



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING

September 24, 2013

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer Steven M. Weinberg, MD, JD, Member Melinda S. Fredricks,
Member*

Midland

Colleyville

Conroe

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AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – September 24, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

Tuesday, September 24, 2013

10:00 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of July 23, 2013	José Cuevas, Jr.
3.	Commission Report: Administrator and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities	Sherry Cook
4.	Ports of Entry Staffing Analysis	Karen Smithwick Robert Saenz
5.	Seaports Tax Collection Implementation Update	Karen Smithwick Robert Saenz
6.	Internal Audit of the Inspection Administration-Compliance	Munday Rufus
7.	Follow-up: Internal Audit of the Licensing & Permit Revenue Processing; Information Resources Division; Legal Services Division	Munday Rufus
8.	Internal Audit Plan – Fiscal Year 2014	Munday Rufus
9.	Approval to Adopt Amendment to Rule §33.6, Renewal of Licenses and Permits After Expiration	Martin Wilson
10.	Approval to Adopt Amendment to Rule §33.9, Fees for On-Line Transaction	Martin Wilson
11.	Approval to Adopt Amendment to Rule §33.23, Alcoholic Beverage Permit, License and Certificate Surcharges	Martin Wilson
12.	Approval to Adopt New Rule §33.27, Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements	Martin Wilson
13.	Approval to Adopt Amendment to Rule §41.56, Out-of-State Winery Direct Shipper's Permits	Martin Wilson
14.	Approval to Adopt Amendment to Rule §41.71, Identification Stamps and Local Distributor's Records	Martin Wilson
15.	Approval to Adopt Amendment to Rule §45.105, Advertising	Martin Wilson
16.	Approval to Adopt Amendment to Rule §45.120, Co-Packaging of Alcoholic Beverage	Martin Wilson
17.	Approval to Publish Proposed Repeal of Rule §33.3, Brewpub License Fees	Martin Wilson
18.	Approval to Publish Proposed Amendment to Rule §35.6, Regional Forwarding Centers	Martin Wilson
19.	Approval to Publish Proposed Amendment to Rule §41.61, Permission and	Martin Wilson

	Reports	
20.	Approval to Publish Proposed Amendment to Rule §50.2, Definitions	Martin Wilson
21.	Approval to Publish Proposed Amendment to Rule §50.28, General Requirements	Martin Wilson
22.	Public Comments	José Cuevas, Jr.
23.	Retirement Reception Honoring Steve Greinert, Director of Tax & Marketing Division	Jose Cuevas, Jr.
24.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, Duties of the Position of Administrator (Govt. Code §551.071, §551.074, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11)	José Cuevas, Jr.
25.	Next Meeting Date: Tuesday, November 26, 2013	José Cuevas, Jr.
26.	Adjournment	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 Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – September 24, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING MINUTES

September 24, 2013

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, September 24, 2013 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS
PRESENT:**

José Cuevas, Jr.
Steven Weinberg, MD, JD

STAFF PRESENT:

Sherry Cook, Administrator

Joshua Alexander, District 4 Supervisor, Audit & Investigations
Division

Carolyn Beck, Director, Communications & Governmental
Relations

Gene Bowman, Director, Audit & Investigations Division

David Brandon, Enterprise Manager, Information Resources Division

Mindy Carroll, Director, Education & Prevention Division

Amanda Collins, Auditor, Houston Regional Office

Julie Davis, Technical Writer, Education & Prevention Division

Alex De La Garza, Regional Manager, Ports of Entry Division

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Jacqueline Eddins, Intern, Tax & Label Approval Division

Rickie Eddins, Administrative Assistant, Tax & Label Approval Division

Darla Elam, Regional Coordinator, Licensing Division

Shelby Eskew, Director, Business Services Division

Randy Field, Major, Houston Enforcement Division

Diana Figueroa, Executive Assistant, Executive Division

Joe Fralin, Regional Manager, Ports of Entry Division

Thomas Graham, Supervisor, Marketing Practices

Loretta Green, Licensing Supervisor, Arlington Regional Office

Kelly Greene, Accounts Examiner, Tax & Label Approval Division

Steve Greinert, Director, Tax & Label Approval Division

Toni Hale, Program Specialist, Education & Prevention Division
Amy Harrison, Director, Licensing Division
Emily Helm, General Counsel, Legal Division
Joe Iagnemmo, Web Design Administrator, Information Resources
Division
Ashleigh Jons, Seller Training Coordinator, Education & Prevention
Division
Bryant Jones, Sergeant, Lufkin Enforcement Office
Dexter Jones, Assistant Chief, Audit & Investigations Division
Joann Joseph, Assistant Director, Licensing Division
Judith Kennison, Deputy General Counsel, Legal Division
Fran Kolliner, Accounts Examiner, Tax & Label Approval Division
Vanessa Mayo, Assistant Director, Business Services Division
Mark Menn, Captain, Lubbock Enforcement Office
Brenda Meyers, Regional Supervisor, Austin District Office
Joy Murray, Chemist, Tax & Label Approval Division
Earl Pearson, Assistant Chief, Enforcement Division
Andy Peña, Director, Office of Professional Responsibility/Training
Division
Yvette Price, Licensing Supervisor, San Antonio District Office
Gloria Darden Reed, Executive Assistant, Executive Division
John Reney, Lieutenant, Office of Professional Responsibility
Carla Rios, Quality Assurance Specialist, Ports of Entry Division
Robert Saenz, Chief of Field Operations
Karen Smithwick, Director, Ports of Entry Division
Ed Swedberg, Assistant Administrator, Executive Division
Ron Swenson, Captain, Special Investigation Division
Todd Talley, Regional Liaison, Field Operations
Dewayne Thompson, Agent, Special Investigations Unit
Tana Travis, Lieutenant, Houston Enforcement Office
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS
PRESENT:**

Lou Bright, General Counsel, Texas Wine and Grape Growers
Association
Vic Brooks, Vice President, Republic National Distributing Company
ML Calcote, Consultant, Republic National Distributing Company
Doug Davis, Vice President, Wholesale Beer Distributors of Texas
Doug DuBois, Director of Governmental Affairs, Texas Food and Fuel
Association
Robert Gonzales, Certified Public Accountant
Alan Gray, Executive Director, Licensed Beverage Distributors
Jane Greinert
Pat Greinert
Lance Lively, Executive Director, Texas Package Stores Association
Jack Martin, Attorney, Jack Martin & Associates
Mary Miley, Policy Analyst, Governor's Office

Allen Reininger, Legal Assistant, Spoetzl Brewery/ Gambrinus
Company
Tyler Rudd, Consultant, California Wine Institute
Monday Rufus, Certified Public Accountant
Tom Spilman, Executive Vice President, Wholesale Beer Distributors
of Texas
Karen Watkins, Assistant Attorney General, Office of the Attorney
General of Texas

CALL TO ORDER

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

APPROVAL OF COMMISSION MINUTES OF July 23, 2013

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of July 23, 2013. Commissioner Steven Weinberg so moved to approve the minutes as written. Presiding Officer José Cuevas seconded the motion. The motion carried.

COMMISSION REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES

Presiding Officer Cuevas called upon Administrator Sherry Cook to present the Commission report on Administrator and Agency Activities, Budget Issues, Staff Achievements and Legislative Activities.

Administrator Cook announced that Commissioner Melinda Fredricks was unable to attend the Commission meeting. She stated, however, Presiding Officer Cuevas and Commissioner Weinberg made up a quorum and the meeting would proceed. She welcomed Presiding Officer Cuevas and Commissioner Weinberg back to Austin. A discussion on whether video-conferencing was a viable option when a Commission member was not able to attend in-person followed. It was stated by General Counsel Emily Helm that it is an option; however, the location of the video-conferencing event must be announced and made public prior to the Commission meeting.

Administrator Cook will research if utilizing WebEx video-conferencing during Commission meetings is feasible.

General Counsel Helm will research the legalities of using WebEx video-conferencing during Commission meetings.

Administrator Cook began by reporting on significant Agency activities. She stated that in August, the Agency had five graduates from the auditor's academy who will be stationed in different offices throughout the state. She announced that the fall agent academy is scheduled to begin on October 7, 2013 with eight agent trainees. Administrator Cook

emphasized that since the Agency is starting the fiscal year with a deficient, she will use a cautious approach toward filling the vacancies to retain a balance with the Agency's attrition rate. She stated a spring academy has been scheduled and we will monitor our budget and open vacancies and determine the appropriate number of agent trainee positions to fill. Commissioner Weinberg asked if the recent pay raise increase resulted in a more qualified pool of agent trainees to choose from. Chief of Field Operations Robert Saenz stated they raised the minimum qualifications for the applicants and were very satisfied with the applicants.

Administrator Cook stated that she is proud of TABC's achievement of having "zero" agent academies to having four in the past 15 months. She gave kudos to Assistant Administrator Swedberg, the Chiefs, Business Services and Human Resources for working together to make the academies happen. She added that an academy budget has been identified and has been set aside. She stated the Executive Team is preparing for the next Legislative Appropriations Request (LAR) to determine what future requirements are needed to sustain future academies. Commissioner Weinberg inquired about the cost of the academy. Administrator Cook stated that most training is conducted in-house by TABC personnel, however, per diem and lodging expenses have to be budgeted.

Administrator Cook discussed the new online application system, NeoGov. She stated it streamlines the hiring process and helps filter qualified applicants. Human Resources Director Loretta Doty stated the system is making the application screening process more efficient. She added they are in the process of training supervisors on using NeoGov.

Administrator Cook briefed the Commissioners on the latest project by Education and Prevention. She stated that the Agency is wrapping up several projects related to grant funding. She explained that one specific project is a 45-minute Marketing Practices video that will be shown to wholesale distributors and retailers. She stated that this will enhance the training provided by Marketing Practices Supervisor, Thomas Graham. The video will further educate the industry on items such as on-premise promotions, temporary events and signage. Administrator Cook stated in addition to the new smartphone app recently developed, an industry guide was recently printed which will be provided to manufacturers, wholesalers, and retailers. Administrator Cook applauded everyone who worked on the industry guide for their efforts in getting it published. She specifically mentioned that Toni Hale of Education and Prevention was instrumental in publishing the guide. She continued stating that a grant was received and will be used to fund the automation of the industry guide. She added that this will allow the industry guide to be available on mobile devices and will keep the industry abreast as changes occur.

Administrator Cook's next topic of her presentation was Agency Performance Measures. She stated that the number of licensing businesses in Texas is continuing to grow at an average rate of 2.5%. She added there was a slight dip in 2012 but there is steady growth in 2013.

Administrator Cook stated she is planning to evaluate how the changes the Sunset Advisory Committee made in 2008 and the loss of resources following affected our usage of resources. She stated that she would like to present at the next legislative session how the Agency utilized its resources and automated as much as possible during the budget cuts and

how the need for human intervention and resources is now necessary to meet demands. She added that the resource and staffing needs will be determined and built into a future Legislative Appropriations Request (LAR).

Administrator Cook's next item for discussion was the growth by tiers. She stated that the manufacturers tier has spiked 13.2% as opposed to the retail tier that spiked 1.3%. She mentioned that inside the manufacturer's tier, brewers and beer manufacturers have grown 37% since 2012 and distilleries have grown 31% during that same period. She stated there is continued growth throughout the industry. She explained that during recent discussions with industry members it is believed the growth is attributed to manufacturers offering new variety and flavors of liquors. She stated the Agency will continue to monitor the growth.

Administrator Cook continued her presentation with an Inspections briefing. She stated that the inspection volume has increased significantly. She stated that the recent addition of new agents has added to our inspections count. Administrator Cook added that by the end of July 2013 the Agency had met the FY 2014 goal of 75,200 minimum inspections. She stated that they are confident to easily meet the FY 2014 target going forward. She added Assistant Administrator Swedberg and the Chiefs are monitoring the inspections numbers closely and will be able to determine "weekly" if they are on track or falling behind schedule. Commissioner Weinberg inquired if administrative cases have risen. General Counsel Helm confirmed that they have increased but Legal only receives about 10% of the cases as most are settled by regional Captains.

Administrator Cook briefed the Commissioners on Enforcement Inspection Compliance Rates. She stated with the increased inspections being conducted, it drives compliance behavior. She added that achievements are aligned with targets in most categories with an 89% compliance rate for minor stings. She stated that in August and September the minor sting compliance rate has risen. She stated recently 76 retailers were set-up for minor stings and it resulted in a 100% compliant behavior which was a great accomplishment. She noted TABC's presence in establishments is imperative to improving compliance behavior. Presiding Officer Cuevas inquired how much the "education" the Agency provides to establishments has attributed to the Agency's recent compliance successes. Chief Saenz stated the Agency provides education to establishments when violations are found. He stated the Agency went from an 89% compliance rate in July to 93% in September. Commissioner Weinberg stated that the Agency should consider providing establishments a certificate or letter for successfully passing sting operations. Administrator Cook said at one time we did issue a letter but did not continue the practice. However, she said the Agency will reinstate issuing a letter to establishments for passing a sting operation or inspection to enforce positive compliance behavior. She stated that historical behavior of an establishment should be considered when a violation is found.

Chief Robert Saenz will reinstitute the issuance of letters for establishments that are in compliance with TABC regulations.

Administrator Cook stated the Complaint Driven Investigations were down in FY 13 and compliant behavior is above 90%. She added that the Agency's presence in license premises is a deterrent for bad behavior. She stated she believes that by raising the bar on hiring

employees, training and the field training programs TABC offers, these all attribute to the success, professionalism and improve interactions with the communities. Presiding Officer Cuevas inquired which areas of the Agency contributed to the closure of the Complaint Driven investigations. Administrator Cook stated Law Enforcement, Auditors and Licensing are the primary areas where investigations come from.

Administrator Cook reviewed the Closed Investigations by Type slide. She stated a total of 5,690 investigations were closed with the largest categories being "Other Investigations", making up 59% and "Cash/Credit Law" making up 21% of the investigations. She further explained that "Cash Law" and "Credit Law" were two of the top offenses investigated by auditors. She also stated that "Selling/Serving to a Minor" and "Selling/Serving to Intoxicated Persons" were two of the top offenses investigated by Enforcement agents.

Administrator Cook discussed At-Risk locations and primarily where the Agency is spending its time. She stated that for FY13, 4,291 or 8.1% of locations were considered At-Risk. She added that the Agency is concentrating more on systemic problems and focusing on high risk locations. She stated that once a location has a public safety violation in last 12 month period, it is considered At-Risk and is visited until the behavior is corrected or its permit cancelled, if necessary. She emphasized the Agency is working to correct the problem(s) with the establishment instead of taking immediate enforcement action. She added most of the priority locations are in the Arlington area, followed by Houston, San Antonio, Lubbock and Austin. Commissioner Weinberg inquired if agent resources were distributed among the Agency's priority locations. Administrator Cook said we conducted a re-organization recently and it aligned closely. She stated in addition to making sure resources are distributed in areas of need, we are also examining permit types in relation to the priority locations. She explained that certain permit types require more time for the inspections.

Administrator Cook will provide the Commissioners with an overlay of Priority Locations and Enforcement Resources by district.

Presiding Officer Cuevas asked how the Agency keeps local law enforcement involved on issues found at high risk locations. Administrator Cook said the agents keep local law enforcement involved and include them in the administrative cases for resolution. She stated that local law enforcement has a huge stake in the game and the Agency is here to assist them through correcting those issues.

Administrator Cook reviewed the reported and published credit law delinquencies. She stated that there is a huge variance between the reported and published credit law delinquencies because the permittees are provided an opportunity to clear up the debt before the delinquency is published. She added that the Agency monitors the debt delinquencies by license types are monitored and that the package stores with licensed permit and without licensed permit make-up the majority of the debt.

Administrator Cook stated that during the last legislative session a law was passed that codifies the payment rule that gives an additional four days for payment. She stated that a stakeholder meeting is scheduled for October 2, 2013 to discuss recommendations and implementations.

Commissioner Weinberg revisited the debt delinquency slide. He inquired of Administrator Cook if it was known who the major repeat offenders were. Administrator Cook responded that she will review the debt delinquency information and the major violators. Commissioner Weinberg commented that if certain stores and/or corporations are repeat offenders, there needs to be a rule in place to suspend all licenses/permits; if one store is delinquent and owes debt, all of their store licenses should be suspended. Commissioner Weinberg requested that Assistant General Counsel Martin Wilson draft a rule to that effect. Commissioner Weinberg stated that he thinks a rule like this will eliminate the problem with repeat delinquents.

Administrator Cook will review the debt delinquency information and determine who the major repeat violators were and report to the Commissioners. Assistant General Counsel Martin Wilson will present a rule that addresses suspending all store permits when one of the stores is delinquent in payment.

Administrator Cook discussed the August 2013 vacancies slide. She noted that eight CPOs' positions will be filled in October during the agent school. She stated that the Agency will be aggressively recruiting applicants who want to make a career at TABC. She also stated that the Agency has identified a need to hire an in-house recruiter to focus on finding qualified commission peace officers and civilian applicants. She stated that the interview boards at the Agency will be diversified. However, she commented that the Agency will incur travel costs for interview board members travelling to Austin. Commissioner Weinberg suggested that using video-conferencing from a district office may help avoid some of the travel expenses.

Administrator Cook lastly addressed the retirement of Steve Greinert, Director of Tax & Label Approval, stating he was a valued, knowledgeable employee with over 26 years of service and will be greatly missed. Presiding Officer Cuevas presented Director Greinert with a plaque from Governor Rick Perry on his retirement. Commissioner Weinberg presented Director Greinert with a certificate of merit for his years of service with TABC and wished him well. Administrator Cook also presented him with a plaque from TABC wishing him well on his retirement. Presiding Officer Cuevas expressed on the behalf of the Commissioners their sympathies on the recent loss of his father and wishes him well on his retirement.

Administrator Sherry Cook's report is supported by a PowerPoint presentation. (Attachment 1)



Administrator Sherry Cook, Commissioner Steven Weinberg, Pat Greinert , Steve Greinert, Jane Greinert, Presiding Officer José Cuevas, and Assistant Administrator Ed Swedberg



Director Steve Greinert & Staff – Tax & Marketing

Jackie Eddins, Matt Besfer, Joy Murray, Fran Kolliner, Steve Greinert, Rickie Eddins, Julie Almaraz, Kelly Greene and Thomas Graham

PORTS OF ENTRY STAFFING ANALYSIS

Chief Saenz stated that during the 83rd Legislature Session the Agency was appropriated additional positions. He stated that due to recent audit report findings and prompting from Commissioner Weinberg, the Agency analyzed the staff schedules and placement of TCOs along the border to maximize revenue at bridges. He stated the Port of Entry update would be in two sections, both to be presented by Ports of Entry Director Karen Smithwick.

Director Karen Smithwick thanked Commissioner Weinberg for his concern of staffing placement along the border and the auditors for noting the staffing recommendations. She then began her presentation with an overview of current staffing.

- 2 Regional Managers each supervising 3 districts
Joe Fralin and Alex De La Garza
- 6 District Supervisors
- 6 Assistant Supervisors
- 88 filled of 91 TCO positions at 20 Texas/Mexico border crossings
- 7 Appropriated positions by 83rd Legislative Session
- 3 Full-time positions for Fabens-Tornillo Port

Director Smithwick explained how she analyzed the staffing placement and POE hours to determine the best schedule and staffing strategy for each location. She stated for the new positions recently appropriated; they also analyzed and determined the best use of those resources to maximize revenue.

Director Smithwick stated it was noted that there was a decline in revenue. The revenue reports were compared against Customs Border Patrol traffic reports to see if reduced traffic going into Mexico was the cause. In analyzing the reports, a correlation between traffic going into and back from Mexico and revenue was noted. She stated based on this information, staffing and POE hours were adjusted to match high traffic hours. She added the Agency anticipates FY 2014's revenue matching or possibly exceeding FY 2013's revenue with the adjusted hours and staffing placement. She noted that to operate all the locations with the needed hours to maximize revenue, 96 employees are required; however, they are operating efficiently with the hours and staff currently budgeted and available.

She continued that "smart scheduling" was implemented and POE hours were adjusted based on need and during high traffic times. Chief Saenz stated that POE works with Customs Border Patrol and obtained data to determine the high inbound traffic times. He explained that based on this data, POE was able to adjust its hours to match traffic patterns which should increase revenue. Director Smithwick stated it is estimated that potential increased revenue of \$96,384 per year could result from these modifications.

Director Smithwick will revisit the revenue numbers from her presentation in 6 months and recheck the revenue numbers versus the adjustment of the POE hours of operations.

Director Smithwick gave a progress update of the Fabens-Tornillo Port. She stated that construction on the U.S. side for commercial use is set for completion on December 28, 2013 and January 18, 2014 for non-commercial use. She added (1) FTE and (1) PTE will operate that port once open with an additional PTE beginning after May 2014. The operating hours will be from 10am to 6pm. She stated they anticipate utilizing the recruiter to find applicants at the local universities since the PTE positions would be an ideal job for college students.

Presiding Officer Cuevas stated that with the later hours at the POEs there is a higher risk of danger for TCOs. Director Smithwick stated that a committee has been created to write procedures, establish protocol and address some of the risks that may arise. Chief Saenz noted that they are discussing with Lieutenant Marvin Montero of Enforcement Administration for options on using cameras, panic alarms, cash registers and ways to secure monies. He stated they are also working with Business Services Director Shelby Eskew to identify funding and possibly adding these expenses to a grant for border protection safety and homeland security.

Director Smithwick will provide the Commissioners with a status on replacing the POE cash boxes with cash registers.

Director Karen Smithwick's report is supported by a PowerPoint presentation. (Attachment 2)

SEAPORTS TAX COLLECTION IMPLEMENTATION UPDATE

Presiding Officer Cuevas called for the Director Smithwick to begin her presentation of the next agenda item.

Director Smithwick advised the Commissioners that the Agency was appropriated positions to establish a Seaport Unit in Galveston. She stated that three ships will be coming in through Galveston and one ship would be coming through Houston-Bayport in the fall of 2014. Director Smithwick stated that negotiations are being finalized for lease space and are receiving proposals from temporary agencies for employee staffing. She added that hiring supervisors and acquiring equipment is anticipated to wrap up by November 2013. Training for supervisors and employees and preparing lease space should be completed by December 2013. Director Smithwick stated the collection of taxes at Seaport is scheduled to begin by January 2014.

Director Smithwick gave an overview of the planned 2014 Galveston cruises, equaling 182 total combined cruises. She stated the anticipated cost for FY14 is \$223,589 which is below our budget of \$252,173. She said included in that budget is one full-time district supervisor and two part-time assistant supervisors.

Chief Saenz stated that the departmental purchase requisitions for equipment will soon be processed. He also said Director Smithwick recognized that the supervisors should be trained prior to the temporary employees so they have built that into the timeline.

Additionally, he stated adherence to the timeline schedule is essential to ensuring the project runs as planned and on or under budget.

Presiding Officer Cuevas inquired if an estimate of revenue had been completed for the new Seaports. Director Smithwick stated that based on the statistician's knowledge and the prior POE Director's reports, estimates were about \$1.2 million. Chief Saenz added there were some questions on how the survey was conducted by the past POE Director, which indicated higher revenue, so they are being conservative in estimating \$1.2 million in revenue.

