alcoholic beverages purchased from any wholesaler, class B wholesaler, winery, wine bottler, or local distributor in accordance with §102.32 of the Alcoholic Beverage Code shall be deemed delinquent.

(b) Each delivery of alcoholic beverages by a wholesaler, class B wholesaler, winery, wine bottler, or local distributor to a package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer shall be accompanied by an invoice of sale bearing the name of the retailer together with a full description of the alcoholic beverages delivered, the price and terms of sale, and the place and date of actual delivery. One copy of such invoice shall be signed by the retailer or his agent, showing receipt of the merchandise, and shall be retained by the seller. The other copy shall be retained by the retailer.

(c) It shall be the duty of each wholesaler, class B wholesaler, winery, wine bottler, or local distributor to report all delinquencies to the administrator in writing within two business days after such delinquencies occur. Such reports set forth the name, address, and permit number of the package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer in default, the date of sale and delivery of such alcoholic beverages on account of which report is made, the amount in dollars and cents of such delinquency, and the name, address, and permit number of the permittee reporting. In a like manner, the wholesaler, class B wholesaler, winery, wine bottler, or local distributor shall report when payment in full has been made of any account previously reported delinquent.

(d) In the event any package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer shall pay on his account with any wholesaler, class B wholesaler, winery, wine bottler, or local distributor by means of a draft, check or any other instrument, which draft, check, or other instrument is dishonored by the drawee, then it shall be the duty of such wholesaler, class B wholesaler, winery, wine bottler, or local distributor to immediately report such fact to the administrator by affidavit provided such failure to honor such draft, check, or other instrument causes a delinquency. In such event, the giver of such dishonored draft check, or other instrument shall be deemed guilty of attempting to evade the delinquent list to be published by the commission and such act shall constitute a violation of this rule, and any permit held by the giver of such dishonored draft, check, or other instrument may be cancelled or suspended.

(e) Following each delinquency reporting date, the commission shall notify wholesalers, class B wholesalers, wineries, wine bottlers, and local distributors of all delinquencies occurring by publishing a delinquent list which specifies an effective date for the list, and after said effective date no sales or deliveries of alcoholic beverages shall be made to any package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer whose name appears upon said delinquent list until such time as notice of removal from such list has been given in writing by the commission. After the effective date of the delinquent list, any retailer whose name appears on such list must pay the delinquency by cash, U.S. postal money order, postal note, express money order, cashier's check, certified check, or bank exchange.

(f) After the effective day of the delinquent list on which their name appears, package store permittees, wine only package store permittees, private club permittees, private club exemption certificate permittees, mixed beverage permittees, and other retailers shall not purchase or accept delivery of any alcoholic beverages from any wholesaler, class B wholesaler, winery, wine bottler, or local distributor until the commission has given notice of removal from such list.

(g) If any default or failure to comply with the requirements of §102.32 of the Alcoholic Beverage Code is the result of a dispute involving the quality or quantity of the alcoholic beverages, or any other factor involved in the sale of or purchase of same, the seller or purchaser may file a statement in writing with the administrator on or before the delinquency reporting date, setting forth in detail any reason why a delinquency should not be deemed to exist. The administrator shall thereupon determine whether the retailer shall be placed upon the delinquent list.

(h) If a due date under §102.32(c) falls on a Saturday, Sunday or a state or federal holiday, the due date shall be the next regular business day. Payment sent via U.S. mail or private delivery service shall be deemed made on the date the payment is mailed or sent, as evidenced by postmark, receipt or other similar proof of mailing date. Payment delivered directly to an agent or employee of a vendor who is authorized by the vendor to accept payment shall be deemed made on the date of actual delivery to such authorized employee or agent of vendor.

Attachment 6

Adoption of Proposed New Rule §45.121, Credit Restrictions and Delinquent List for Liquor

PROPOSED NEW RULE W/TXREG CHANGES and JB CHANGES

§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) 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.

(3) 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.

(4) Incident—A single delinquent payment.

(5) 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.

(6) 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.

(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 is cancelled for cause, voluntarily cancelled, expires, suspended or placed in suspension while on the delinquent list may be disqualified from applying for or being issued an original or renewal permit or license. For purposes of this rule, the Retailer includes all persons who were owners, officers, directors, equity interest holders 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 [~~made by completing all information required~~] on the forms provided [~~by the commission for this purpose. Reporting forms may be obtained~~] on the commission's web based reporting system at www.tabc.state.tx.us/creditlaw/reporting. [~~public web site at 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.

[~~Sellers are required to report each violation to the commission electronically to credit.law@tabc.state.tx.us, or by submitting the appropriate forms in writing by fax or by mail to the number or address listed on the form.~~]

[~~(3) Sellers are required to report a Notice of Payment when a Retailer makes payment in full for a previously reported violation. The report may be filed electronically to credit.law@tabc.state.tx.us, or by submitting the appropriate forms in writing or by fax or mail to the number or address listed on the form.~~]

(3) All reports of violations or payment under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(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 Delinquency List until the Release Date on Delinquent List, or 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 appears on the commission's Delinquency List is prohibited from purchasing or accepting delivery of alcoholic beverages from any source to any of Retailer's licensed locations from the date the violation appears on the Delinquency List until the Release Date on the Delinquent List or until the Retailer no longer appears on the Delinquent List.

(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 [~~file~~] a detailed electronic written statement with the commission with an electronic or paper copy to the [~~and the~~] Seller explaining the basis of the dispute. The Retailer must immediately submit an electronic notice of[~~notify the commission of the~~]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 repeat violations of this section. The commission may consider whether the repeat violations are 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 26th [~~5th~~-] day of the[~~each~~] 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[~~that~~] month. The Delinquent list will be published the

11th [~~20th~~] 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 continuously each day the commission is open during normal business hours to reflect reports of violations and payments submitted. [~~Notice of Payments received, each day the commission is open during normal business hours.~~] The Release Date is the date a [~~the commission enters the Notice of~~] Payment is submitted to [~~onto~~]the Delinquent List.

(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

10:00 a.m. – May 19, 2009

5806 Mesa Drive
Austin, Texas 78731

TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on May 19, 2009.

Alan Steen
Administrator

Sworn and subscribed before me this the 23rd day of June 2009.

GLORIA DARDEN REED
NOTARY PUBLIC WITHOUT BOND
STATE OF TEXAS
COMMISSION EXPIRES MAY 11, 2013

Gloria Darden Reed
Notary in and for Travis County