Presiding Officer Cuevas asked how many people are on a ship and how long it would take to disembark the ship. Director Smithwick responded that it depended on whether the cruise was a close loop (inside of U.S.) or open loop (outside U.S.) in which open loop cruises require a closer review of passenger credentials. She stated that she went to a port to observe how long it takes to disembark and based her analysis on being properly staffed to ensure transactions take no more than two minutes. Director Smithwick explained she and her staff are working through the process to streamline it so that it goes smoothly. She stated that she and her staff will coordinate with the ship's staff to have the passenger information ready for fast and efficient processing.

Presiding Officer Cuevas posed a question as to how Texas' tax collection differs from other states. Director Smithwick explained that Texas is unique in that other states have a specific number of bottles that can be purchased before taxes are collected, where as Texas taxes on the first unit forward. She added that in Florida when alcohol is purchased, Customs will give the customer a form and place a security hold on their alcohol, collect the excise tax and release the alcohol when the customer presents proof that the taxes have been paid. Presiding Officer Cuevas inquired how Customs would work with the Agency since our tax requirements are different. Director Smithwick stated they are working through the logistics to see how exactly TABC's tax collection would be handled.

Presiding Officer inquired how the cruise passengers are being advised of TABC's tax collection policy. Director Smithwick stated that a Public Information and Education module is being worked on and they anticipate working with the ship's administration to include TABC's taxation policy in their public service announcements. She added there are plans to meet with the representatives from the cruise industry in November to give them TABC's pamphlets and to request they include TABC's policies in their public service announcements advising the customers of the limits on alcohol. Chief Saenz stated that the Agency will work with the passengers and the cruise lines to educate them on TABC's policy and use our discretion in collecting bottles over the limit. He stressed our goal is to be as efficient as possible and not cause additional delays in the disembarking process.

Commissioner Weinberg suggested modifying the Ports of Entry's logo to include a ship in addition to the bridge to represent the various types of entries we operate. He added that he anticipates being present on January 5, 2014 to observe the opening of the Galveston Seaport entry.

Director Smithwick will modify the Ports of Entry's logo to reflect the addition of the Seaports.

Chief Saenz stated that Director Smithwick suggested having TCOs from other inland ports on standby in the chance additional staff was needed to expedite the disembarking process. Director Smithwick stated they are not going to fail and are preparing for different problems that may arise.

Director Karen Smithwick's report is supported by a PowerPoint presentation. (Attachment 3)

INTERNAL AUDIT OF THE INSPECTION ADMINISTRATION-COMPLIANCE

Presiding Officer Cuevas called upon Monday Rufus, Certified Public Accountant for his presentation on the Internal Audit of the Inspection Administration-Compliance. He conveyed his sympathy and that of the Commissioners on the passing of Monday Rufus' mother. Commissioner Weinberg added that Director Smithwick's presentation on Ports Of Entry staffing and utilization was a result of findings from Mr. Rufus' report.

Mr. Rufus stated they evaluated the controls implemented by the Texas Alcoholic Beverage Commission regarding the Inspection Administration-Compliance as of June 5, 2013. He added the results of the evaluation disclosed that the Commission has procedures and controls in place for the inspections of licensed premises selling alcoholic beverages. He noted they identified some opportunities for enhancing the controls currently in place. He reviewed the two findings they identified and management recommendations.

Mr. Monday Rufus' report is supported by a PowerPoint presentation. (Attachment 4)

Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Weinberg moved to approve the Internal Audit of the Inspection Administration-Compliance. Presiding Officer Cuevas seconded the motion and the motion passes.

FOLLOW-UP: INTERNAL AUDIT OF THE LICENSING & PERMIT REVENUE PROCESSING; INFORMATION RESOURCES DIVISION; LEGAL SERVICES DIVISION

Mr. Monday Rufus reviewed his presentation on the Follow-up: Internal Audit of the Licensing & Permit Revenue Processing; Information Resources Division; Legal Services Division. He stated the audits were conducted by a previous Internal Auditor. He noted his review was limited to following up on the findings and recommendations included in the previous reports for Licensing and Permit Revenue Licensing, Information Resources Division and Legal Services Division.

Mr. Rufus summarized the follow up findings and recommendations for the Commissioners. He noted in the Legal Services Division report Finding 9-Item C regarding activity status for cases, the recommendation was not implemented due to management's belief their current process was adequate. He also stated that Finding 10 pertaining to new employee training was only partially implemented. For Finding 10, General Counsel Helm explained they require 15 units of CLE (Continuing Legal Education) which includes liquor laws, evidence, orders, cross examination, administrative law, criminal law i.e., search warrants. However,

she agrees that the Legal Department's Case Management Manual should be updated to document training for new employees. Mr. Rufus stated Finding 11 regarding reports not being available to all regional chiefs, majors, captains, lieutenants, or management was also partially implemented. General Counsel Helm stated based on this audit finding they have taken several steps to upload the case statuses on the intranet and VR to show where Legal is in the case process. She added, based on positive feedback she has received, these new implementations have been working to keep agents and involved parties informed of case statuses. Therefore, she doesn't see a need to provide them copies of reports.

Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Weinberg moved to approve the Follow-up: Internal Audit of the Licensing & Permit Revenue Processing; Information Resources Division; Legal Services Division. Presiding Officer Cuevas seconded the motion and the motion passes.

Mr. Monday Rufus' report is supported by a PowerPoint presentation. (Attachment 5)

INTERNAL AUDIT PLAN – FISCAL YEAR 2014

Presiding Officer Cuevas called upon Mr. Rufus, for his presentation on the Internal Audit Plan - Fiscal Year 2014.

Mr. Rufus stated that they prepared a risk assessment to determine the areas in the Commission that should be considered for audit. He gave an overview of the risk assessment that listed the areas recommended for audit in Fiscal Year 2014. He added the main factors used to consider high risk areas were:

- Exposure level,
- Quality of Controls,
- Changes in Systems and Processes.

Presiding Officer Cuevas asked how often each area is audited. Mr. Rufus said ideally on a five year audit cycle each risk assessment area is audited. However, he added if the Commissioners or Administrator requests an area be audited not in the selected risk areas, the audit cycle can be modified.

Presiding Officer Cuevas inquired of Administrator Cook how many audits were being conducted a year. Administrator Cook responded three to four audits were being conducted due to a reduced budget. Presiding Officer Cuevas suggested increasing the budget next year to allow more audits to be conducted as they can be used to "clean up" areas.

Commissioner Weinberg noted that the Internal Audit of Tax Administration - Ports of Entry is scheduled for March 2014. He suggested that the audit be moved to May 2014 to allow a full 6 months for the recommendations to be implemented and in place.

Mr. Rufus will move the scheduled Internal Audit of the Ports Of Entry Division to May 2014 instead of March 2014 to allow for a full 6 month review of data.

Administrator Cook also stated she would like to see the Internal Audit of LP ID Stamps/Private Club Cards added to the audit plan in the next cycle. She said recent changes to the system would benefit from the controls in place being examined and possibly strengthened, especially as they relate to revenue. Presiding Officer Cuevas agreed.

Mr. Rufus will move up the scheduled Internal Audit of the LP ID Stamps/Private Club Cards on the Audit Plan schedule.

Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Weinberg moved to approve the Internal Audit Plan - Fiscal Year 2014 with suggested changes to audit plan. Presiding Officer Cuevas seconded the motion and the motion passes.

Mr. Monday Rufus' report is supported by a PowerPoint presentation. (Attachment 6)

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

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items 9 –11 and items 13-16.

APPROVAL TO ADOPT AMENDMENT TO RULE §33.6, RENEWAL OF LICENSES AND PERMITS AFTER EXPIRATION

APPROVAL TO ADOPT AMENDMENT TO RULE §33.9, FEES FOR ON-LINE TRANSACTION

APPROVAL TO ADOPT AMENDMENT TO RULE §33.23, ALCOHOLIC BEVERAGE PERMIT, LICENSE AND CERTIFICATE SURCHARGES

APPROVAL TO ADOPT AMENDMENT TO RULE §41.56, OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMITS

APPROVAL TO ADOPT AMENDMENT TO RULE §41.71, IDENTIFICATION STAMPS AND LOCAL DISTRIBUTOR'S RECORDS

APPROVAL TO ADOPT AMENDMENT TO RULE §45.105, ADVERTISING

APPROVAL TO ADOPT AMENDMENT TO RULE §41.120, CO-PACKAGING OF ALCOHOLIC BEVERAGE

Assistant General Counsel Martin Wilson presented the agenda items, as noted above and stated no comments were received on the amendments.

Presiding Officer Cuevas called for a motion on agenda items 9-11 and items 13-16. Commissioner Weinberg moved to approve items 9 through 11 and items 13 through 16. Presiding Officer Cuevas seconded the motion and the motion passes.

Assistant General Counsel Wilson began his presentation by stating that the remainder of the rules he would be presenting today are for approval to publish in the *Texas Register*. He added that a public hearing has been set to receive oral comments on these rules. The Public Hearing has been scheduled for October 29, 2013 at 1:30 in the Commission Meeting Room on the first floor of the Texas Alcoholic Beverage Commission Headquarters, 5806 Mesa Drive, Austin, Texas.

APPROVAL TO PUBLISH PROPOSED REPEAL OF RULE §33.3, BREWPUB LICENSE FEES 17

Assistant General Counsel Wilson stated that they are requesting to repeal Rule §33.3, Brewpub License Fees as it is no longer accurate or necessary. He explained previously applicants would file for a Brewpub License with the County. He stated since the Legislature has streamlined the application process and all filings are completed by TABC instead of the County, the rule requiring a brewpub license fee paid to the County is no longer necessary.

Presiding Officer Cuevas called for a motion on agenda item 17. Commissioner Weinberg moved to approve publication in the *Texas Register*, approval to publish proposed repeal of rule §33.3, brewpub license fees, for a 30-day comment period. Presiding Officer Cuevas seconded the motion and the motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §35.6, REGIONAL FORWARDING CENTERS

Assistant General Counsel Wilson stated that they are requesting approval to publish proposed amendment to rule §35.6, regional forwarding centers. He explained Forwarding Centers are basically temporary warehouses where product can be stored before they are sent to distribution warehouses. The proposed amendment eliminates a monthly reporting requirement by Forwarding Centers; however, records must be maintained on-site and retained for a period of four years. The amendment will result in less regulatory burden for members of the manufacturing tier and on the Commission's resources will be reduced.

Presiding Officer Cuevas called for a motion on agenda item 18. Commissioner Weinberg moved to approve publication in the *Texas Register*, approval to publish proposed amendment to rule §35.6, regional forwarding centers, for a 30-day comment period. Presiding Officer Cuevas seconded the motion and the motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §41.61, PERMISSION AND REPORTS

Assistant General Counsel Wilson presented his next agenda item, Proposed Amendment to Rule §41.61, Permission and Reports. He said currently the rule requires a minister, priest, rabbi or authorized head of any religious organization who wishes to obtain wine tax free for supplemental purposes to apply for a permit. The proposed amendment eliminates this requirement. He stated it retains the requirement that the wholesaler or winery providing such wine obtain a letter from the minister, priest, and rabbi or authorized head of the religious organization verifying that the wine will be used for sacramental purposes.

Presiding Officer Cuevas called for a motion on agenda item 19. Commissioner Weinberg moved to approve publication in the *Texas Register*, approval to publish proposed amendment to rule §41.61, Permission and Reports, for a 30-day comment period. Presiding Officer Cuevas seconded the motion and the motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items 20 –21.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §50.2, DEFINITIONS

Assistant General Counsel Wilson presented Proposed Amendment to Rule §50.2, Definitions. He said currently the rule does not specifically identify Commission approved identification numbers which are acceptable to receive a TABC certification. The Commission approved identification numbers defined acceptable are:

- Social Security Numbers
- Individual Taxpayer ID Number
- Alien Registration Number
- Case number (*machine readable*) immigrant visa

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §50.28, GENERAL REQUIREMENTS

Assistant General Counsel Martin Wilson presented the agenda item, Approval to Publish Proposed Amendment to Rule §50.28, General Requirements. The proposed amendment to the rule is to delete the requirement that a seller server student be a United States citizen or be legally authorized to work in the United States. He stated the amendment also specifies the *information* that must be provided to the Commission with a request to verify that a student has been certified. As a result of these changes he stated, the section was retitled. He explained that the original intent of including that requirement was to ensure the proper personal identification information was collected when seller server certification was requested. Assistant General Counsel Wilson stated with the amendments to rule §50.2 clarifying the “Commission approved identification numbers” accepted will ensure the proper identification information is collected to provide seller server certification. He added, the amendment was sent to the Ms. Delgado, representative for the Sac N Pac stores and Ms. Susan Speyer, owner of Safe Food 4 U for review and no comments were received.

Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Weinberg moved to approve the publication of the proposed amendments to Rule §50.2, Definitions and to Rule §50.28, General Requirements, for a 30-day comment period. Presiding Officer Cuevas seconded the motion and the motion passes.

PUBLIC COMMENTS

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

Presiding Officer Cuevas introduced and welcomed Mary Milley, TABC's new Policy Analyst from the Governor's office.

Administrator Cook invited everyone to the main lobby for Director Steve Greinert's retirement reception.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF ADMINISTRATOR (GOVT. CODE §551.071, §551.074, §2102.006(A) AND §2102.007(A)(1), TEXAS ALCOHOLIC BEVERAGE CODE §5.11)

Presiding Officer Cuevas announced that the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time 12:32 p.m., September 24, 2013 and an Executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to deliberate the appointment, employment, evaluation, duties of the position of administrator (govt. Code §551.071, §551.074, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11).

Presiding Officer Cuevas announced that the Texas Alcoholic Commission has concluded its Executive session and is now in open regular session. The date is September 24, 2013 and the time is 1:38 p.m. No final action, decision or vote was made in executive session.

NEXT MEETING DATES: Tuesday, November 19, 2013

ADJOURN

Presiding Officer José Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion. Presiding Officer Cuevas seconded. The motion was made and seconded. The motion passes. Presiding Officer José Cuevas announced that the meeting was adjourned at 1:38 p.m.

Attachment 1

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

Administrators Report
September 24, 2013 – Commission Meeting



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

Ed Swedberg
Asst. Administrator

Sherry Cook
Administrator

Robert Saenz
Chief Field Operations

COMMISSIONER
STEVEN WEINBERG, MD, JD

CHAIRMAN
JOSE CUEVAS, JR.

COMMISSIONER
MELINDA S. FREDRICKS



Six new Auditors graduated August 23rd.

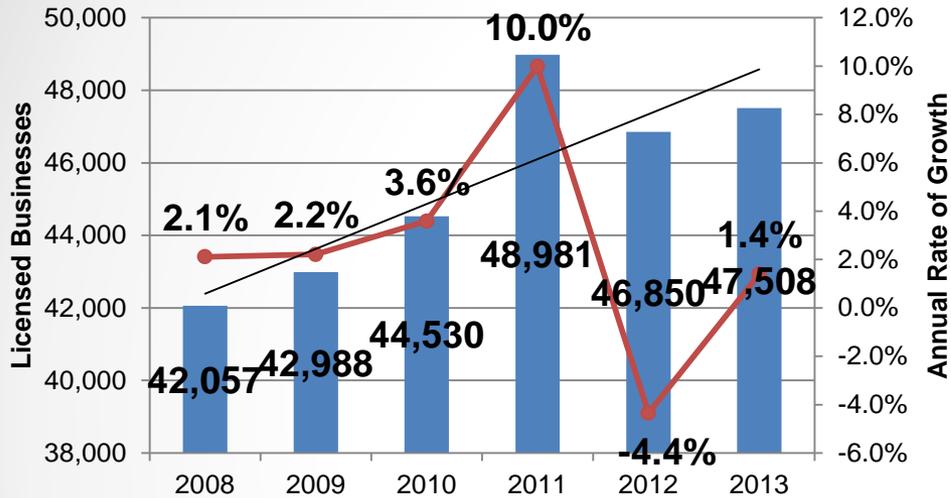
Agent Academy scheduled to begin October 7th.

The agency has recently acquired the NEOGOV applicant tracking system for use by HR, thereby automating the tracking of job applications.

Education and Prevention completed contracts to produce a Marketing Practices training video, a new smart phone app, and an industry guide.

ACCOMPLISHMENTS

In-State Licensed Businesses By Fiscal Year

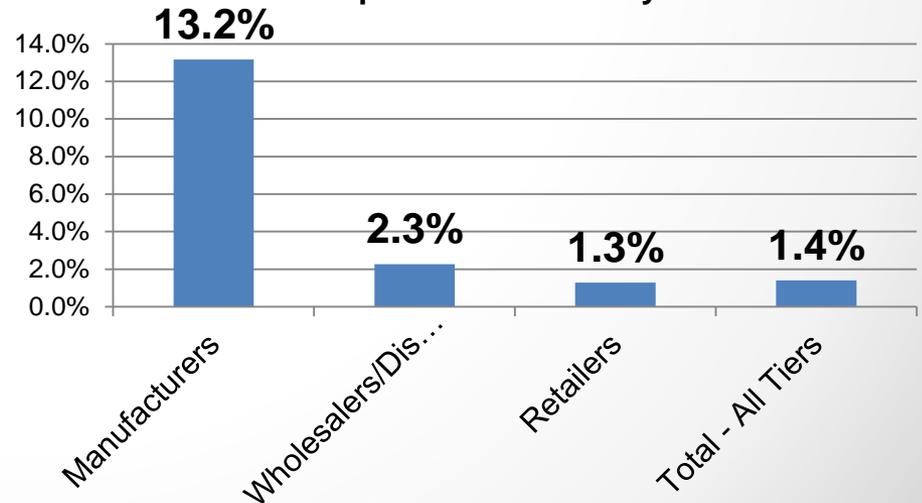


* Total for FY 2013 is as of July 31st. Totals for all other fiscal years are as of August 31st.

■ Licensed Businesses ● Growth Rate

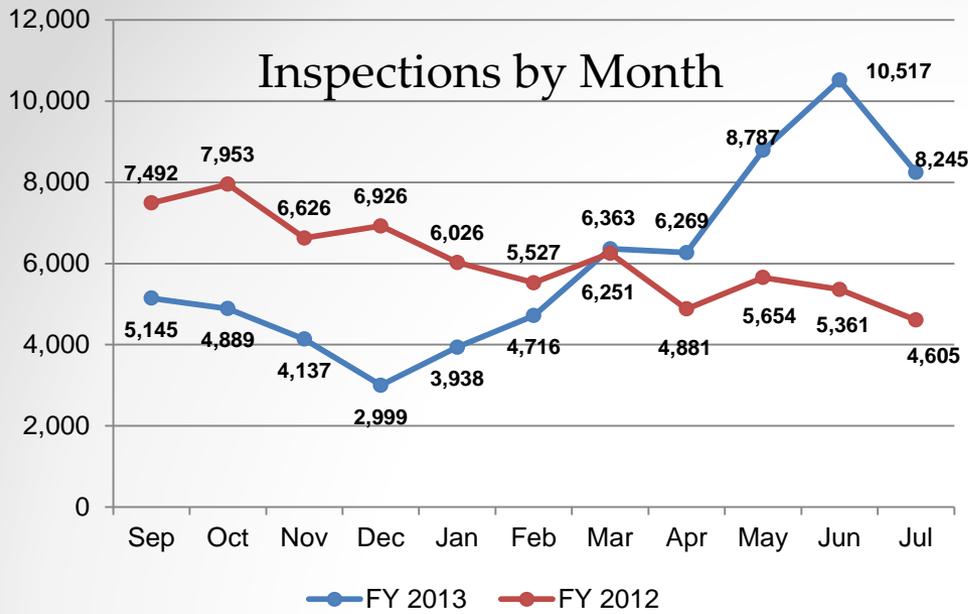
Growth

Rate of Growth by Tier September 2012 - July 2013



ENFORCEMENT INSPECTIONS AND ADMINISTRATIVE CASES

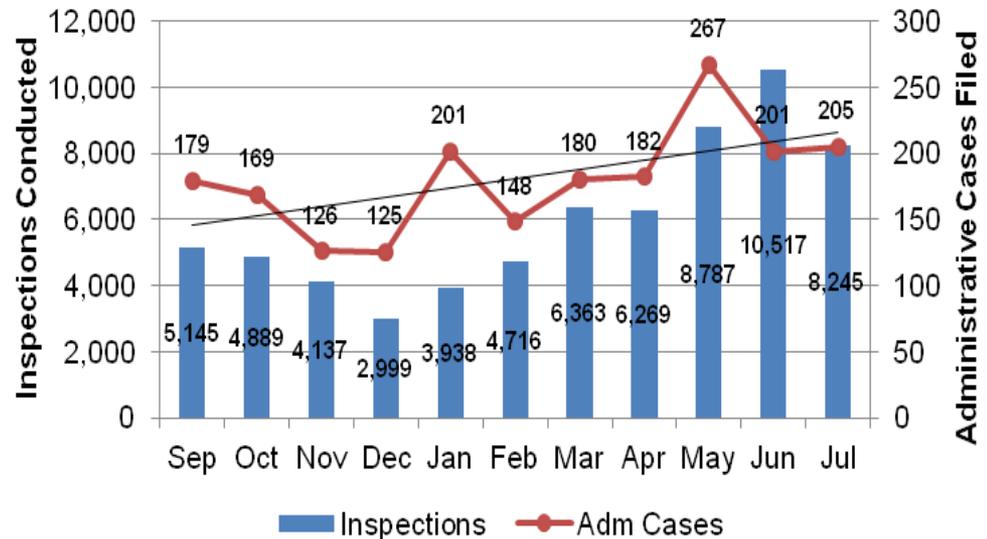
Inspections by Month



FY 2012 - 67,302
 FY 2013 - 66,004

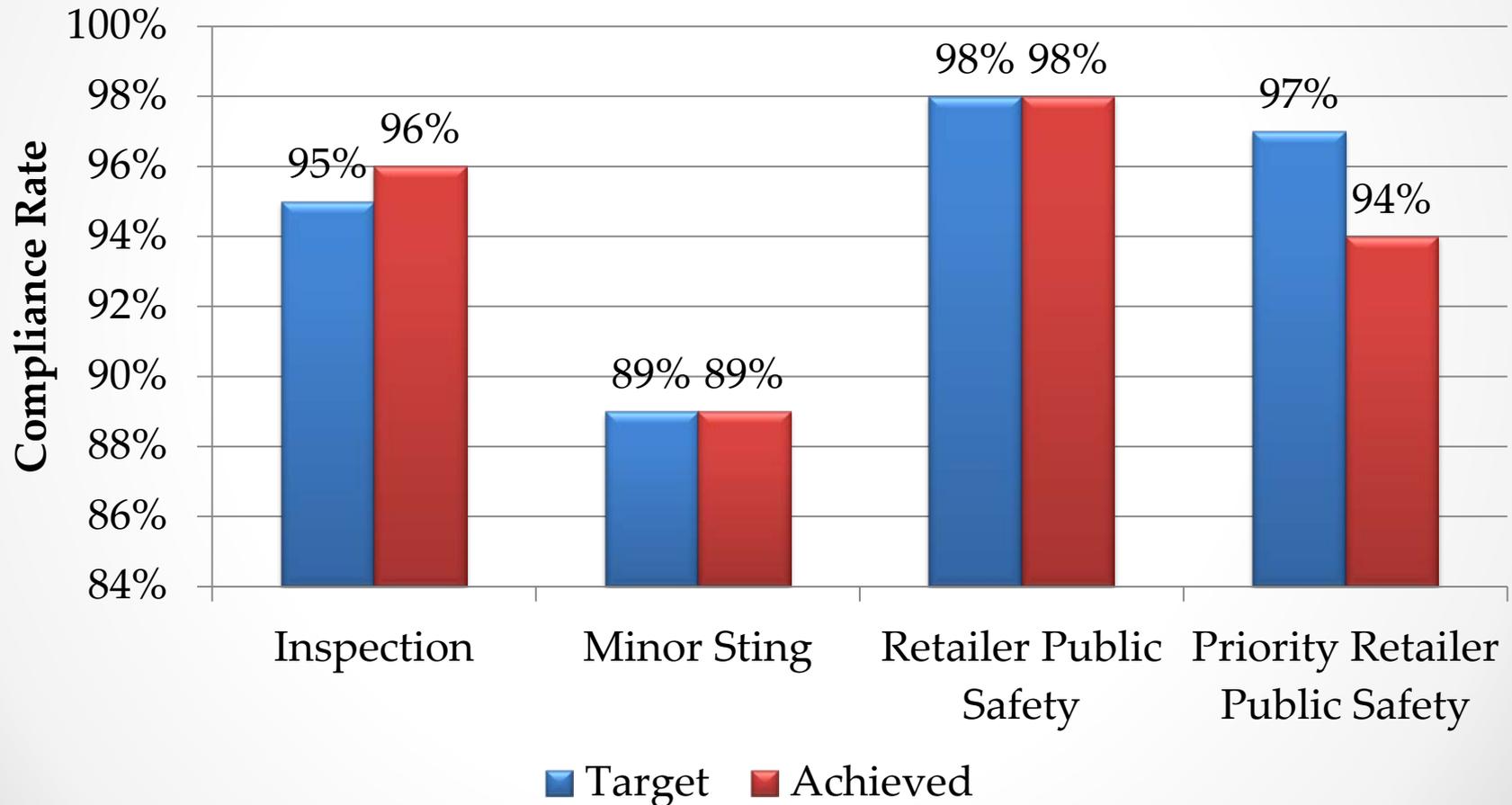


Enforcement FY 2013 Inspections & Administrative Cases September - July

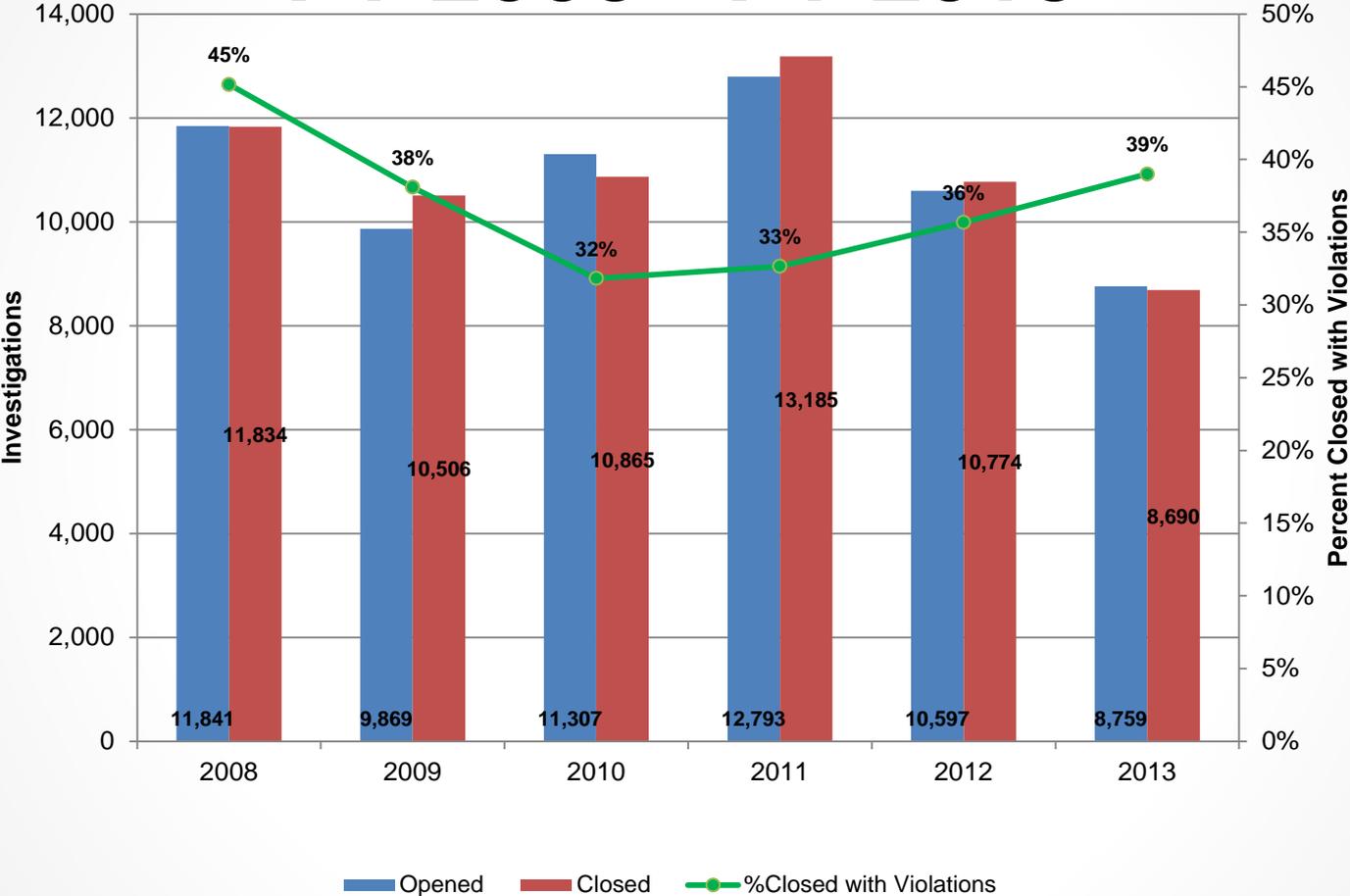


Enforcement Inspection Compliance Rates

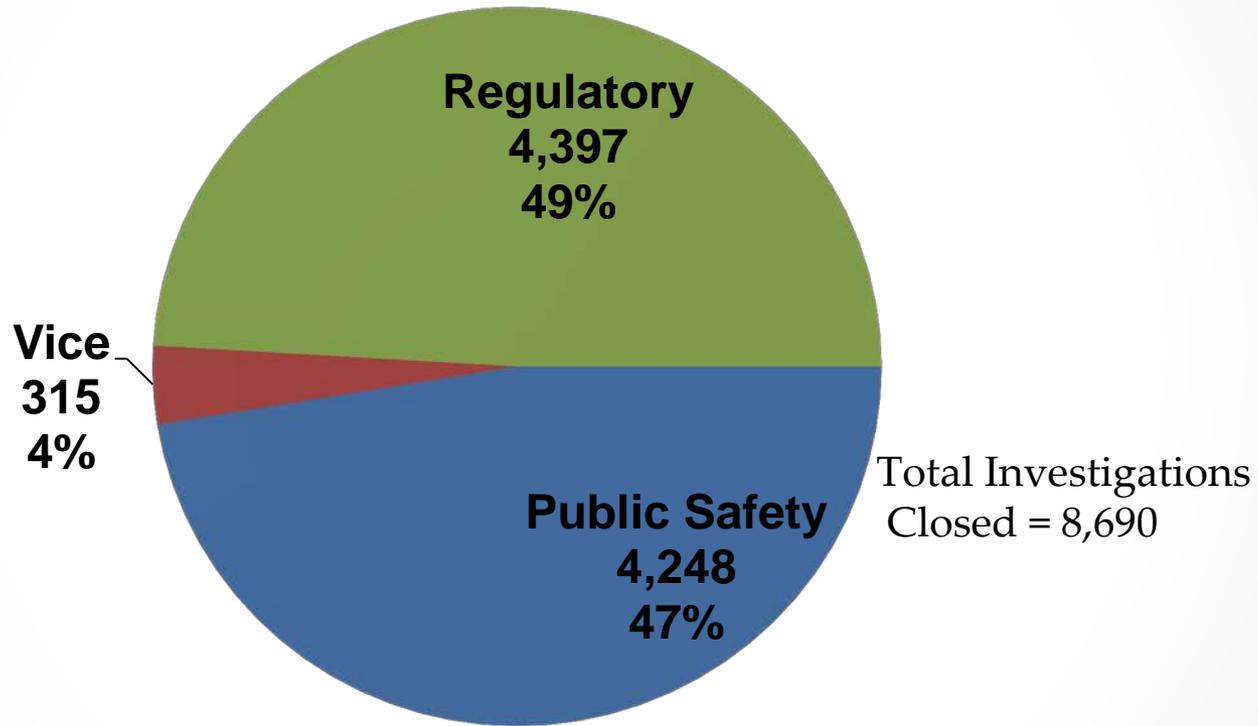
FY 2013 as of July 31st



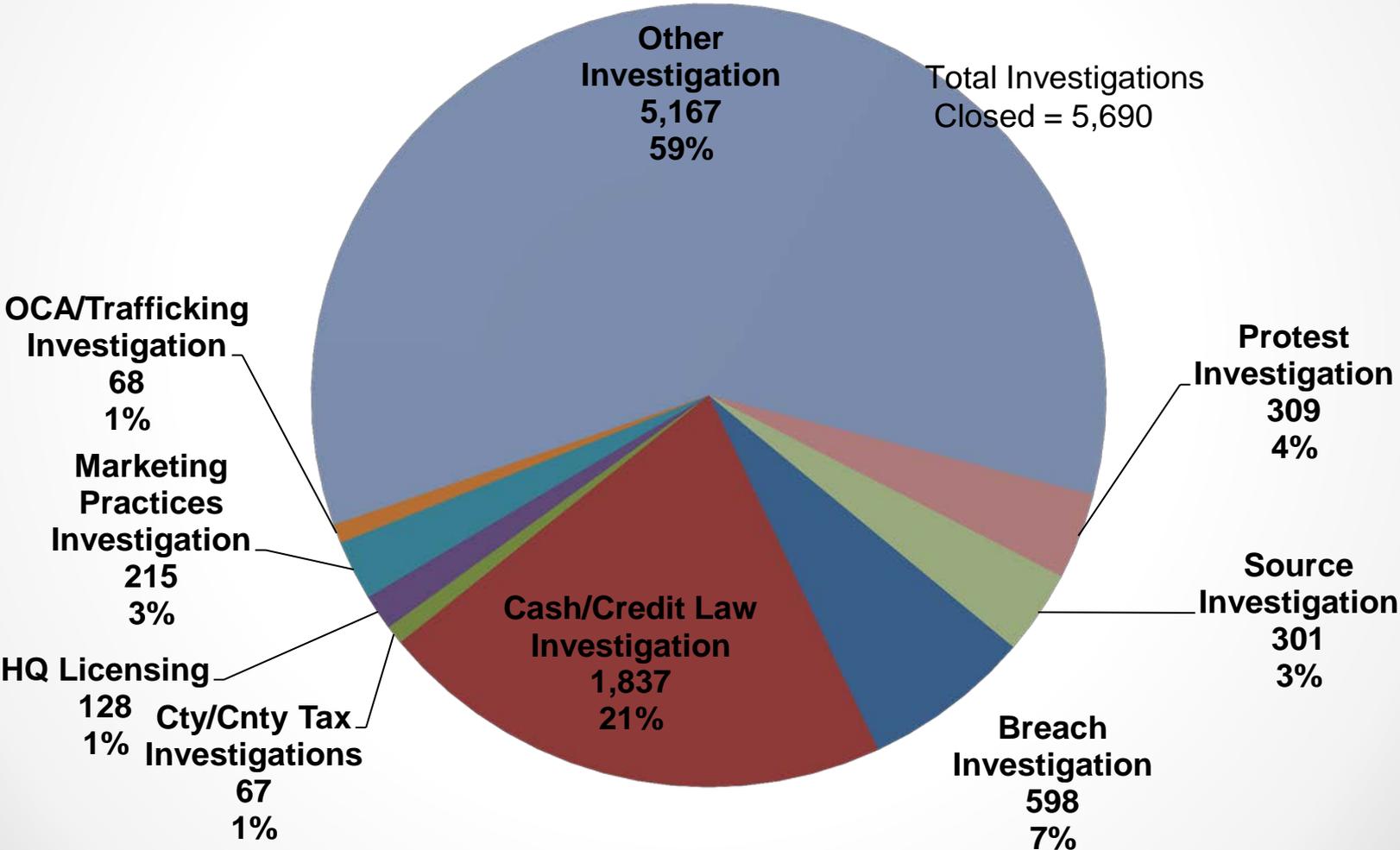
TABC Investigations FY 2008 - FY 2013



Investigations Closed by Type of Allegation Investigated FY 2013



Closed Investigations by Type FY 2013



**Top Ten Allegations Most Frequently
Investigated by Auditors
FY 2013**

Allegation Description	No. Investigations
Cash Law	1,026
Credit Law	797
Failure to Pay/Rpt MB Gross Receipts Tax	125
Failure to Pay State Sales Tax	104
Fail To Pay Local Fees /Tax	91
Misc. Marketing Practice Violation	85
Bond: Failure To Maint.Acpt.GR Tax Bond	63
Misc. Violations	36
Outdoor Advertising Violation	35
Subterfuge	31
Total Investigations Closed by Auditors	2,651

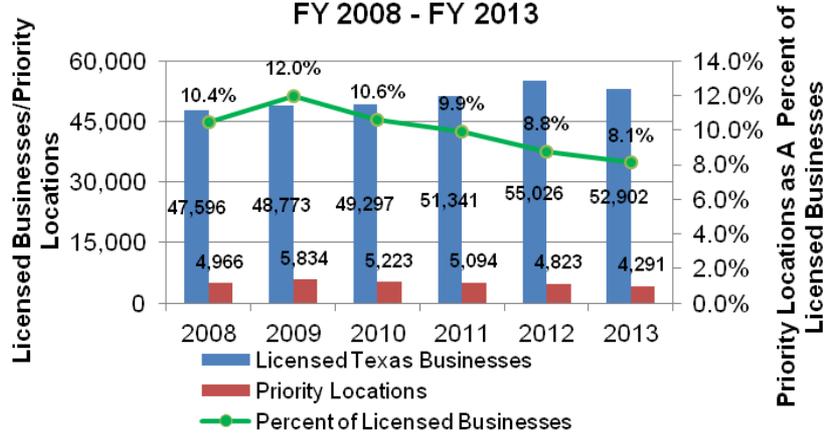
**Top Ten Allegations Most Frequently
Investigated by Enforcement Agents
FY 2013**

Allegation Description	No. Investigations
Sell/Serve/Dispense/Deliver AB To Minor	1,396
Sell/Deliver AB to Intoxicated Person	1,163
Breach, Failure To Report	555
Possess/ Permitting Possession of Drugs	506
Breach of the Peace	471
Sale/Serve/Deliver During Prohibited Hrs	444
Intoxicated Licensee/Permittee	425
Sale Of AB Without License/Permit	386
Permitting Minor To Possess/Consume	335
Place or Manner, Misc.	330
Total Investigations Closed by Agents	5,793

At-Risk Locations

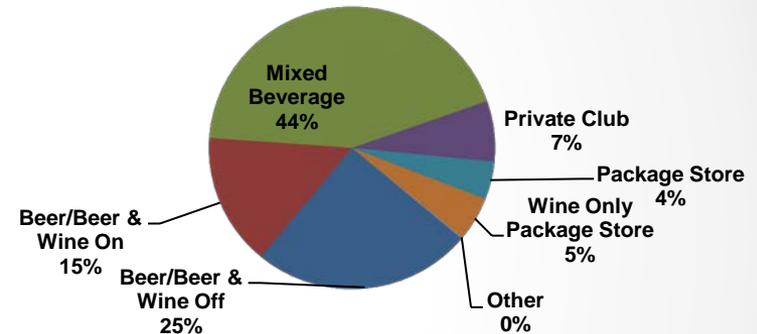
Licensed Texas Businesses & Priority Locations

FY 2008 - FY 2013



Priority Locations by License Type

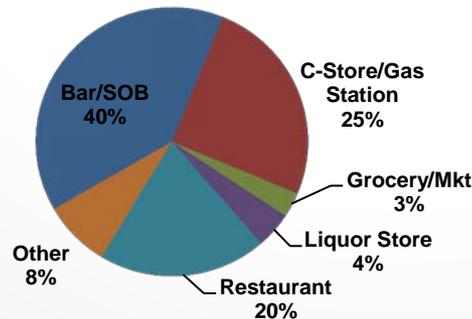
August 28, 2013



Priority Locations by Business Type

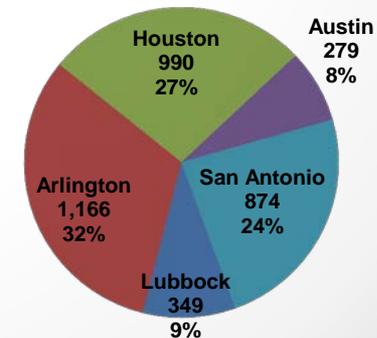
August 28, 2013

3,658
Priority
Locations in
Texas on

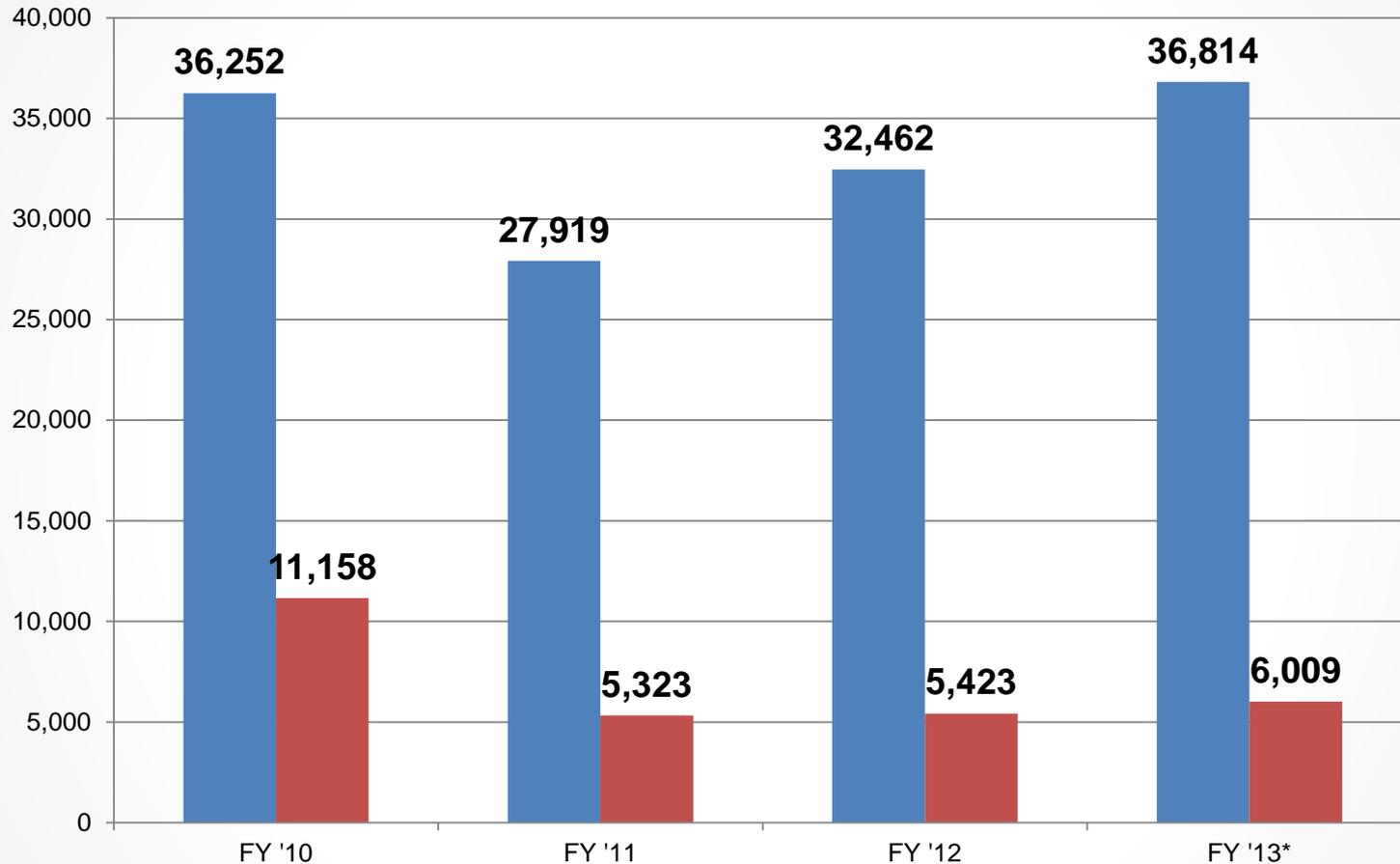


Priority Locations by District

August 28, 2012



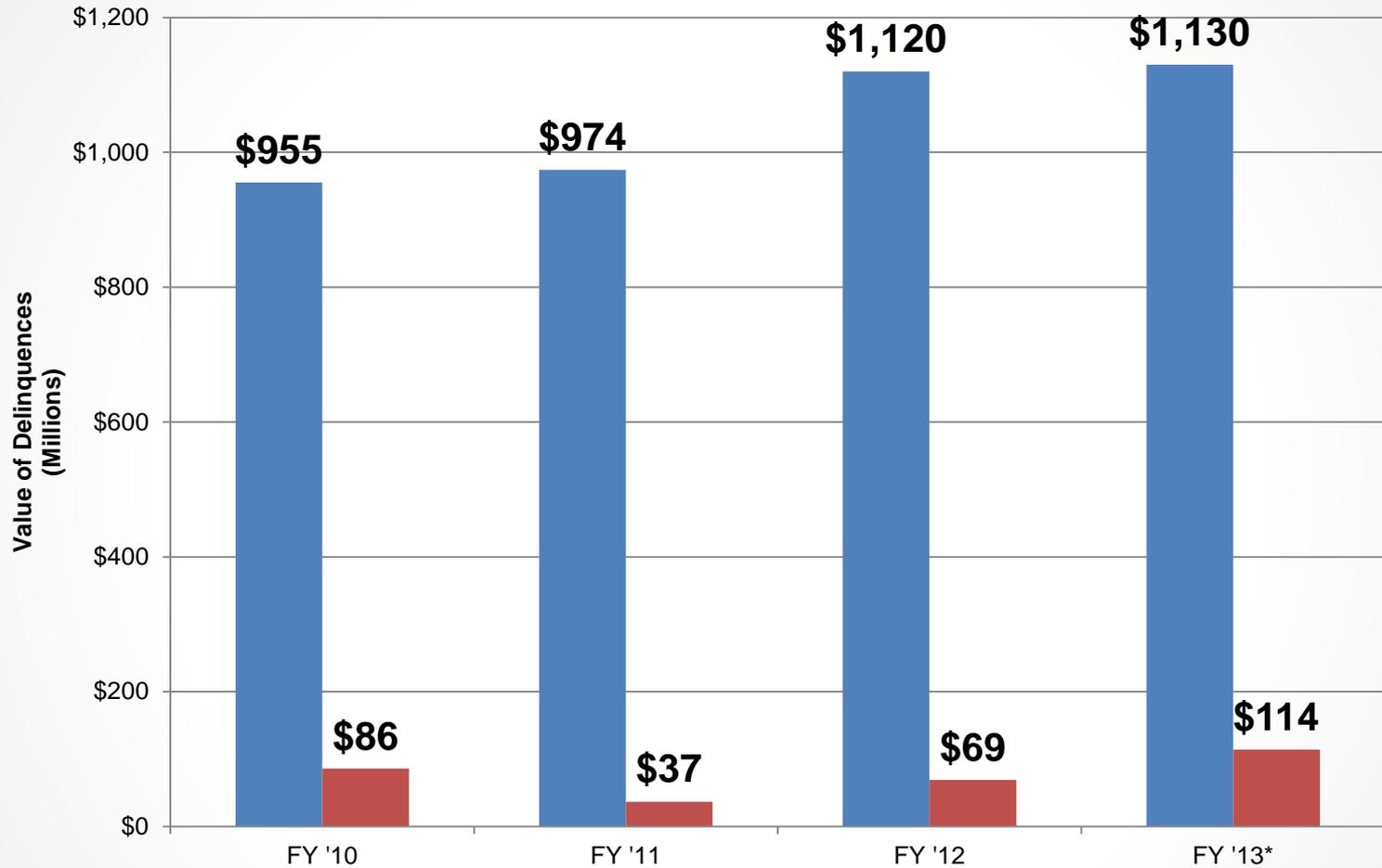
Reported & Published Credit Law Delinquencies FY 2010 - FY 2013



The values shown for FY 2013 are projections based on the delinquencies experienced FY-YTD and during the closing months of prior fiscal years.

■ Reported Delinquencies ■ Published Delinquencies

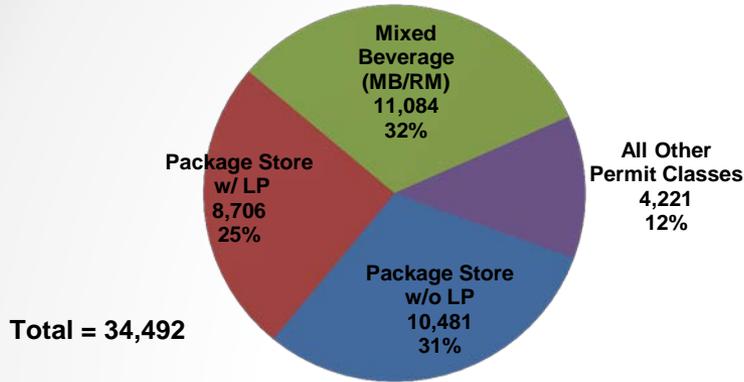
Dollar Value of Credit Law Delinquencies FY 2010 - FY 2013



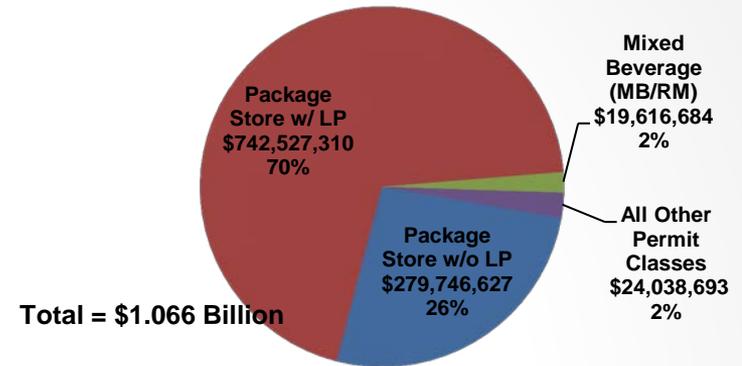
The values shown for FY 2013 are projections based on delinquencies experienced FY-YTD and during the closing months of prior fiscal years.

■ Reported Delinquencies ■ Published Delinquencies

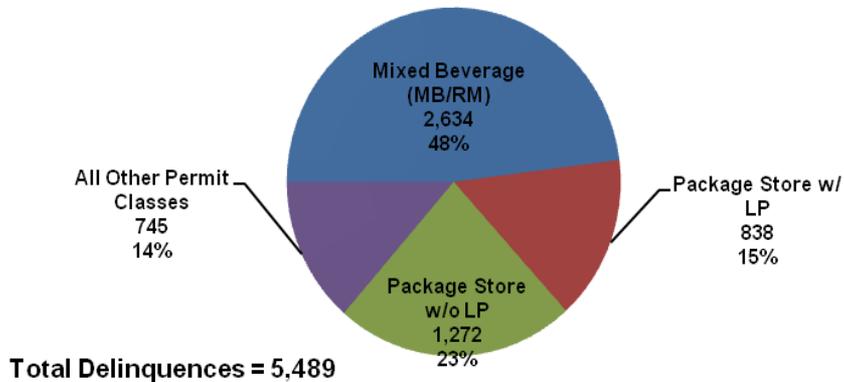
Reported Credit Law Delinquencies by License Class September 2012 - July 2013



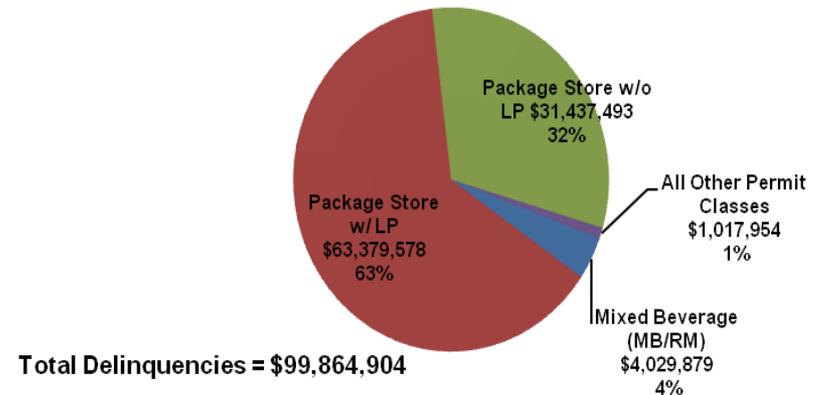
Dollar Value of Reported Delinquencies by License Class September 2012 - July 2013



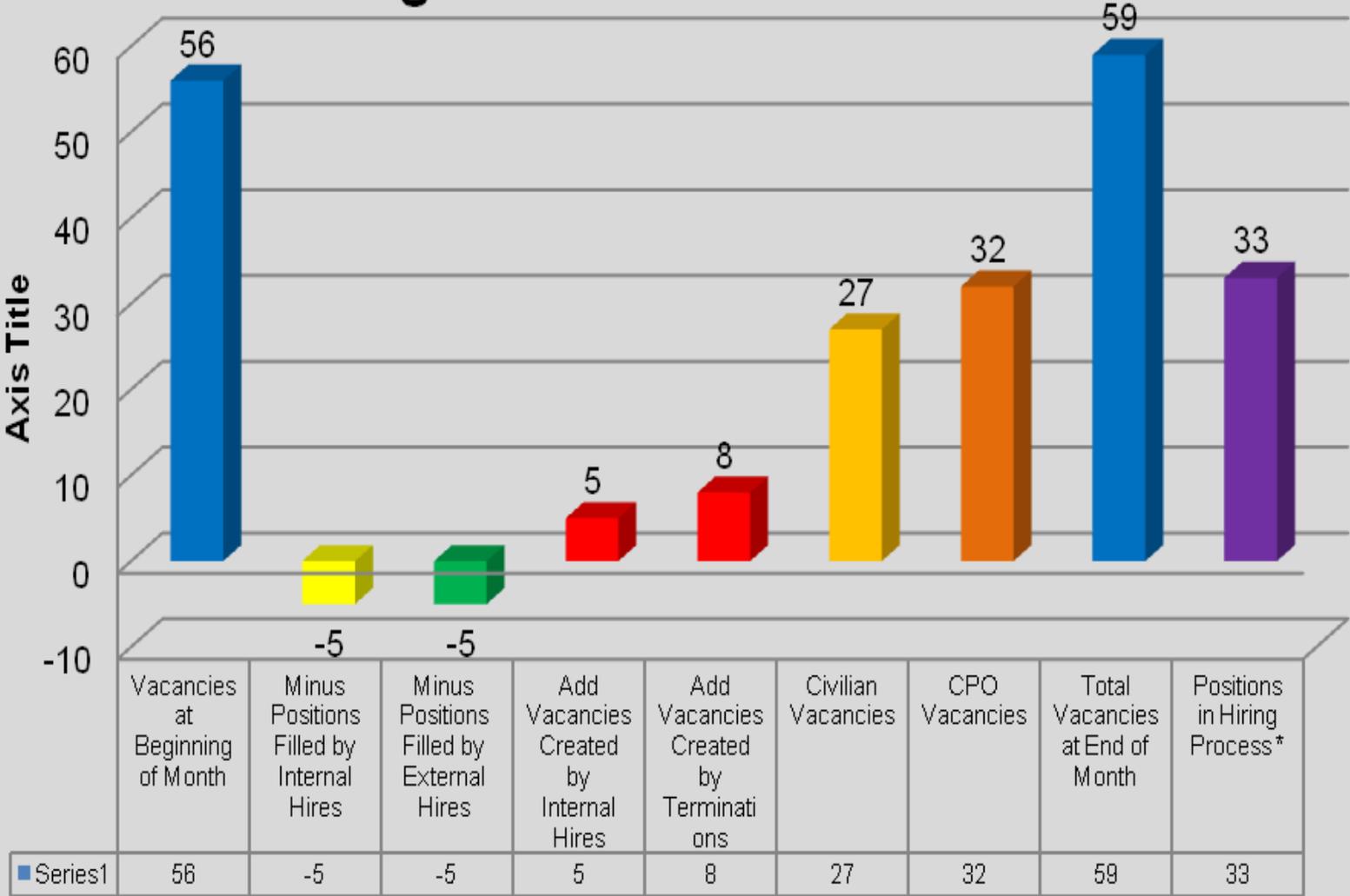
Published Credit Law Delinquencies by License Class September 2012 - July 2013



Published Credit Law Delinquencies by License Class September 2012 - July 2013



August 2013 Vacancies



Tax and Marketing Division

Stephen “Steve” Greinert – 26+ Years

Steve Greinert began his career with TABC on January 11, 1987 as an Administrative Technician in the Excise Tax Section. After graduating from Concordia Lutheran College in 1990, Steve promoted to an Auditor position. In 1999, he promoted to Excise Tax Manager and in 2011, to the Director of Tax and Marketing Practices.

Steve has lived his entire life in the Austin area. He and his wife Jane have been married for 25 years. They have two sons: Chris, age 18 and Michael, age 15. Steve likes to attend and tailgate at The University of Texas football and baseball games. He also enjoys hunting and playing golf.





Attachment 2

Ports of Entry Staffing Analysis

FIELD OPERATIONS
PORTS OF ENTRY DIVISION
STAFFING ANALYSIS
FY2014



Overview

- Purpose
- POE Organization and Staffing
- Assumptions
- Current Hours and Staffing
- Methodology
- Proposed Changes
- Revenue Impact

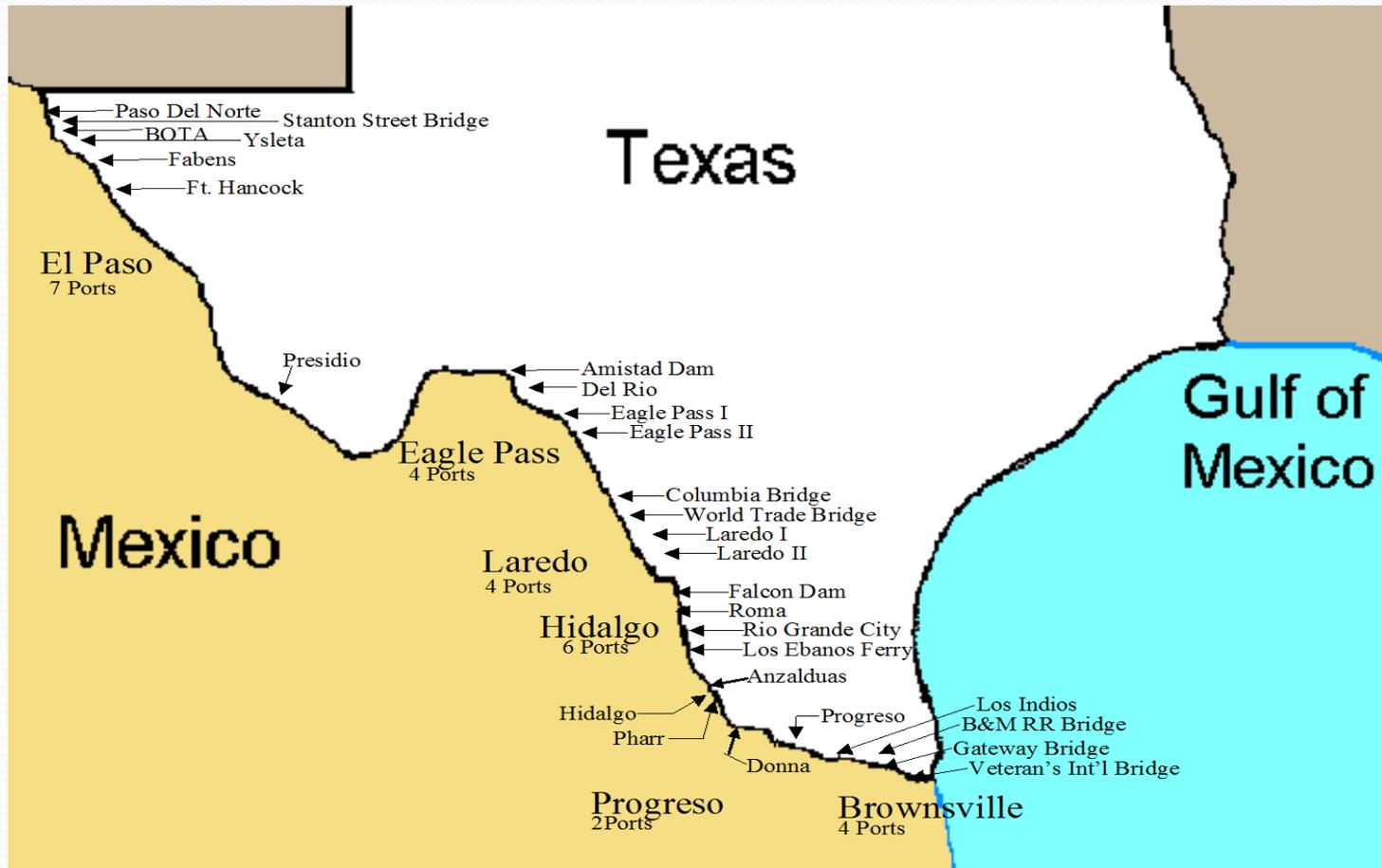
Purpose

- Determine the best hours to maximize TABC POE revenue at bridges
- Develop scheduling and staffing strategy for each location
- Strategically place newly appropriated positions in key revenue locations

POE Organization and Staffing

- Two Regional Managers – each supervise 3 Districts
 - Joe Fralin and Alex De La Garza
- 6 Inland Districts
 - 6 District Supervisors
 - 6 Assistant Supervisors
 - Currently 91 TCO positions (88 filled)
 - 7 additional positions appropriated during 83rd Legislative Session
- New Seaport District (Galveston) will be established effective January 2014

Currently 88 TCO's are strategically placed at 20 Texas-Mexico border crossings comprising the six POE Districts.

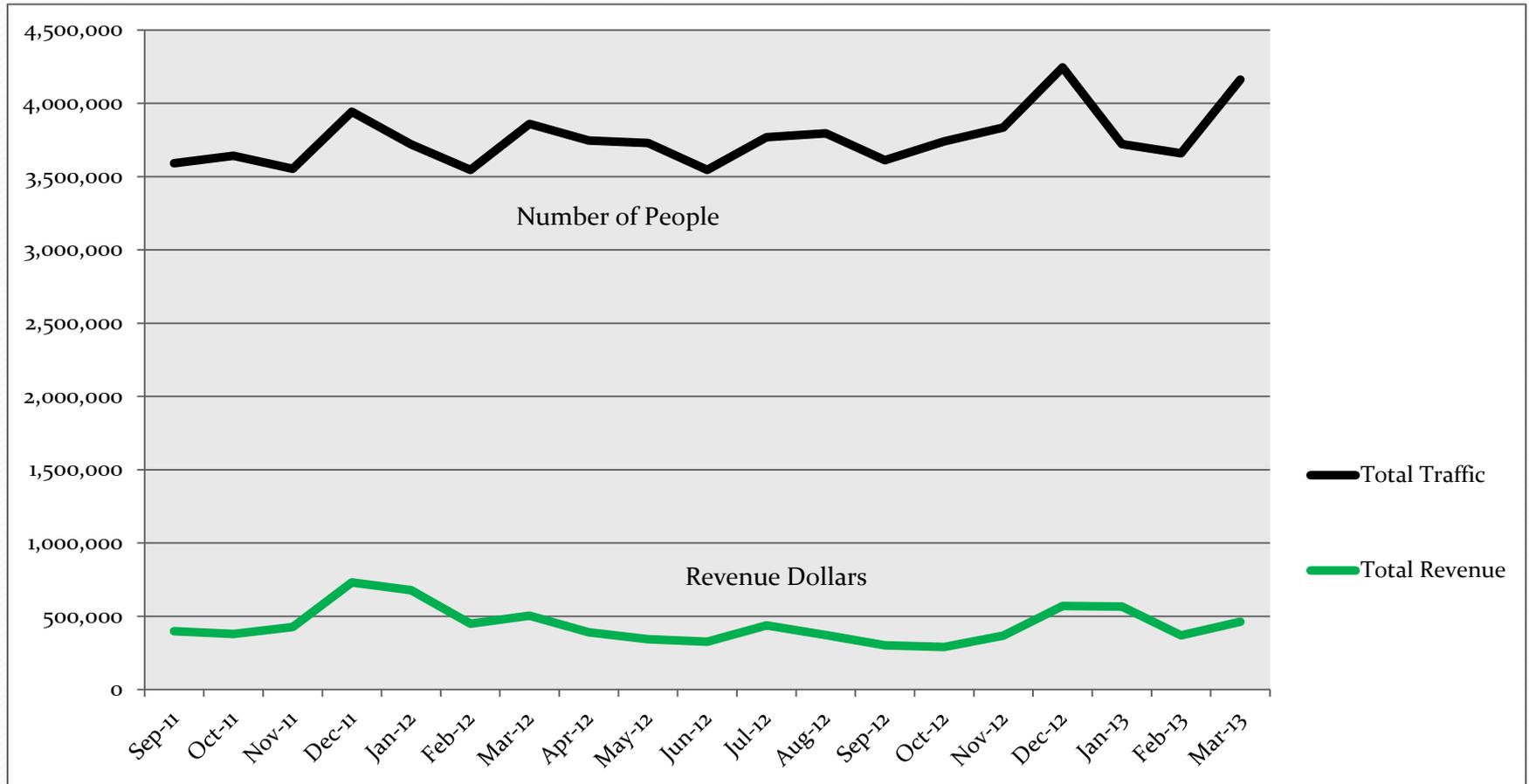


The remaining eight border crossings are spot-checked only

Assumptions

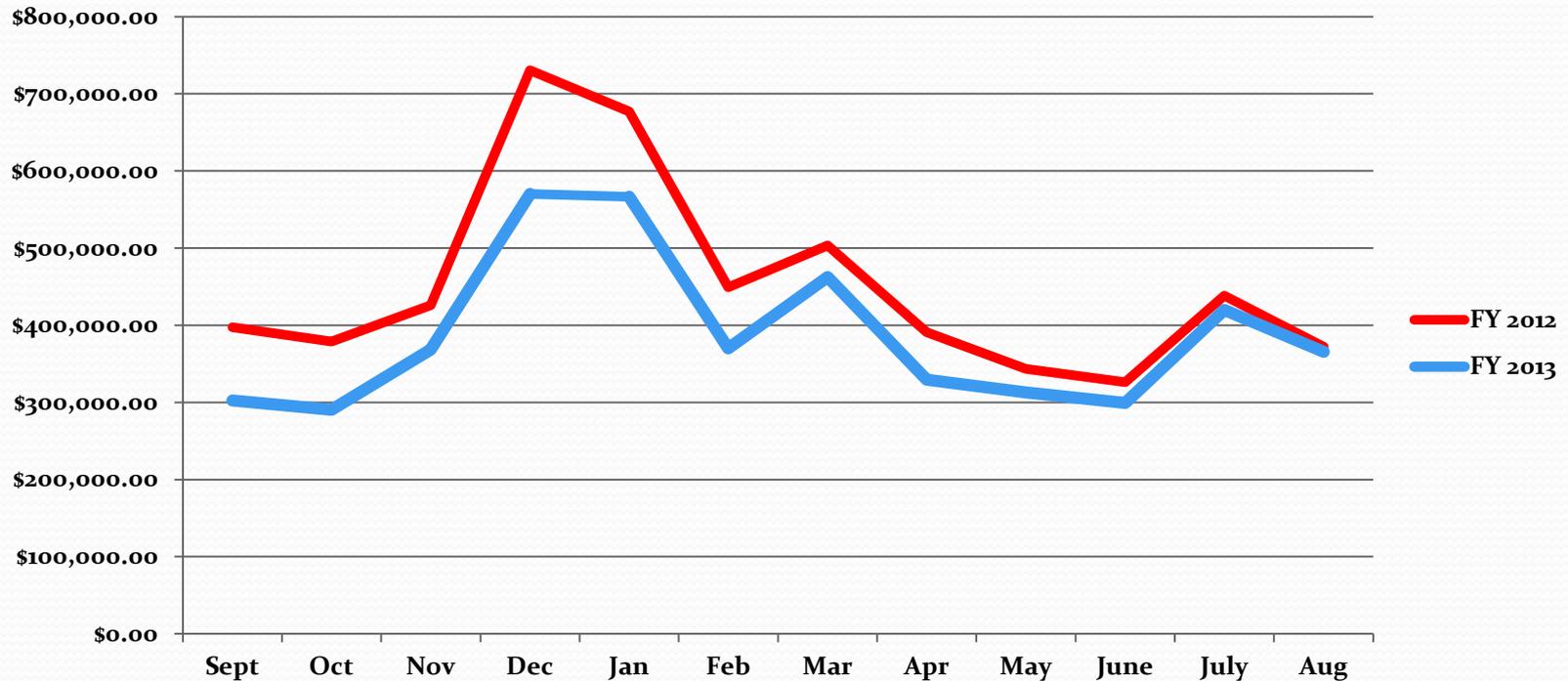
- Overall bridge traffic, as reported by CBP, is closely correlated with TABC POE revenue collection
 - Therefore, we can assume that relatively high traffic reported by CBP during hours when a TABC POE location is closed has the potential to generate relatively high revenue if that TABC POE location were to be open
- Although overall revenue for FY13 trailed that of FY12, the gap closed at the end of the year
 - Therefore, we can assume that revenue generation for FY14 will equal or exceed that of FY13

Total CBP Traffic vs. Revenue



Revenue Result for FY13

Overall Revenue FY 2012 vs 2013



Current Hours and Staffing

Location:	# of POS Loc.	Hours Open (daily)	TABC # Hours	Yearly Hours
El Paso District:				
Paso Del Norte (PDN)	3	8am-12am	16	17,520
Stanton Street Bridge	0	Commuter Traffic only		
Bridge of the Americas (BOTA)	2	8am-12am	16	11,680
Ysleta	1	8am-12am	16	5,840
Tornillo (Fabens)	1	Spot check	Varies	289
Ft. Hancock	1	Spot check	Varies	8
Presidio	1	10am-6pm	8	2,920
Eagle Pass District:				
Asmistad Dam	1	Spot check	Varies	215
Del Rio International	2	7am-11pm	16	11,680
Eagle Pass I	1	7am-11pm	16	5,840
Eagle Pass II	1	8am-12am	16	5,840
Laredo District:				
Gateway Bridge I	2	8am-12am	16	11,680
Lincoln/Juarez Bridge II	3	6am-12am	18	19,710
Columbia	1	Spot check	Varies	32
World Trade	0	Commercial Traffic only		

Current Hours and Staffing (cont'd)

Location:	# of POS Loc.	Hours Open	TABC # Hours	Yearly Hours
Hidalgo District:				
Hidalgo International	2	7am-12am	17	12,410
Pharr	1	8:00am-11:30pm	18	6,570
Anzalduas	1	7am-10pm	15	5,475
Roma International	1	7am-10pm	15	5,475
Rio Grande City	1	11am-7 pm	8	2,920
Los Ebanos Ferry	1	Spot check	Varies	44
Falcon Dam	1	Spot check	Varies	0
Progreso District				
Progreso Intl Bridge	4	8am-10pm	14	20,440
Donna	1	11am-7pm	8	2,920
Los Indios	1	7am-11pm	16	5,840
Brownsville District				
Gateway	2	7am-12am	17	12,410
B&M RR Bridge	1	8am-12am	16	5,840
Veteran's Intl Bridge	1	7am-11pm	16	5,840
Total Staffing Hours				179,438

Total Equivalent FTE's (1864 hours avg) - 96

Methodology

- Gathered CBP 24x7 traffic data for each port
 - Average number by day of week and time of day
 - Federal FY12 (Oct 11 – Sep 12)
- Gathered TABC POE revenue data for each port
 - Average amount by day of week and time of day
 - Federal FY12 (Oct 11 – Sep 12)
- Analyzed both data sets to determine:
 - Low traffic hours/revenue hours – consider change from opened to closed
 - High traffic hours/revenue hours – consider change from closed to opened

Proposed Changes



PROPOSED CHANGES

Location:	# of POS Loc.	Current Daily Hours of Operation	New Hours of Operation	Added Staff	Revenue Increase
El Paso District:				1FTE & 1PTE	\$7,992
Paso Del Norte (PDN)	3	8am-12am	M-F, Sun 8am-12am; Sat 8am-3am	0	
Stanton Street Bridge	0	Commuter Traffic only			
Bridge of the Americas (BOTA)	2	8am-12am	Fri-Mon 8am-12am; Tue-Thu 9am-12am	0	
Ysleta	1	8am-12am	M-F 9am-12am; Sat 8am-3am; Sun 8am-2am	0	
Tornillo (Fabens)	1	Spot check	Daily 10am-6pm	1FTE & 1PTE	
Ft. Hancock	1	Spot check			
Presidio	1	10am-6pm	no change	0	
Eagle Pass District:				0	\$12,706
Asmistad Dam	1	Spot check			
Del Rio International	2	7am-11pm	M-Th 8am-11pm; Fri 8am-1am; Sat 7am-1am; Sun 7am-12am	0	
Eagle Pass I	1	7am-11pm	M-F 8am-11pm; Sat-Sun 7am-11pm	0	
Eagle Pass II	1	8am-12am	M-Th 8am-12am; Fri & Sat 8am-2am; Sun 8am-1am	0	

PROPOSED CHANGES	# of POS Loc.	Current Daily Hours of Operation	New Hours of Operation	Added Staff	Revenue Increase
Location:					
Laredo District:				2PTE	\$44,963
Gateway Bridge I	2	8am-12am	M-Th 9am-12am; Fri&Sun 8am-1am; Sat 8am-2am	0	
1. Lincoln/Juarez Bridge II	3	6am-12am	M-W 6am-12am; Thu-Sat 24hrs; Sun 6am-2am	1PTE	
Columbia	1	Spot check	Fri-Sun 10am-6pm	1PTE	
World Trade	0	Commercial Traffic only			

PROPOSED CHANGES	# of POS Loc.	Current Daily Hours of Operation	New Hours of Operation	Added Staff	Revenue Increase
Hidalgo District:				0	\$13,889
Hidalgo International	2	7am-12am	M-W 8am-12am; Th 7am-12am; Fri-Sun 7am-1am		
Pharr	1	8:00am-11:30pm	no change		
Anzalduas	1	7am-10pm	M-W 8am-10pm; Th 7am-10pm; Fri-Sun 7am-11pm		
Roma International	1	7am-10pm	M-Th 8am-10pm; Fri&Sun 8am-11pm; Sat 8am-12am	0	
Rio Grande City	1	11am-7 pm	M-F 11am-7pm; Sat 11am-10pm; Sun 11am-8pm	0	
Los Ebanos Ferry	1	Spot check			
Falcon Dam	1	Spot check			

PROPOSED CHANGES	# of POS Loc.	Current Daily Hours of Operation	New Hours of Operation	Added Staff	Revenue Increase
Progreso District:				1PTE	\$11,065
Progreso Intl Bridge	4	8am-10pm	M-Th 8am-10pm; Fri&Sun 8am-11pm; Sat 8am-12am		
Donna	1	11am-7pm	M-Thu, & Sun 11am-7pm; Fri 11am-9pm; Sat 10am-9pm	1PTE w Progreso	
Los Indios	1	7am-11pm	no change		
Brownsville District:				0	\$5,769
Gateway	2	7am-12am	M-T,Th,Fri & Sun 7am-12am; Wed 8am-12am; Sat 7am-1am	0	
B&M RR Bridge	1	8am-12am	no change		
Veteran's Intl Bridge	1	7am-11pm	M-Th 8am-11pm; Fri 8am-12am; Sat-Sun 7am-1am	0	

Fabens – Tornillo Port

- Supervised from El Paso District
- Construction U.S. side: 12/28/13 completion – non-commercial Port operation 01/18/14
- Construction Mexico side: start TBD with est. completion May 2014
- Staffing: 1 FTE and 1 part-time *
- Hours: Daily 10 am – 6pm

*1 additional PTE after 05/2014

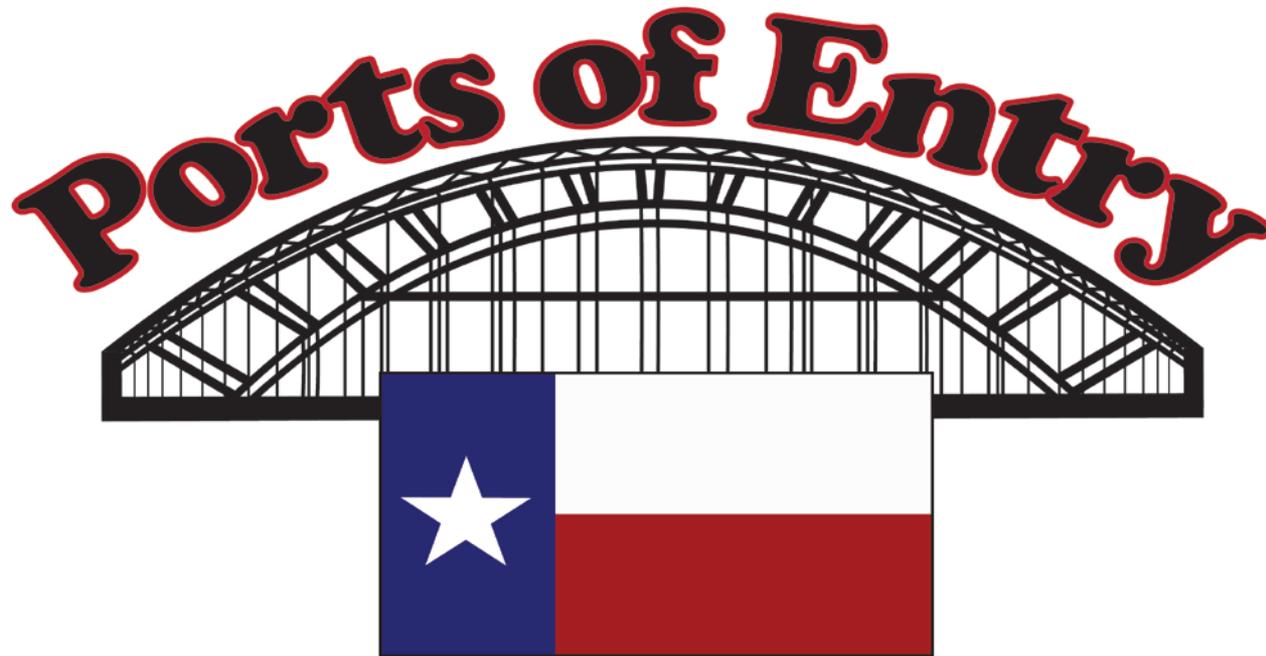
Summary of Proposed Changes

- Added staffing - total of 3 FTE's:
 - 1 FTE and 1 PTE for Fabens-Tornillo Port
 - 2 PTE for Laredo Port
 - 1 PTE for Progreso Port
- “Smart” Scheduling at selected Ports
 - Change opening and closing hours to maximize revenue

Revenue Impact

- Potential net revenue increase of **\$96,384** per year
 - El Paso District **\$7,992**
 - Eagle Pass District **\$12,706**
 - Laredo District **\$44,963**
 - Hidalgo District **\$13,889**
 - Progreso District **\$11,065**
 - Brownsville District **\$5,769**

Questions?



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Wednesday CBP POV trfc	Wednesday Revenue \$ per POV	Wednesday TABC Revenue	Wednesday TABC work hours	Wednesday TABC \$ per work hour	Thursday CBP POV trfc	Thursday Revenue \$ per POV	Thursday TABC Revenue	Thursday TABC work hours	Thursday TABC \$ per work hour
7,556		\$0.00	0.00		7,614		\$0.00	0.00	
5,641		\$0.00	0.00		6,493		\$0.00	0.00	
3,383		\$0.00	0.00		4,393		\$0.00	0.00	
1,761		\$0.00	0.00		2,408		\$0.00	0.00	
2,695		\$0.00	0.00		2,645		\$0.00	0.00	
6,442		\$0.00	0.00		6,423		\$0.00	0.00	
8,099		\$0.00	0.00		8,416		\$0.00	0.00	
8,121		\$0.00	0.00		8,503		\$0.00	0.00	
20,719	\$0.01	\$290.25	56.35	5.15	20,094	\$0.01	\$299.00	58.69	5.09
25,457	\$0.01	\$337.00	44.60	7.56	25,125	\$0.02	\$557.50	50.20	11.11
21,770	\$0.03	\$620.75	49.27	12.60	22,098	\$0.03	\$597.75	50.94	11.73
18,785	\$0.04	\$798.50	52.90	15.09	18,520	\$0.06	\$1,124.75	51.60	21.80
17,797	\$0.07	\$1,224.25	57.22	21.40	17,613	\$0.07	\$1,197.25	52.99	22.59
17,678	\$0.07	\$1,261.00	58.00	21.74	17,705	\$0.08	\$1,455.75	52.00	28.00
17,893	\$0.08	\$1,426.50	58.00	24.59	17,835	\$0.10	\$1,841.00	52.89	34.81
18,578	\$0.08	\$1,423.00	58.44	24.35	18,664	\$0.09	\$1,591.00	52.47	30.32
21,205	\$0.08	\$1,703.50	33.85	50.32	20,589	\$0.09	\$1,755.50	31.80	55.20
20,129	\$0.08	\$1,601.75	82.67	19.38	19,906	\$0.08	\$1,669.25	74.54	22.39
22,606	\$0.07	\$1,545.25	57.42	26.91	22,297	\$0.07	\$1,564.25	54.00	28.97
25,777	\$0.06	\$1,549.25	55.68	27.82	25,133	\$0.07	\$1,703.25	51.75	32.91
24,833	\$0.07	\$1,769.50	55.59	31.83	24,272	\$0.07	\$1,787.25	52.52	34.03
20,541	\$0.07	\$1,515.25	54.74	27.68	19,776	\$0.07	\$1,324.75	51.00	25.98
16,310	\$0.06	\$982.75	53.75	18.28	16,301	\$0.07	\$1,138.50	51.00	22.32
13,501	\$0.03	\$403.50	51.01	7.91	13,152	\$0.04	\$538.75	49.99	10.78
367,277	0.06	\$18,452.00	879.49	\$20.98	365,975	0.06	\$20,145.50	838.38	\$24.03
	avg		54.97	avg		avg		52.40	avg

Friday POV trfc	Friday Revenue \$ per POV	Friday TABC Revenue	Friday TABC work hours	Friday TABC \$ per work hour	Saturday POV trfc	Saturday Revenue \$ per POV	Saturday TABC Revenue	Saturday TABC work hours	Saturday TABC \$ per work hour
8,023		\$0.00	0.00		9,284		\$0.00	0.00	
6,596		\$0.00	0.00		9,004		\$0.00	0.00	
4,541		\$0.00	0.00		6,998		\$0.00	0.00	
3,023		\$0.00	0.00		5,389		\$0.00	0.00	
3,075		\$0.00	0.00		4,140		\$0.00	0.00	
6,155		\$0.00	0.00		5,259		\$0.00	0.00	
8,016		\$0.00	0.00		7,225		\$0.00	0.00	
8,241		\$0.00	0.00		7,517		\$0.00	0.00	
19,749	\$0.02	\$325.75	51.05	6.38	14,030	\$0.05	\$721.25	50.42	14.30
25,175	\$0.03	\$654.50	49.32	13.27	16,572	\$0.04	\$691.00	53.19	12.99
21,603	\$0.03	\$753.75	51.13	14.74	18,192	\$0.05	\$938.50	54.27	17.29
18,338	\$0.05	\$972.25	52.50	18.52	19,010	\$0.07	\$1,260.00	54.15	23.27
18,328	\$0.07	\$1,351.25	54.17	24.94	22,269	\$0.10	\$2,164.00	55.55	38.96
18,083	\$0.10	\$1,813.25	55.60	32.61	22,032	\$0.10	\$2,193.75	55.00	39.89
18,914	\$0.11	\$2,023.25	54.00	37.47	21,736	\$0.13	\$2,899.50	55.00	52.72
19,271	\$0.11	\$2,208.00	53.34	41.39	21,525	\$0.14	\$3,090.75	54.99	56.21
21,642	\$0.11	\$2,277.75	35.04	65.00	21,430	\$0.15	\$3,246.50	31.58	102.80
21,029	\$0.11	\$2,376.50	76.33	31.13	21,697	\$0.16	\$3,546.75	81.35	43.60
22,757	\$0.11	\$2,459.00	56.09	43.84	20,809	\$0.17	\$3,620.75	55.20	65.59
24,404	\$0.10	\$2,522.00	53.05	47.54	20,129	\$0.16	\$3,296.00	55.58	59.30
23,125	\$0.11	\$2,548.50	54.39	46.86	19,330	\$0.15	\$2,992.50	54.00	55.42
19,503	\$0.11	\$2,106.25	51.46	40.93	17,720	\$0.14	\$2,469.00	54.00	45.72
17,366	\$0.09	\$1,544.50	50.00	30.89	17,091	\$0.12	\$1,968.25	54.00	36.45
15,023	\$0.06	\$846.25	50.58	16.73	15,878	\$0.06	\$995.25	54.00	18.43
371,980	0.08	\$26,782.75	848.05	\$31.58	364,266	0.12	\$36,093.75	872.28	\$41.38
	avg		53.00	avg		avg		54.52	avg

Sunday	CBP POV trfc	Sunday Revenue \$ per POV	Sunday TABC Revenue	Sunday TABC work hours	Sunday TABC \$ per work hour
	10,375		\$0.00	0.00	
	10,331		\$0.00	0.00	
	9,425		\$0.00	0.00	
	8,766		\$0.00	0.00	
	7,000		\$0.00	0.00	
	4,903		\$0.00	0.00	
	4,100		\$0.00	0.00	
	4,640		\$0.00	0.00	
	10,179	\$0.07	\$676.75	60.68	11.15
	13,853	\$0.07	\$958.75	54.40	17.62
	15,090	\$0.07	\$1,016.50	55.49	18.32
	16,866	\$0.09	\$1,510.50	58.01	26.04
	18,179	\$0.09	\$1,579.50	59.00	26.77
	18,968	\$0.10	\$1,835.00	59.00	31.10
	19,837	\$0.13	\$2,543.75	59.00	43.11
	19,887	\$0.13	\$2,651.50	59.00	44.94
	23,686	\$0.12	\$2,769.50	36.29	76.32
	22,283	\$0.13	\$2,850.75	84.25	33.84
	21,062	\$0.12	\$2,595.50	58.32	44.50
	20,030	\$0.10	\$2,076.50	57.72	35.98
	18,682	\$0.11	\$1,992.25	56.00	35.58
	18,127	\$0.11	\$1,989.00	56.00	35.52
	17,853	\$0.10	\$1,707.25	56.00	30.49
	17,715	\$0.04	\$791.25	55.05	14.37
	351,837	0.10	\$29,544.25	924.21	
		avg		57.76	

Monday: traffic in outlier hours needs to exceed 12,750 to cover cost per work hour (\$15.68) at avg 56.77 work hours - for additional potential revenue.

Tuesday: traffic in outlier hours needs to exceed 14,100 to cover cost per work hour (\$15.68) at avg 105.69 work hours - for additional potential revenue

Wednesday: traffic in outlier hours needs to exceed 14,400 to cover cost per work hour (\$15.68) at avg 54.97 work hours - for additional potential revenue.

Thursday: traffic in outlier hours needs to exceed 13,700 to cover cost per work hour (\$15.68) at avg 52.40 work hours - for additional potential revenue.

Friday: traffic in outlier hours needs to exceed 10,400 to cover cost per work hour (\$15.68) at avg 53.0 work hours - for additional potential revenue.

Saturday: traffic in outlier hours needs to exceed 7,200 to cover cost per work hour (\$15.68) at avg 54.42 work hours - for additional potential revenue.

Sunday: traffic in outlier hours needs to exceed 9,100 to cover cost per work hour (\$15.68) at avg 57.76 work hours - for additional potential revenue.

Attachment 3

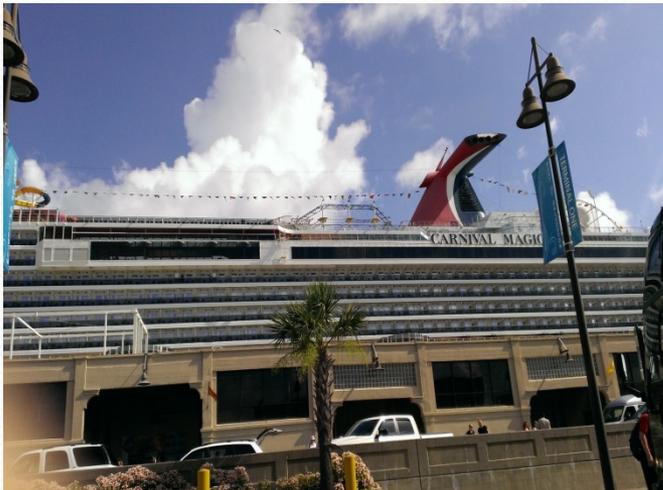
Seaports Tax Collection Implementation Update

FIELD OPERATIONS
PORTS OF ENTRY DIVISION
SEAPORTS UPDATE – Sep 2013



Seaports Unit Status

- Tax Collection at Seaports
 - Galveston - 3 ships
 - Houston-Bayport – 1 ship (fall '14)



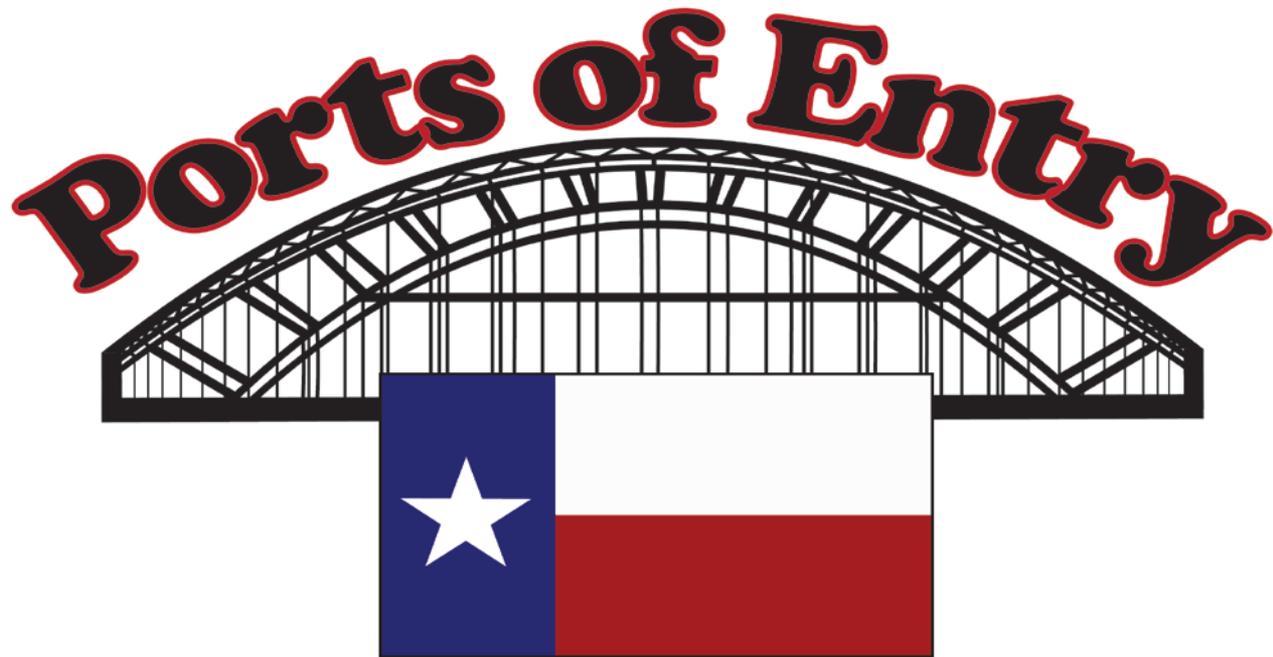
2014 Galveston Cruises

- Carnival Magic: 52 sailings
- Carnival Triumph: 78 sailings
- Disney Wonder: 2 sailings
- RCCL Navigator: 50 sailings

Cost Summary:

- FY'14 Cost Summary:
 - Estimated Temp. Labor Cost: \$51,770
 - Equipment & Services Cost: \$101,792
 - Base Rent (9mos): \$4,073
 - Salaried Supervisors: \$65,954 (TCOV 10/12 of \$44,273 , TCOIV 9/12 of \$38,746)
- **Total \$223,589**
- Seaports FY Budget Amt: \$252,173
- Management Reserve: **\$28,584**

Questions?



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Galveston Cruise Schedule:

PORT OF GALVESTON - CRUISE CALLS 2014

TERMINAL NO. 1 - PIER 23/26 And TERMINAL NO. 2 = PIER 27/28

JANUARY							FEBRUARY							MARCH							APRIL								
Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat		
			1	2	3	4	1	2	3	4	5	6	7	8	1	2	3	4	5	6	7	8	1	2	3	4	5	6	7
5	6	7	8	9	10	11	9	10	11	12	13	14	15	9	10	11	12	13	14	15	13	14	15	16	17	18	19		
12	13	14	15	16	17	18	16	17	18	19	20	21	22	16	17	18	19	20	21	22	20	21	22	23	24	25	26		
19	20	21	22	23	24	25	23	24	25	26	27	28	23	24	25	26	27	28	29	27	28	29	30						
26	27	28	29	30	31								30	31															

MAY							JUNE							JULY							AUGUST						
Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat
				1	2	3	1	2	3	4	5	6	7	1	2	3	4	5	6	7	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9
11	12	13	14	15	16	17	15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16
18	19	20	21	22	23	24	22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23
25	26	27	28	29	30	31	29	30					27	28	29	30	31			24	25	26	27	28	29	30	
																				31							

SEPTEMBER							OCTOBER							NOVEMBER							DECEMBER						
Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat
	1	2	3	4	5	6				1	2	3	4							1							
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	7	8	9	10	11	12	13
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	14	15	16	17	18	19	20
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27
28	29	30					26	27	28	29	30	31	23	24	25	26	27	28	29	28	29	30	31				
													30														

CRUISE CALLS - TERMINAL NO. 1 (AND) TERMINAL NO. 2		Sailings
No.1 CCL - Carnival Magic (52 Sundays)		52
No.1 CCL - Carnival Triumph (26 Mondays, 26 Thursdays, 26 Saturdays)		78
No.2 DCL - Disney Wonder (1 Saturday, 1 Wednesday)		2
No.2 RCCL - Navigator (48 Sundays, 1 Saturday over night 5-10-2013, 1 Wednesday)		49
181		



Terminal	No.1	Terminal	No.2
Sunday	52	Sunday	48
Monday	26	Monday	
Tuesday	0	Tuesday	
Wednesday	0	Wednesday	2
Thursday	26	Thursday	
Friday	0	Friday	
Saturday	26	Saturday	1
Total No. 1	130	Total No. 2	51
Total Terminal No.1 / No.2		181	

Attachment 4

**Internal Audit of the Inspection Administration-
Compliance**

**INTERNAL AUDIT OF THE
INSPECTION ADMINISTRATION - COMPLIANCE**

AS OF JUNE 5, 2013

AT THE

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

Commission Members
Texas Alcoholic Beverage Commission
Austin, Texas

We have evaluated the controls implemented by the Texas Alcoholic Beverage Commission (Commission) regarding the Inspection Administration - Compliance as of June 05, 2013. The results of our evaluation disclosed that the Commission has procedures and controls in place for the inspections of licensed premises selling alcoholic beverages. We noted some opportunities for enhancing the controls in place. The report that accompanies this letter summarizes our comments and recommendations.

We have already discussed this report with various Commission personnel, and we will be pleased to discuss it in further detail at your convenience.

Monday N. Rufus, P.C.

June 5, 2013
Austin, Texas

Objectives

The primary objectives of the internal audit were:

1. Reliability and Integrity of Information
2. Compliance with Policies, Procedures, Laws, and Regulations
3. Efficiency and Effectiveness of Operating Procedures
4. Safeguarding of Assets

Summary of Internal Audit Results

- Procedures and controls are in place to ensure that inspections conducted by the Inspection Administration-Compliance are being conducted to ensure that licensed premises are complying with the Texas Alcoholic Beverage Code.
- The Compliance Procedures Manual is currently being revised and updated due to the reorganization of the Commission's Field Operations Division.
- During our audit of the Commission's Inspection Administration-Compliance inspection activities, we noted that some procedures were not consistently being implemented by field auditors during inspections of licensed premises.

Finding 1

- **There is no procedure or instruction on how inspection time will be computed for completed inspections with different inspection times being recorded in the Agency Reporting and Tracking System.**
- Three of ten (10) Form C-706 (Open Compliance Check Inspection) inspections tested had inspection times calculated differently:
 - 1 inspection - using percentage of an hour
 - 1 inspection - using minutes and
 - 1 inspection - possible reporting error.

Inspection ID	Inspection Time per Form C-706	Inspection Time per ARTS
1650721	.75	45 minutes (percentage of hour)
1684218	.20	20 minutes (minutes)
1650922	.50	90 minutes (possible error)

Finding 1 (cont'd)

Recommendation:

- Management should include a procedure/comment on the method required to record inspection time at the completion of an inspection and ensure that the inspection time numbers on the inspection forms agree to the recorded Agency Reporting and Tracking System inspection time.
- It is essential that accurate inspection times be consistently recorded by field auditors since the number of hours worked by auditors are used by management in monitoring the inspection target numbers in the Commission's annual Compliance Action Plan.

Finding 2

- **Management should clarify policy on recording inspection time at the completion of an inspection.**
- The five inspections reviewed at District 5 (San Antonio) had a range from 1 to 6 days from the date of the inspection to the date it was recorded in the Agency Reporting and Tracking System.
- The Compliance Procedures Manual requires that they be recorded “upon completion of an inspection”.

Inspection ID:	Date of Inspection	Recorded in ARTS /DAR	Number of Days
1639351	10/18/2012	10/22/2012	4
1650721	11/08/2012	11/0//2012	1
1684218	01/11/2013	01/17/2013	6
1685565	01/18//2013	01/22/2013	4
1693234	02/01/2013	02/04/2013	3

Finding 2 (cont'd)

Recommendation:

- Management should clarify the Compliance Procedures Manual to be more consistent as to when completed inspections are required to be recorded by field auditors in the Agency Reporting and Tracking System depending on the type of inspection.
- This would also establish reporting consistency in the five statewide districts and provide a more up to date number of inspections completed.

Report Distribution

As required by Gov't Code 2102.0091, copies of these reports should be filed with the following:

Governor's Office of Budget and Planning

Attn: Mike Meyers
P.O. Box 12428
Austin, Texas 78711
Phone: (512) 463-1778

Legislative Budget Board

Attn: Ed Osner
P.O. Box 12666
Austin, Texas 78711
Phone: (512) 463-1200

State Auditor's Office

Attn: Internal Audit Coordinator
P.O. Box 12067
Austin, Texas 78711
Phone: (512) 936-9500

Sunset Advisory Commission

Attn: Ken Levine
P.O. Box 13066
Austin, Texas 78711
Phone: (512) 463-1300

Texas Alcoholic Beverage Commission

Jose Cuevas, Jr., Presiding Officer
Steven M. Weinberg, MD, JD
Melinda S. Fredricks

**Texas Alcoholic Beverage Commission
Management**

Sherry Cook, Administrator

Attachment 5

**Follow-up: Internal Audit of the Licensing & Permit
Revenue Processing; Information Resources Division;
Legal Services Division**

FOLLOW-UP: INTERNAL AUDIT OF THE

LICENSING AND PERMIT REVENUE PROCESSING

INFORMATION RESOURCES DIVISION

LEGAL SERVICES DIVISION

AS OF AUGUST 29, 2013

AT THE

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

Commission Members
Texas Alcoholic Beverage Commission
Austin, Texas

We have reviewed the status of our internal audit recommendations related to the following as of August 29, 2013:

- Licensing and Permit Revenue Processing (Original Report Date: March 27, 2012)
- Information Resources Division (Original Report Date: May 22, 2012)
- Legal Services Division (Original Report Date: October 22, 2012)

The accompanying schedules summarize our original findings and recommendations, current status, and remarks.

We appreciate the courtesy and cooperation shown by the management of the Agency during the course of the engagement.

Monday N. Rufus, P.C.

August 29, 2013
Austin, Texas

Objective

The objective of these internal audit follow-ups was limited to following up on the findings and recommendations included in the following:

- Licensing and Permit Revenue Processing (Original Report Date: March 27, 2012)
- Information Resources Division (Original Report Date: May 22, 2012)
- Legal Services Division (Original Report Date: October 22, 2012)

Summary of Internal Audit Results

Appendix 1 (Licensing and Permit Revenue Processing), *Appendix 2* (Information Resources Division), and *Appendix 3* (Legal Services Division – Support) summarize and provide the status and steps taken by the management of the Commission to the recommendations made in these reports.

LICENSING AND PERMIT REVENUE PROCESSING

Finding 1

Staff has the capability to override the fees required in VR and this occurs frequently with respect to override of late fees imposed by the VR system.

Recommendation:

Licensing Division management should monitor the fee override activities performed in the Versa Regulation system to ensure that all fee changes satisfy agency requirements. Override capabilities should be limited to processors, who should obtain approval from their supervisors for any fee changes made including the amount, the date and the reason for all changes other than the \$100 late fee adjustment. Supervisors should maintain a file of fee changes made to reconcile with a Versa Regulation override report.

Finding 1 (cont'd)

Management Response:

Agree. Licensing is working with IRD to finalize monthly report for supervisors to review overrides by individual processor from their district. Override capabilities will be restricted to limited Resource Support staff members at the request of processors after obtaining approval from their supervisor.

Current Status: Implemented

Internal Auditor determined that the Licensing Division has begun generating monthly reports. Obtained and reviewed a sample of the reports and noted no exceptions.

No further work is deemed necessary in this area at this time.

Finding 2

Override activities are not currently monitored by management, but the internal control weakness that exists could be mitigated by regular monitoring of override activities and a requirement that any overrides other than the \$100 late fee adjustment must have documented supervisory approval

Recommendation:

Licensing should work with the IRD and the VR vendor to determine if some type of change could be made in VR to eliminate the automatic \$100 late charge that is assigned by the system for certain types of agent license renewals. This would eliminate the need to override the VR system and would eliminate most overrides that currently are performed.

Finding 2 (cont'd)

Management Response:

VR system will no longer require late fee for type of agent permits; A, BK, and T.

Current Status: Implemented

The Internal Auditor obtained and reviewed documentation supporting the implementation of this recommendation on in January 2012.

No further work is deemed necessary in this area at this time.

Finding 3

Applications and renewals for these beer licenses must be submitted to the county and the required fees collected by the county. Approval by the county judge is necessary before TABC can issue an original beer license.

Recommendation:

TABC should seek a legislative change in the TAB Code regarding beer licenses and renewals so that applications and fees for beer licenses can be submitted directly to TABC. This statutory change could be done without eliminating the requirement for the county judge to approve all beer licenses and it would enable the counties to collect their fees and TABC to collect the State's fees. This would be a much more efficient process for applicants, the counties and TABC and would make it easier for TABC to implement its planned online application system.

Finding 3 (cont'd)

Management Response:

Agree. The Commission will research this area with on-line submission of applications and if necessary address this issue in the 82nd Legislature Interim Charges so that the Legislature can make the best decision.

Current Status: Implemented

Internal Auditor determined the issue was addressed by the 83rd Legislature under SB 1035.

No further work is deemed necessary in this area at this time.

Finding 4

Some steps in the processing of temporary receipts are inefficient. Currently the accounts examiners hand write their initials, class, permit number, renewal date and expiration date in the bottom left-hand corner of the renewal form. This information is retained in the VR system and writing it on the form is a duplication of effort. Licensing sends a manual billing statement to every county and 4 by 6 cards for every applicant in each county who has activity for a given month. This same information is posted on the agency's internet site.

Recommendation:

Licensing should instruct the counties to use the agency website to determine funds due to TABC and manual billing statements should only be sent to those counties that are unable to use the TABC website to determine amounts due to TABC.

Finding 4 (cont'd)

Management Response:

Agree. Information is currently available on TABC's website. Working with IRD to adapt data to a user friendly format.

Current Status: Implemented

Internal obtained and reviewed a copy of the Notice instructing the counties to use the agency's website for different inquiries.

No further work is deemed necessary in this area at this time.

Finding 5

Billing counties for approved beer applications at the end of the process rather than requiring applicants to submit their applications and fees directly to TABC at the beginning of the process, results in a significant delay in the State receiving funds

Recommendation:

Counties should be instructed to submit temporary receipts to TABC as soon as possible after receipt and the district offices should process these applications as soon as possible to eliminate the delays that are present in the current process.

Finding 5 (cont'd)

Management Response:

Agree. However delays are due to peak period workload. Licensing will constantly monitor workload to ensure workflow to facilitate timely processing.

Current Status: Implemented

Internal Auditor determined the issue was addressed by the 83rd Legislature under SB 1035.

No further work is deemed necessary in this area at this time.

Finding 6

TABC allows the counties to retain 5% of the license fees collected on approved beer licenses and renewals. This practice dates back to the 1940's according to staff, but review of the TAB Code does not indicate any provisions in the Code or in the agency administrative rules that authorize TABC to allow the counties to keep 5% of the state fee paid for each approved application

Recommendation:

TABC should determine what actions are necessary regarding the long-standing practice of allowing counties to retain 5% of state fees collected for beer licenses since there appears to be no statutory authority for the counties to receive these funds.

Finding 6 (cont'd)

Management Response:

Agree. The Commission will research this area with on-line submission of applications and if necessary address this issue in the 82nd Legislature Interim Charges so that the Legislature can make the best decision.

Current Status: Implemented

Internal Auditor determined the issue was addressed by the 83rd Legislature under SB 1035.

No further work is deemed necessary in this area at this time.

Finding 7

None of the offices immediately endorse checks received with “For Deposit Only – TABC”, which increases the risk of checks being misused or stolen.

Recommendation:

Checks received by the regional offices should be immediately endorsed with a “For Deposit Only – TABC” stamp.

Finding 7 (cont'd)

Management Response:

Agree. Stamps have been ordered and distributed to the field offices. Original procedures updated.

Current Status: Implemented

The Internal Auditor determined this recommendations been implemented. The Internal Auditor obtained and reviewed copies of the instructions and other supporting documentation related to the implementation of this recommendation.

No further work is deemed necessary in this area at this time.

Finding 8

We also noted that not all counties send their temporary receipts directly to Headquarters. This not only violates agency rules, it creates a delay in the processing of temporary receipts and billing for this revenue held by the counties.

Recommendation:

Counties should be instructed to send temporary receipts directly to Headquarters.

Finding 8 (cont'd)

Management Response:

Agee. We will address those counties who routinely submit TR's through our field offices.

Current Status: Implemented

Internal Auditor determined the issue was addressed by the 83rd Legislature under SB 1035.

No further work is deemed necessary in this area at this time.

Finding 9

Testing of overpayments processed for September and October of 2011 indicated that overpayments were processed once a month rather than being processed on an ongoing basis when received by the Business Services Division. In some cases these overpayments are for substantial amounts.

Recommendation:

Business Services should revise its procedures for processing overpayment requests to reduce the number of days from date of request for an overpayment from Licensing to date of processing for payment by the Business Services Division. If it is not practical to process each payment when received, then consideration should be given to a weekly batch processing rather than monthly batch processing.

Finding 9 (cont'd)

Management Response:

Agree. The Business Services Division will update the overpayment policy to establish procedures to ensure that overpayment requests from Licensing are processed on a weekly basis.

Current Status: Implemented

The Internal Auditor determined that this recommendation has been implemented. Obtained and reviewed a copy of the policy change.

No further work is deemed necessary in this area at this time.

INFORMATION RESOURCES DIVISION

Finding 1

TABC is not in compliance with requirements in the Information Resources Management Act and related DIR administrative rules related to accessibility of information resources by individuals that are disabled.

Recommendation:

IRD should develop an accessibility policy that meets all of the requirements found in the DIR administrative rules related to accessibility. The policy should include a plan to address non-compliance with accessibility requirements, accessibility training for TABC staff, and how exceptions to accessibility requirements will be documented and approved by the Administrator. This should be done in conjunction with the corrective action plan TABC and DIR agree upon.

Finding 1 (cont'd)

Management Response:

Management concurs. IRD has developed a plan and policy that is being reviewed by upper management which includes all the elements of this recommendation. The agency is exploring using computer based accessibility training created by an inter-agency group of trainers. The training will focus on making Microsoft Office products (Word, Excel and PowerPoint) accessible. The Training Division will be responsible for keeping track of employees who take the accessibility training.

Current Status: Implemented

The internal auditor obtained and reviewed the newly completed Accessibility Policy and Training Plan.

No further work is deemed necessary in this area at this time.

Finding 2

TABC is working to resolve the accessibility issues with the Neibus Labeling System, but Neibus must address the accessibility requirements. In addition, the Neibus Imaging System used internally does not meet the accessibility requirements.

Recommendation:

IRD should inventory those systems and applications that do not meet accessibility requirements and exception requests should be developed and approved by the Administrator. The exception requests should include all provisions specified by the DIR administrative rule in TAC §213.17.

Finding 2 (cont'd)

Management Response:

Management concurs. IRD has developed a spreadsheet that lists all of the internal, external and externally hosted web applications. The document includes but is not limited to the name of the application, priority number (for example, high public use, low public use down to single internal user), state of compliance, is there an exception request in place and what are its accessibility issues. An exception request form has also been created. Several of them have been filled out by the Accessibility Coordinator (AC) and signed by the Administrator

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 3

Some changes to procedures could be made to further strengthen access controls and to document that all individuals authorized access to automated information resources have completed the required confidentiality and non-disclosure agreements and security awareness training. In addition, some information security policies need to be reviewed and updated.

Recommendation:

Contractors other than those working under the Data Services Center (DCS) contract should sign the Confidential Information Non-Disclosure Agreement before they are granted access to the TABC network or applications within the network. IRD should retain these documents. Once contractors have been granted access to the TABC network, they should take the IT Security Awareness Course and the certificate of completion should be submitted to IRD and retained

Finding 3 (cont'd)

Management Response:

Management concurs. IRD has procedurally required NDA's on all users before they are granted access to the TABC network. IRD will make sure that all documentation is stored correctly to avoid the exceptions noted by the auditor. IRD will also require contractors to complete the IT Security awareness course and submit the certificate of completion to IRD.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 4

While there appears to be an effective process for disabling network access for terminated employees, there is not an effective process for terminating access privileges of contractors (auditors) when they have completed their work at TABC. Employees and contractors are required to sign an information security acknowledgement and confidentiality agreement before access to agency computer systems is allowed. This policy is enforced for employees, but not for contractors.

Recommendation:

A process should be established to ensure that contractor access to the TABC network or applications within the network is terminated when these individuals have completed their projects at TABC.

Finding 4 (cont'd)

Management Response:

Management concurs. IRD will begin enforcing a reasonable expiration date on every contractor access account to avoid the issue noted by the auditor. IRD will also work with other division management to request via email, the on boarding/off boarding of contractors requiring network access.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 5

The Training Division tracks completion of the course by employees, but there is no overall tracking system to determine which employees have not completed the mandatory training course. There is no enforcement of the requirement for non-employees that are granted access to the network to take the IT Security Awareness Course.

Recommendation:

All TABC employees should take the IT Security Awareness Course and the Training Division should develop a system for tracking those employees that have not completed the course. Management should enforce the requirement for this mandatory training

Finding 5 (cont'd)

Management Response:

Management concurs. The IT Security Awareness Course was developed within the past year and is intended to be taken annually by all employees. The Training Division currently tracks who has and has not taken the course. As the first anniversary approaches, the Training Division will notify employees to complete the class again.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 6

TABC has adopted two agency-wide policies that deal with information systems security. The first is Computer Security Policy # HR-3.04. This policy was adopted on February 15, 2006. The second policy is Use of IT Resources Policy # HR-3.05. This policy was also adopted on February 15, 2006. Although the information in both policies appears to still be relevant, with the significant changes that occur in the information resources environment, both policies should be reviewed and updated to address new technology that has emerged (social media for example).

Recommendation:

IRD should work with executive management and Human Resources to update the two agency-wide policies dealing with information resources security and use. The IRD security policies should be revised to reflect the actual operations of TABC, rather than the “generic” DIR security policies developed as guidelines for all state agencies. All the IRD security policies need to be reviewed and updated by IRD to reflect changes since the last revision and actual practices of the IRD.

Finding 6 (cont'd)

Management Response:

Management concurs. IRD has submitted the IR security policy updates to the Director of Human Resources to be revised in the HR manual. Once the policy manual committee approves and publishes the changes, all employees will have access to them on the agency's intranet site.

The requirement of complex passwords for all network access accounts will be implemented by the end of April to correspond with the IR security policy on passwords. IRD also plans to review and update all remaining IR security policies as part of our annual security audit in May, 2012.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation.

No further work is deemed necessary in this area at this time.

Finding 7

The TABC Business Resumption Plan was updated in September 2010. Review of the Plan indicates that it addresses all requirements of the DIR for disaster recovery plans. The plan was last tested on July 29, 2009 in conjunction with IBM under the Team for Texas contract. The results of testing are well documented. Apparently no mock tests have been conducted since July 2009, even though DIR recommends some type of annual testing of the Plan.

Recommendation:

Once the transition to the new DCS vendors is completed, the IR Division and the DCS vendor should complete another test of the disaster recovery plan and the results of the testing should be used to update the Business Resumption Plan.

Finding 7 (cont'd)

Management Response:

Management concurs. The agency has submitted a remedy ticket to the DCS vendor requesting that we be placed in the queue for conducting the annual disaster recovery plan testing exercise. Once the testing is completed the results will be updated in the BRP.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of Scheduled Disaster Recovery Test in FY 2014.

No further work is deemed necessary in this area at this time.

Finding 8

TABC does not have an IR Steering Committee or similar type of formalized process for considering and acting upon automation projects. Large automation projects that will require significant funding are prioritized and included in the agency legislative appropriations request. They only proceed if funding for the project is provided by the Legislature. Other projects that may improve efficiency are undertaken as time and resources are available.

Recommendation:

IRD should categorize automation projects into groups that have common elements such as SharePoint projects, mobile applications, public or industry inquiry, etc. IRD should estimate the costs and time required to complete each project and depending upon the perceived benefits, executive management and IRD could jointly prioritize the projects within each category.

Finding 8 (cont'd)

Management Response:

Management concurs. IRD maintains a project portfolio that broadly groups automation initiatives into Active (Current), Pipeline (Pending), and Horizon (Conceptual) projects. That project portfolio has been updated to include the categories described and includes an order-of-magnitude estimate for cost and time. Executive management and IRD will review the project portfolio on a routine basis to prioritize projects

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 9

Although TABC has most of the elements of a change management policy, the change management process is informal and does not follow the change management policy or procedure that the agency has adopted. There is no change control board for reviewing changes to production systems when the changes are made. The policy also indicates a change management log will be maintained for all changes. There is no change management log, although change requests to production systems are logged into one of three different systems (IAMS, SharePoint or the Help Desk).

Recommendation:

The change management policy should be revised to include actual agency practices rather than the ideal model that is reflected in the current policy. Those elements of the policy that are too time consuming and may not be necessary such as the current provision of the policy that states that “the change control board will consider all change requests” should be eliminated from the policy. Those specific elements of change management that IRD follows should be documented and where necessary the policy should include those elements that would improve the change management process such as better documentation of testing results and sign off by user management for some types of changes.

Finding 9 (cont'd)

Management Response:

Management concurs. The change management policy has been updated to reflect the processes in use by IRD, including improvements listed in the recommendation.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 10

The process for establishing priorities for changes to existing systems in production is very dependent upon staff availability and the user division assessment of the need for the change.

Recommendation:

TABC executive management and the IRD should determine the project priority of the conversion of the existing change management system (IAMS) to a SharePoint system that could be used to track all change requests (those currently tracked in IAMS, SharePoint and Help Desk) and that could provide better documentation of testing results.

Finding 10 (cont'd)

Management Response:

Management concurs. TABC will modernize the existing change management system and include tracking of the change through software release. However, TABC recently implemented new help desk software. Help desk changes are tracked automatically through completion separately from software change requests. TABC does not intend to integrate those functions as it is cost-prohibitive to acquire the number of software licenses necessary.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

Finding 11

The IRD Activity Management System contains requested changes classified as “High Priority” that have been in the IAMS for several years with no activity. In one instance, a project classified as “Urgent” was submitted in June 2010, but shows no activity. Some type of review process is needed by IRD and management of the user divisions of change requests that have not been completed

Recommendation:

A review process should be implemented by the IRD and management of the user divisions of change requests that have not been completed. All incomplete change requests over a certain length of time should be reviewed to determine if the changes are still needed and if the priority assigned (urgent, high, medium or low) is still valid.

Finding 11 (cont'd)

Management Response:

Management concurs. IRD will periodically provide division management the list of outstanding change requests for review during executive and division staff meetings. IRD will review the priority assigned to older change requests and make the appropriate changes if needed. In the example noted by the auditor where a project was classified as “urgent” since June, 2010, IRD has since changed the priority to a more realistic status of low. The change request was related to a state auditor finding which would require a major rewrite of the Cash/Credit Law (CCL) system.

Current Status: Implemented

The internal auditor obtained and reviewed project logs. Determined that recommendation has been implemented.

No further work is deemed necessary in this area at this time.

Finding 12

IRD procedures are found in many different locations on the IRD section of the Intranet. Many IRD policies and procedures are found under the IRD Documents Heading. Some are found in specific file folders within the IRD Documents folder, while others are not organized into any files but are listed in random fashion in the IRD Documents folder. Some of these policies and procedures are up-to-date and in clearly labeled file folders such as Internet Procedures. However in other folders such as Help Desk Procedures, the four documents listed all date to the 1990's.

Recommendation:

The IRD should develop a system to organize IRD policies and procedures into file folders and subfolders that are clearly labeled. Outdated procedures should be archived in one location. After all procedures have been organized and indexed, the IRD Director or his designee should work with the IRD staff to determine those procedures that need to be documented or updated.

Finding 12 (cont'd)

Management Response:

Management concurs. IRD policies and procedures have been organized into file folders under IRD's section of the internal SharePoint website. Outdated procedure documents have been organized into a single set of folders for review and deletion. All procedures are being reviewed as part of recommendation #6.

Current Status: Implemented

The internal auditor obtained and reviewed evidence of implementation. No further work is deemed necessary in this area at this time.

LEGAL SERVICES DIVISION

Finding 1

Administrative cases are being processed consistently and in accordance with established procedures, but the timeliness of processing cases varies among the attorneys. Some attorneys are processing administrative cases very timely, while others are not.

Recommendation:

Legal Services should perform documented cases analyses and complete the annual review and report of administrative cases to evaluate and document the effectiveness of the Legal Division in processing administrative cases and to identify potential opportunities to improve case outcomes through different case processing strategies by Legal or through training with Field Operations.

Finding 1 (cont'd)

Management Response:

Management agrees that Legal Services need to update the Case Management Manual from 2009 and eliminate tasks that are no longer applicable or used. With regard to the case management manual's requirement of an annual review and report involving General Counsel, Deputy General Counsel and team leaders to analyze contested case activities for the preceding fiscal year, staff has not done so since 2009. Since 2009 the more effective tool of the quarterly docket review conducted by the Deputy General Counsel each quarter with staff attorneys has been found to be more effective. The manual is to be changed to reflect this current practice. The quarterly review provides contemporaneous feedback on the specific cases. This gives guidance on a case-by-case basis to the attorney to assure a more successful outcome of the administrative case. In addition, beginning in 2010, the Deputy General Counsel provides the General Counsel and the Administrator weekly activity reports on the administrative case activities for the previous. This brings to the attention of management for discussion and immediate corrective action when the data indicates such. Legal will continue with the above-described practices as they are better tools to determine if administrative cases are being processed consistently, in accordance with established procedures, and in a timely manner by all attorneys.

Current Status: Implemented

Internal Auditor determined that the Legal Division's Case Management Manual has been updated to eliminate tasks that were no longer performed or rendered relevant.

No further work is deemed necessary in this area at this time.

Finding 2

Some case files tested were organized and indexed in accordance with the Case Management Manual, but many were not indexed and filed in accordance with the instructions in the Manual.

Recommendation:

Legal Services should work with IRD to determine if SharePoint can be used as a way to maintain and share the electronic case files. If SharePoint is not the best option for maintaining these files, then another alternative for maintaining these files should be developed to ensure the files are not lost, misplaced or altered in an unintended way.

Finding 2 (cont'd)

Management Response:

Management met in August 2012 with IRD. IRD is to move the legal files on K: drive onto SharePoint to avoid losing or deletion of the electronic files. In the meantime, Legal has requested IRD to investigate how or if certain protections can be placed on its electronic files to make the movement or deletion of a file impossible thereby eliminating the problem.

Current Status: Implemented

Internal Auditor determined that case files have been migrated to SharePoint ensuring proper maintenance and sharing of case files.

No further work is deemed necessary in this area at this time.

Finding 3

Case analyses are conducted but, not documented; the “nine-month” marker is used by the Deputy General Counsel when docket reviews are performed; and, Legal Services is not completing the annual review and report as specified in the Case Management Manual. Legal Services maintains electronic case files by docket number and by fiscal year. There have been problems in the past in locating certain files because they were inadvertently moved or eliminated. The file folders containing these documents are on the K: Drive, but there is no protection to ensure that they cannot be moved or eliminated.

Recommendation:

The attorneys, legal secretaries and legal assistants should use the one-page case checklist in the case file folders to document activities that occur as the case progresses through different stages. Each attorney should also use the Notes sheet in the case file to document case notes and other events that occur during case processing. The legal secretaries and legal assistants should ensure that the case files are organized, indexed and information is filed in the case files in accordance with the procedures specified in the Case Management Manual.

Finding 3 (cont'd)

Management Response:

Management never intended the “check list” form on the inside of each file folder to be mandated. It was simply a tool for those attorneys who chose to use it, to remind them and/or others of milestones on the case. The one-page checklist is time-consuming and redundant as the VR and database can also track significant milestones in a case. Also the significant milestones in a case are usually memorialized in documents with in the file. Staff attorneys can continue to use the one page check list and or VR and the Case Management Manual will be revised to reflect this.

Current Status: Implemented

Internal Auditor determined that the Case Management Manual has been amended to provide the attorneys more flexibility in managing case files.

No further work is deemed necessary in this area at this time.

Finding 4

There have been significant delays by the Assistant General Counsel in reviewing the Proposals for Decision (PFDs) received from the State Office of Administrative Hearings (SOAH) and preparing the Orders for approval by the Assistant Administrator. While improvements have been made in clearing the backlog of PFDs under review, as of June 4, 2012 there were still eight PFDs received during 2011 where the Orders have not been completed

Recommendation:

The Assistant General Counsel should have an established deadline of 60 days or less after receipt of the case record from SOAH for preparing and submitting the order(s) to the Assistant Administrator for review and approval

Finding 4 (cont'd)

Management Response:

Management agrees a backlog of PFDs under review for Orders on contested cases exists. The Texas Government Code §2001.143 allows a decision maker other than a SOAH ALJ to extend the period in which an Order may be issued past 60 days. To address this backlog, in April 2012, a bench mark to complete the legal review of each PFD was established. The legal review was to be provided to the Administrator for an Order 60 days from receipt of SOAH's official case record. Also a priority system was implemented to help determine which past due PFDs were to be reviewed first. These two steps have reduced the backlog. Once the Assistant General Counsel provides the proposed Order to the Administrator, there is no specific deadline. Please note that the Administrator is timely on signing Orders submitted to her.

Current Status: Implemented

The Internal Auditor determined that the General Counsel has established a 60-day deadline for a referral to the Administrator or designee for an Order after of case from SOA to review. A tracking log is used to show timelines and deadlines.

No further work is deemed necessary in this area at this time.

Finding 5

There is a need to update many of the screen prints used in the document and make other changes to ensure that the procedures outlined in the Manual agree with actual practices. Those procedures that are not being used should be eliminated from the Manual if management does not intend to follow the procedure.

Recommendation:

Updating of the Case Management Manual should be completed, with changes to the screen prints used in the document from the VR system instead of the old LE system and any other change needed to ensure the procedures outlined in the Manual agree with actual practices. Those procedures that are not being used should be eliminated from the Manual if management does not intend to follow the procedures.

Finding 5 (cont'd)

Management Response:

Management agrees to revise and update the Case Management Manual. Such revisions had begun prior to the audit and will reflect changes raised in this audit (check list and annual review, etc.,).

Current Status: Implemented

The Internal Auditor determined that the Legal Case Management Manual has been updated accordingly.

No further work is deemed necessary in this area at this time.

Finding 6

There are effective communication processes for informing the TABC operating divisions about the reasons for dismissed cases and the actions taken or required on completed cases, but no status reports are provided to Field Operations staff on pending cases. It is up to Field Operations to inquire of Legal Services about the status of pending cases.

Recommendation:

A monthly status report (or even a bi-monthly status report) should be prepared by Legal Services and placed on the Intranet using SharePoint for any TABC staff members with an interest in the status of a particular case or cases. Each attorney with assistance of the legal assistant or legal secretary should be responsible for updating the status of their assigned cases.

Finding 6 (cont'd)

Management Response:

Management disagrees that a monthly or bi-monthly status report is necessary for enhanced communication purposes with the field. Legal staff do not have the time to generate another monthly report for so few cases that eventually go to hearing and staff are aware they will be involved in the hearing or the Supervisors or Regional Director have input into any settlement that resolves the case. Currently, staff attorneys apprise the appropriate field representatives of a contested cases' current status, significant updates. In addition, with regard to protest cases, the current protest policy requires bi-monthly meeting with the Regional Directors and Regional Supervisors. (As mentioned, Houston conducts these meetings weekly.) During these meeting if other administrative cases need to be discussed, or a specific protest, the region's assigned attorney can be conferenced in via phone to discuss. For outcomes on contested cases, all PFDs and Orders issued by the Administrator on the PFD are posted on the Internet by region, trade name, and fiscal year. Management believes that this ongoing interaction between the divisions is a better alternative than a monthly report.

Current Status: Implemented

Internal Auditor determined that case status is discussed at Regional Team meetings. Additionally staff with proper access rights can access the ARTS database to determine case activity.

No further work is deemed necessary in this area at this time.

Finding 7

The wording in the NOV and the NOH needs to be exactly like it is in the statute and in many cases it is not. As a result, the attorneys must edit the language and corrections must be made by the legal secretary or legal assistant before the letters can be sent. This delays the process and results in wasted staff time, when the correct language used in the letter could be generated directly from the VR system. A related problem is that some of the violation codes used by Enforcement need to be updated or corrected.

Recommendation:

Legal Services should work with IRD, the Planner and the Field Operations Division to correct the language on the NOV and NOH letters that are prepared from the VR system based on the violation codes used by Field Operations.

Finding 7 (cont'd)

Management Response:

Management concurs in part. Every lawyer is legally obligated to review each allegation in their NOV and NOH for legal sufficiency based upon the specific facts and circumstances of each allegation, regardless of what any form asserts. Management agrees to review the violation codes used by Field Operations to update the allegations, if necessary. During this review process when a change or addition of an allegation proves to be repetitive and general, the Deputy General Counsel will work with IRD to make the suggested change. This intermediate procedure is to be detailed in the revised Case Management manual.

Current Status: Implemented

Internal Auditor determined that the language in VR for allegations in the Notice of Violation and Hearing has been updated.

No further work is deemed necessary in this area at this time.

Finding 8

The violation codes used by Enforcement do not always match the violations as stated in the TAB Code. In some cases the use of one violation code may need to be broken down into multiple violations.

Recommendation:

Legal Services should work with IRD, the Planner and Field Operations to update, correct or modify the violation codes used by Field Operations so the violation codes match the violations as stated in the TAB Code.

Finding 8 (cont'd)

Management Response:

Management concurs. See response to Recommendation 7.

Current Status: Implemented

Internal Auditor determined that activity codes have been modified and/or corrected as deemed necessary.

No further work is deemed necessary in this area at this time.

Finding 9

There is a need for consensus among Enforcement, Legal and the Planner regarding the violation codes that will be used.

Recommendation:

To ensure the activity codes and activities related to administrative cases are accurate in the VR system, Legal Services should:

- a. Work with the Planner and IRD to determine if the activity codes can be streamlined into those that are needed and used to reflect the key steps and important activities in processing administrative cases.
- b. Revise current procedures to ensure that the date in the VR system for the NOV, NOH or any other letters that are generated from the system is the date the letter is mailed not when it is generated by the system.
- c. Work with Field Operations and the Planner to determine how the case outcomes can be correctly retained in the VR system and reflected on the Public Inquiry website, while still ensuring that Field Operations can monitor entities that are in a suspension status.

Finding 9 (cont'd)

Management Response:

- a. Management agrees to streamline the activity codes as most are not informative. Activity codes are not mandated and some staff attorneys use the activity codes more as a checklist. Other staff attorneys keep the appropriate field person informed via personal interaction (email, phone). Entering activity codes are to be done by the legal assistant when given the documents to send out. In many instances individual attorneys mail their own documents due to the legal support engaged in other more critical activities.
- b. Management agrees. The date on the NOV or NOH is the date the document is mailed. A note is made to reflect the date the NOV or NOH was initially generated and given to the attorney for review and signature.
- c. Management disagrees. Because Legal generated the agreement or Order mandating the sanction of a fine or suspension, it has been tasked to follow-up to verify payment of the fine within the timeline and notify the field. When a fine is not paid, the system is changed to reflect the proper penalty of suspension. This is a labor-intensive determination as there are several situations where payment of the fine can occur. The change made by Legal to suspension when necessary does reflect the proper status of a case submitted and resolved by legal.

Finding 9 (cont'd)

Current Status:

- a. **Implemented.** Internal Auditor determined that activity codes have been modified and/or corrected as deemed necessary. No further work is deemed necessary in this area at this time.
- b. **Implemented.** The Internal Auditor determined that the system reflects proper date the activity starts and when NOV is mailed. No further work is deemed necessary in this area at this time.
- c. **Not implemented.** Based on the Internal Auditor's discussion with the Deputy General Counsel, Legal Services Division believes that the current process related to this recommendation is adequate and deems it unnecessary to change it. No further work is deemed necessary in this area at this time.

Finding 10

There is no structured classroom training for new attorneys or legal support staff. On the job training with some mentoring is the primary means of training for new staff in Legal Services.

Recommendation:

Legal Services should develop a new employee training program comprised of courses currently offered to Field Operations staff to supplement the on the job training and mentoring that is used to train these new staff members on administrative case processing and protests.

Finding 10 (cont'd)

Management Response:

Management does not disagree. When the current attorneys and legal assistants were hired, Liquor Law was only available to the Legal Division intermittently when the Agents academy was conducted. Depending on the start date of the employee, these types of courses may not be available timely. The Deputy General Counsel or other staff attorney can provide a condensed version of Liquor Law to the new attorney that includes an overview of the three-tier system, nuances of the Texas Alcoholic Beverage Code and the prosecution of TABC most common violations until the Liquor Law training becomes available and the new attorney can attend. Lastly, Management anticipates that the Revised Case Management Manual will better assist new employees as they become acquainted with case-handling procedures within the Division.

Current Status: Partially Implemented

The Internal Auditor determined that Legal Services has revised the Case Management Manual which is used by the attorneys/assistants. This manual facilitates training in addition to on-the-job training. We encourage Legal Services to continue its effort to ensure full implementation of this recommendation.

No further work is deemed necessary in this area at this time.

Finding 11

The reports provided to the Commissioners are not provided to the Assistant Regional Chiefs, Majors, Captains, Lieutenants or the Licensing Division Director. If these reports could be set up in SharePoint and available to Field Operations management, Licensing management and other authorized TABC staff this would be useful information for keeping these individuals informed about the status of important cases.

Recommendation:

Legal Services should work with IRD to determine if the Legal Services reports on important cases being processed could be set up in SharePoint and available to Field Operations management, Licensing management and other authorized TABC to keep them informed about the status of important cases.

Finding 11 (cont'd)

Management Response:

See Management's response to related topic under Recommendation No. 6.

Current Status: Partially Implemented

Based on the Internal Auditor's discussion with the Deputy General Counsel and information I obtained, the Legal Division has implemented a number of changes. Activities dealing with a contested administrative case referred to Legal Services are placed into VR by the Legal Staff. The case information in VR has now been migrated into ARTS. All TABC employees, including agents, have access to ARTS. Agents can go into ARTS and determine what is occurring on a particular case in Legal. Additionally, all pending cases and protests in Legal Services are discussed, in detail, with each regional division supervisors in the monthly or weekly regional management team meetings. We encourage Legal Services to continue its effort to ensure full implementation of this recommendation.

No further work is deemed necessary in this area at this time.

Finding 12

Copies of the open records requests submitted to requestors are not retained except in unusual circumstances. For this reason it was not possible to test whether open records requests are processed consistently and in accordance with established procedures.

Recommendation:

The Public Information Coordinator should enter deadlines for all open records requests into the database and when a deadline is not met, the reason(s) should be entered in the comments section. An exception report should be generated by the PI Coordinator monthly for those requests not provided by the deadline. This report should be provided to the General Counsel so any problems can be identified and corrected in responding to open records requests by the deadline specified in the agency policy.

Finding 12 (cont'd)

Management Response:

Management asserts that the present policy does not accurately set out the statutory requirement under the Public Information Act. The Public Information Coordinator (PIC) pursuant to Texas Government Code §§552.301, has 10-business days to a request for an opinion from the Office of the Attorney General (OAG) on whether or not certain information is excepted from disclosure to the public; not a deadline to release requested information. However, the deadline for when the PIC must produce the requested information is “promptly” – meaning as soon as possible under the circumstances, based on the facts in each request. That may be more or less than 10 days.

Current Status: Implemented

The Internal Auditor determined that the Public Information database and policy have been updated. The deadlines, dates closed, and remarks are now shown on open records requests Calendar.

No further work is deemed necessary in this area at this time.

Report Distribution

As required by Gov't Code 2102.0091, copies of this report should be filed with the following:

Governor's Office of Budget, Planning and Policy

Attn: Jonathan Hurst
internalaudits@governor.state.tx.us

Legislative Budget Board

Attn: Ed Osner
Ed.Osner@lbb.state.tx.us

State Auditor's Office

Attn: Internal Audit Coordinator
iacoordinator@sao.state.tx.us

Sunset Advisory Commission

Attn: Ken Levine
sunset@sunset.state.tx.us

Texas Alcoholic Beverage Commission

Jose Cuevas, Jr., Presiding Officer
Steven M. Weinberg, MD, JD
Melinda S. Fredricks

Texas Alcoholic Beverage Commission Management

Sherry Cook, Administrator

Attachment 6

Internal Audit Plan – Fiscal Year 2014

Internal Audit Plan

Fiscal Year 2014

Texas Alcoholic Beverage Commission

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

August 29, 2013

Audit Committee and Commissioners
Texas Alcoholic Beverage Commission
Austin, Texas

Dear Commissioners:

As required by the Internal Auditing Act (Texas Government Code, Section 2102.008), we have prepared the audit plan for Fiscal Year 2014.

We prepared a risk assessment to determine the areas in the Texas Alcoholic Beverage Commission that should be considered for audit. Based on that risk assessment, the following areas are recommended for audit in Fiscal Year 2014:

• Performance Measures Reporting	150
• Enforcement Administration	150
• Excise Tax Administration	175
• Risk Assessment and preparation of Audit Plan (FY 2015)	25
• Fiscal Year 2013 Annual Internal Audit Report	20
• Follow-up on prior year's audit recommendations:	
<i>Internal Audit of Fixed Asset Management</i>	
(Report Date: January 31, 2013)	25
<i>Intern Audit of Tax Administration – Ports of Entry</i>	
(Report Date: March 07, 2013)	25
<i>Internal Audit of Inspection Administration - Compliance</i>	
(Report Date: June 05, 2013)	<u>25</u>
Total Hours	595

Your approval is required to enable the internal auditor to begin the audit activities for fiscal year 2014.

Sincerely,

Monday N. Rufus, P.C.

CC:
Sherry Cook, Administrator, TABC
Ed Swedberg, Assistant Administrator, TABC

Internal Audit Plan Methodology

This section summarizes the methodology used in preparing the internal audit plan. In order to understand the Agency and develop our risk assessment process, we reviewed the Agency's:

- Strategic plan
- Legislative appropriations request
- Appropriations and Riders in the General Appropriations Act
- State Auditor's Office and Internal Audit reports
- Other documents obtained from the Agency

The following Agency processes/systems have been considered during the development of the areas of interest list:

- Cash Disbursements and Travel Processing and Payables
- Performance Measures Reporting
- Accounting and Budgeting
- Cash Receipts and Fee Processing
- Legal Services
- Information Systems – Disaster Recovery & Business Continuity
- Information System – Security
- Information Technology System Development
- Enforcement Administration
- Audit & Investigations Administration
- Executive Administration
- Ports of Entry

- Fixed Assets Management
- Licensing Applications and Processing
- Public Information
- Professional Responsibility
- Historically Underutilized Business (HUB) Compliance
- Payroll and Personnel Processes
- Excise Tax Administration
- Marketing Practices
- Product Approval/Lab
- TABC Commission Operations
- Education and Prevention
- LP ID Stamps/Private Club Cards
- Mailroom Services

Our risk assessment was performed through the consideration of various factors, including:

1. Exposure Level
2. Complexity of Unit
3. Materiality of Revenues and Expenditures
4. Results of Last Audit
5. Extent of other Coverage or Oversight
6. Quality of Internal Controls/Adherence to laws
7. Changes in systems and processes
8. Normal Audit Interval

Although all of the above factors were considered in the assessment of risk for each process/system, some of the factors were weighed more heavily and considered to be more critical to the Agency's internal control structure. The following critical factors were weighted more heavily in our assessment.

- Exposure Level
- Quality of Controls
- Changes in Systems and Processes

Processes Identified as High Overall Risk

Excise Tax Administration

Performance Measures Reporting

Processes Identified as Moderate Overall Risk

Payroll and Personnel Processes

Information Systems – Disaster Recovery & Business Continuity

Enforcement Administration

TABC Commission Operations

Ports of Entry

Information Technology System Development

Cash Disbursements and Travel Processing and Payables

Public Information

Marketing and Practice

Accounting and Budgeting

Fixed Assets Management

Licensing Applications and Processing
Audit and Investigations Administration
Product Approval/ Lab
LP ID Stamps/Private Club Cards
Cash Receipts and Fee Processing
Information Systems – Security
Mailroom Services
Legal Services
Executive Administration
Historically Underutilized Business (HUB) Compliance

Processes Identified as Low Overall Risk

Professional Responsibility
Education and Prevention

Appendix A: Summary of Audit Risk Assessment

High = 38 and up

Mod = 30 – 37

Low = Less than 30

	<u>Total Risk</u>	<u>Risk Rank</u>
Excise Tax Administration	41	1
Performance Measures Reporting	39	2
Payroll and Personnel Processes	36	3
Information Systems – Disaster Recovery & Business Continuity	36	4
Enforcement Administration	36	5
TABC Commission Operations	36	6
Ports of Entry	36	7
Information Technology System Development	35	8
Cash Disbursements and Travel Processing and Payables	34	9
Public Information	34	10
Marketing and Practice	34	11
Accounting and Budgeting	34	12

	<u>Total Risk</u>	<u>Risk Rank</u>
Fixed Assets Management	34	13
Licensing Applications and Processing	34	14
Audit and Investigations Administration	34	15
Product Approval/ Lab	34	16
LP ID Stamps/Private Club Cards	34	17
Cash Receipts and Fee Processing	34	18
Information Systems – Security	32	19
Mailroom	30	20
Legal Services	30	21
Executive Administration	30	22
Historically Underutilized Business (HUB) Compliance	30	23
Professional Responsibility	28	24
Education and Prevention	28	25

Internal Audit Plan

Fiscal Year 2014

Estimated Hours

• Performance Measures Reporting	150
• Enforcement Administration	150
• Excise Tax Administration	175
• Risk Assessment and preparation of Audit Plan (FY 2015)	25
• Fiscal Year 2013 Annual Internal Audit Report	20
• Follow-up on prior year's audit recommendations:	
<i>Internal Audit of Fixed Asset Management</i>	
(Report Date: January 31, 2013)	25
<i>Internal Audit of Tax Administration – Ports of Entry</i>	
(Report Date: March 7, 2013)	25
<i>Internal Audit of Inspection Administration - Compliance</i>	
(Report Date: June 5, 2013)	25
	<hr/>
Total Hours	595

Attachment 7

**Approval to Adopt Amendment to Rule §33.6, Renewal
of Licenses and Permits After Expiration**

**September 24, 2013 Commission Meeting, Agenda Item 9:
§33.6 Renewal of Licenses and Permits After Expiration.**

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.6, relating to Renewal of Licenses and Permits After Expiration, without changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5159). The rule will not be republished.

The amendment conforms the section to the requirements of Senate Bill 1035, 83rd Legislature, Regular Session. Senate Bill 1035 streamlines the licensing process by requiring license applications to be filed directly with the commission instead of with the county.

No comments on the proposal were received.

The amendment is adopted pursuant to Alcoholic Beverage Code, §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§33.6 Renewal of Licenses and Permits After Expiration.

- (a) This rule relates to §6.04 of the Alcoholic Beverage Code.
- (b) In addition to the requirements of Alcoholic Beverage Code, §61.48 and §5.50, each applicant who files a license or permit renewal under Alcoholic Beverage Code, §6.04 and §61.48, must, prior to the close of business of the thirtieth calendar day after expiration, submit a fee of \$100.
- (c) In addition to the requirements of Alcoholic Beverage Code, §§11.32, 11.35, and 5.50, and any pertinent rule or procedure of the commission, license and permit renewals which are filed under the Alcoholic Beverage Code, §6.04, must also meet the following requirements:
 - (1) mixed beverage permits, private club registration permits, private club exemption certificate permits, subordinate permits and any license or permit renewal required to be presented to any of this agency's offices which are filed after expiration must be presented prior to close of business on the thirtieth calendar day after expiration and must be complete in form, accompanied by all state fees and surcharges as well as the \$100 fee required by Alcoholic Beverage Code §6.04.

(2) license and permit renewals which are required to be submitted directly to the licensing division in Austin must be postmarked no later than thirty calendar days after expiration or received by the commission no later than thirty calendar days after expiration. The application must be complete in form and accompanied by all state fees, surcharges, and late fees.

(d) Failure to submit any requested information, corrections or forms within fourteen days of demand will constitute non-compliance with Alcoholic Beverage Code §6.04, and this rule, resulting in the expiration of the license or permit due to the insufficiency of the application.

Attachment 8

**Approval to Adopt Amendment to Rule §33.9, Fees for
On-Line Transaction**

**September 24, 2013 Commission Meeting, Agenda Item 10:
§33.9 Fees for On-Line transaction.**

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.9, relating to Fees for On-Line Transaction, without changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5160). The rule will not be republished.

The amendment establishes fees related to on-line licensing transactions. The fees are those set for the use of Texas.gov.

No comments on the proposal were received.

The amendment is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §5.55, which authorizes the commission to charge a reasonable service fee to applicants who choose to use electronic means to apply for licenses and permits.

§33.9 Fees for On-Line Transaction.

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

Attachment 9

**Approval to Adopt Amendment to Rule §33.23,
Alcoholic Beverage Permit, License and Certificate
Surcharges**

September 24, 2013 Commission Meeting, Agenda Item 11:

33.23 Alcoholic Beverage Permit, License and Certificate Surcharges

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.23, relating to Alcoholic Beverage Permit, License and Certificate Surcharges , with no changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5161). The rule will not be republished.

Alcoholic Beverage Code (Code)§5.50 requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code.

The amendment sets surcharges for two new permits and a new license created by the legislature in the 83rd Regular Session: a new Brewer’s Self-Distribution Permit in Chapter 12A of the Code; a new Manufacturer’s Self-Distribution License in Chapter 62A of the Code; and a new Distiller’s Agent Permit in Chapter 15 of the Code.

No comments on the proposal were received.

The section is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and §5.50, which requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code.

§33.23 Alcoholic Beverage License and Permit Surcharges.

- (a) This section relates to Alcoholic Beverage Code §5.50.
- (b) A biennial surcharge on original or renewal permit, license and certificate fees is levied against permit, license and certificate holders as follows:

Liquor Permits and Certificates	
--	--

Agent's Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer's Permit (B)	\$576.00
Brewer's Self-Distribution Permit (DA)	\$250.00
Carrier's Permit (C)	\$252.00
Caterer's Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller's & Rectifier's Permit (D)	\$350.00
Distiller's Agent Permit (DK)	\$94.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler's Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00
Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00

Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00
Non Resident Brewer's Permit (U)	\$376.00
Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00

Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00
Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Self-Distribution License (DB)	\$250.00
Manufacturer's Warehouse License (MW)	\$553.00
Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00

Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:

Daily Temporary Mixed Beverage Permit (TB)	\$201.00
Daily Temporary Private Club Registration Permit (TN)	\$226.00
Temporary Charitable Auction Permit (CA)	\$201.00
Temporary License (BH)	\$201.00
Temporary Wine and Beer Retailers Permit (BH) and (HP)	\$201.00
Temporary Special 3 Day Wine and Beer License (SB)	\$201.00

(d) An organization that holds a private club exemption certificate permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a surcharge.

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) The permit, license or certificate surcharge is due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate fee to which the surcharge applies.

(g) Failure or refusal to timely pay the permit, license, or certificate surcharge is considered the same as failure to timely pay the original or renewal permit, license or certificate fee, and the same penalties apply.

(h) The fees and surcharges for a permit or license may not be prorated or refunded.

Attachment 10

**Approval to Adopt New Rule §33.27, Bonds for
Alternating Brewery Proprietorships and Contract
Brewing Arrangements**

September 24, 2013 Commission Meeting, Agenda Item 12:

33.27 Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements

The Texas Alcoholic Beverage Commission (commission) adopts new §33.27, relating to Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements, with no changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5162). The rule will not be republished.

The new rule implements a portion of House Bill No. 3307, 83rd Legislature, Regular Session. House Bill No. 3307 defines alternating brewery proprietorships and contract brewing arrangements and allows brewers, non- resident brewers, manufacturers and non-resident manufacturers to engage in those activities. It also mandates that the commission require a bond of at least \$30,000 for an entity engaged in those activities that does not own a fee interest in a brewing or manufacturing facility.

The new rule specifically implements the bond requirements of House Bill No. 3307. The bond must be maintained as long as the entity does not own a fee interest in a brewing or manufacturing facility and is in an alternating brewery proprietorship or contract brewing arrangement. The bond would be forfeited if the underlying permit or license is revoked by the commission. The bond can be released if the permittee or licensee acquires a fee interest in a brewing or manufacturing facility, or ceases to be involved in an alternating brewery proprietorship or contract brewing arrangement.

No comments on the proposal were received.

The new rule is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Alcoholic Beverage Code §§12.06(f), 13.04(f), 62.14(e) and 63.05(e), which require the commission to impose a minimum bond for a permittee or licensee who is involved in an alternating brewery proprietorship or contract brewing arrangement but does not own a fee interest in a brewing or manufacturing facility.

33.27 Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements

(a) This section relates to Alcoholic Beverage Code §§11.71, 12.01(a)(6), 13.04(c), 61.41(d) and 62.01(a)(5).

(b) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a brewer's permit or nonresident brewer's permit that:

- (1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and
- (2) does not own a fee interest in a brewing facility.

(c) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a manufacturer's license or nonresident manufacturer's license that:

- (1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and
- (2) does not own a fee interest in a manufacturing facility.

(d) A bond required by subsection (b) or (c) must:

- (1) be made payable to the state;
- (2) be executed only on a form prescribed by the commission, with the permittee or licensee as principal and a qualified surety company doing business in the state as surety;
- (3) be payable in Travis County;
- (4) cover the permit or license period; and
- (5) state on the face of the bond that the holder of the permit or license agrees that the amount of the bond shall be paid to the state if the permit or license is revoked.

(e) A separate bond, when required by subsection (b) or (c), must be posted with the commission for each permit or license. The bond must be maintained until:

- (1) it is released or forfeited under this section; or
- (2) it is terminated by the surety pursuant to Alcoholic Beverage Code §11.71, if it is a bond that is required by subsection (b).

(f) To qualify to provide bonds under this section, a surety company must be licensed by this state and be in good standing with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State, and any other regulatory agencies with jurisdiction over its affairs.

(g) If a bond is required by subsection (b) or (c), an applicant for an original or renewal permit or license must submit the bond at the time of its application for the permit or license. Failure to submit the bond in proper form will result in denial of the application.

(h) A permittee or licensee who was not subject to the bond requirements of subsection (b) or (c) at the time of application must post the required bond at the time it becomes subject to those requirements.

(i) Forfeiture of Bond.

(1) When a permit or license is revoked, the commission shall notify the permittee or licensee in writing of its intent to seek forfeiture of the bond.

(2) The permittee or licensee may, within 30 days of the notice specified in paragraph (1), request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Upon entry of a final order against the permittee or licensee in the hearing described in paragraph (2), or upon waiver of hearing by the permittee or licensee, the commission shall notify the surety company to remit to the state the full amount of the surety required within ten days after notification.

(j) Release of Surety.

(1) A permit or license holder may request release and return of the surety required by subsections (b) or (c) upon:

- (A) expiration of the permit or license;
- (B) voluntary cancellation of the permit or license;
- (C) verification that the applicant or permit or license holder has acquired fee interest in a brewing or manufacturing facility (as appropriate in reference to subsections (b) and (c)); or
- (D) verification that the permit or license holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(2) The release of this surety will not be unreasonably withheld, but the surety company is not released from its obligation until it receives written notice of the release from the commission.

(k) The administrator may not cancel a bond until the surety company has paid and discharged in full all of its liabilities to the state on the bond as of the date of cancellation.

Attachment 11

Approval to Adopt Amendment to Rule §41.56, Out-of-State Winery Direct Shipper's Permits

September 24, 2013 Commission Meeting, Agenda Item 13:

§41.56 Out-of-State Winery Direct Shipper's Permits.

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §41.56, relating to Out-of-State Winery Direct Shipper's Permits, without changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5164). The rule will not be republished.

The amendment reduces the reporting requirement for small out-of-state winery direct shippers, adjusts the reporting periods for larger out-of-state winery direct shippers, and clarifies excise tax payment arrangements.

The amendment allows an out-of-state winery direct shipper that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year to file its required reports to the commission once a year. Other out-of-state winery direct shippers must continue to report quarterly, but the reporting period is being changed from fiscal year quarters to calendar year quarters. The amendment also provides that the excise tax payment accompanying the reports should be made payable to the commission instead of the Comptroller of Public Accounts.

No comments were received on the proposal.

The section is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§41.56 Out-Of-State Winery Direct Shipper's Permits.

- (a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.
- (b) Each holder of an out-of-state winery direct shipper's permit shall make reports (Direct Shipper's Report) to the commission on forms prescribed by the administrator.
- (c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the reporting period for which the report is made and shall show:

(1) the reporting period and year for which the report is made, the permit number and the name and address of the winery;

(2) invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier making delivery for each sale and delivery.

(d) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission.

(e) As long as an out-of-state winery direct shipper's permit remains active, the report required herein must be filed even though no sales or shipments have been made.

(f) Holders of out-of-state winery direct shipper's permits that shipped 4,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a quarterly report. Quarterly Reporting Periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(g) Holders of out-of-state winery direct shipper's permits that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year, may file a yearly report. Yearly Reporting Period: January 1 through December 31.

Attachment 12

**Approval to Adopt Amendment to Rule §41.71,
Identification Stamps and Local Distributor's Records**

September 24, 2013 Commission Meeting, Agenda Item 14:

§41.71 Identification Stamps and Local Distributor's Records.

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §41.71, relating to Identification Stamps and Local Distributor's Records, without changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5164). The rule will not be republished.

The amendment retitles the section and incorporates provisions of §41.72, relating to Invalidation of Stamps. The commission intends to repeal §41.72. The amendment imposes new obligations on local distributors regarding invoicing and recordkeeping that the commission believes are necessary to protect the integrity of the tax identification stamp system, which is integral to the taxing and regulatory regime for distilled spirits. The amendment implements the requirement in Alcoholic Beverage Code §28.151 and §32.201 that a mixed beverage permittee or private club registration permittee may not possess an identification stamp unless it is affixed to a bottle.

No comments were received.

The amendment is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§41.71 Identification Stamps and Local Distributor's Records.

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

(1) Identification stamp--The identification stamp mentioned in §28.15 and §32.20 of the Alcoholic Beverage Code.

(2) Invoice--An instrument issued by the seller of alcoholic beverages to a permittee.

(3) Mutilate—To scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.

(4) Retail permittee –The holder of a mixed beverage permit, a private club registration permit, or private club exemption certificate permit.

(b) The holder of a local distributor's permit shall keep any record required by any rule of the commission or by the Alcoholic Beverage Code for a period of two years on his licensed premises and shall make any such record available to a representative of the commission upon request within a reasonable time.

(c) Identification stamps shall be affixed only by the holder of a local distributor's permit to whom such stamps have been issued by the commission. When affixing identification stamps, the holder of a local distributor's permit shall affix each identification stamp near the top of the brand label of the bottle of distilled spirits in such a manner that some portion of the identification stamp covers and is attached to some portion of the brand label, but does not cover any information on the brand label. "Brand label" means the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail ale.

(d) Transaction records.

(1) Each holder of a local distributor's permit shall prepare a record making an entry thereon on each date there occurs any of the following transactions involving identification stamps and showing the following:

(A) Quantity of identification stamps received.

(B) Quantity and serial numbers of identification stamps affixed, and also showing the invoice date, invoice number, retailer trade name, and retailer permit number.

(C) Quantity of identification stamps on hand after each receipt or affixing of such stamps.

(D) When the holder of a local distributor's permit affixes identification stamps prior to the sale of such stamped merchandise, he shall also record the date the merchandise is stamped showing the number of stamps used per brand and size. Stamped merchandise shall be stored separately from all other merchandise on hand. Stamps issued from pre-stamped stock must be listed individually per invoice line item on sales invoices prepared for retail sales.

(E) The serial number of each stamp issued, lost, stolen, voided, destroyed, or issued as a replacement stamp must be recorded.

(2) Full title and ownership of all identification stamps shall remain vested in the commission. Upon termination of any local distributor's permit, all un-affixed identification stamps on hand shall be surrendered to the commission along with distribution records of stamps issued by the local distributor permittee.

(e) An invoice shall be issued in original and one copy in consecutive numbered order, showing the date of the sale or distribution, the name and permit number of the seller and the purchaser, and the purchaser's complete address, the serial numbers of all identification affixed to the merchandise, the quantity, brand and class of alcoholic beverages sold and the total price of each brand and class shown thereon. Such invoices or a copy thereof shall be delivered to the permittee and a copy of such invoices shall be kept by the seller making same. The seller's copy of the invoice must be signed by the purchaser.

(f) A local distributor may elect to maintain identification stamp records required by section (d) in an electronic format using an automated stamp record system. If this election is made, the automated system must provide the information required by section (d), and the automated system must be inspected and have prior approval from the Commission.

(g) The invalidation of identification stamps required by §28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp. The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.

(h) No retail permittee shall possess or permit any person to possess on the permittee's licensed premises any distilled spirits in any container bearing an identification stamp which has been mutilated or otherwise damaged or marked to a substantial degree.

(i) No retail permittee shall possess or permit any person to possess on the permittee's licensed premise, any blank or serially number TABC identification stamp that is not properly attached to a distilled spirits container that has been properly invoiced to the retail permittee by a local distributor.

(j) All provisions of §§28.08, 28.09, and 28.15 of the Alcoholic Beverage Code applicable to a mixed beverage permittee shall apply to holders of private club registration permits, and private club exemption certificate permits.

Attachment 13

**Approval to Adopt Amendment to Rule §45.105,
Advertising**

September 24, 2013 Commission Meeting, Agenda Item 15:

§45.105 Advertising.

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.105, relating to Advertising, without changes to the proposed text as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5166). The rule will not be republished.

The amendment conforms the rule to the requirements of House Bill 1917, 83rd Legislature, Regular Session, regarding advertising on public transportation passenger vehicles and vehicles for hire. House Bill 1917 amended Alcoholic Beverage Code §108.52 to generally allow outdoor advertising of an alcoholic beverage, or of a business that sells, distributes, or manufactures alcoholic beverages, to be placed on the outside of a public transportation passenger vehicle or a vehicle for hire.

No comments on the proposal were received.

The amendment is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code.

§45.105 Advertising.

(a) Mixed Beverage Establishments.

(1) This subsection relates to Alcoholic Beverage Code §108.07.

(2) Except as provided in this paragraph, the holder of any permit allowing the sale or service of mixed beverages may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the licensed premises in such a manner that the price may be read by persons outside of the premises. It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an “electric sign” in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an “electric sign” in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an “electric sign” in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter, coupon and inducement restrictions of §45.101 of this Subchapter, and sweepstakes and giveaway restrictions of §45.106 of this Subchapter.

Attachment 14

Approval to Adopt Amendment to Rule §45.120, Co-Packaging of Alcoholic Beverage

September 24, 2013 Commission Meeting, Agenda Item 16:

§45.120 Co-Packaging of Alcoholic Beverage.

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.120, relating to Co-Packaging of Alcoholic Beverages, with a change to the proposed title as published in the August 16, 2013 issue of the *Texas Register* (38 TexReg 5167).

The title of the section is modified to more accurately reflect the change made by the amendment. The modification to the title is not a substantive change and does not affect any persons not affected by the amendment as proposed. Significantly, the amendment itself conforms the rule to the requirements of Senate Bill No. 1090, 83rd Legislature, Regular Session, regarding co-packaging of alcoholic beverages. Section 20 of Senate Bill 1090 added Alcoholic Beverage Code §108.035 to allow brewers and manufacturers to package alcoholic beverages in combination with other items under certain conditions that mirror those that were already applicable to distillers, wholesalers and wineries. The amendment of §45.120 to reflect the addition of manufacturers (who produce beer but not liquor) necessitates the change in the title of the rule in order to give adequate notice to persons affected by the rule.

No comments to the proposal were received.

The amendment is adopted pursuant to Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code.

§45.120 Co-packaging of Alcoholic Beverage.

(a) This section relates to Alcoholic Beverage Code §102.07(a)(5) and 108.035.

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a manufacturer, distiller, brewer, rectifier, wholesaler, class B wholesaler, winery or wine bottler (or an agent, employee or servant of such);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer;

and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold to a retailer as a "co-pack", the retailer may not separate the other packaged item and sell it by any means other than the way it was originally packaged when received.

(d) In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a retailer must price and sell a co-pack at a cost/price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler.

(e) Nothing in this section shall preclude a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack.

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

Attachment 15

**Approval to Publish Proposed Repeal of Rule §33.3,
Brewpub License Fees**

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of §33.3, relating to Brewpub License Fees.

Senate Bill No. 1035, 83rd Regular Session of the Texas Legislature, made changes to the process for filing applications for licenses. Instead of filing such applications with the county, as was done prior to the September 1, 2013 effective date of SB No. 1035, such applications will now be filed directly with the commission. In this regard, the process for filing an application for a license becomes the same as the process for filing an application for a permit.

A brewpub license can only be issued to the holder of a wine and beer retailer's permit, a mixed beverage permit or a retail dealer's on-premise license. Under §33.3, the holder of a wine and beer retailer's permit or a retail dealer's on-premise license would file an application for a brewpub license with the county. The holder of a mixed beverage permit would file an application for a brewpub license with the commission. Since all applications for a brewpub license will now be filed with the commission, the rule is no longer accurate and the distinction it draws is no longer required.

Subsection (c) of §33.3 merely restates Texas Alcoholic Beverage Code §74.02.

Since the need for the rule no longer exists, the commission proposes to repeal it.

Section 33.3 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule no longer exists and that it should be repealed.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because the rule will comply with the requirements of the Texas Alcoholic Beverage Code.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at

http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on October 29, 2013 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed repeal affects Alcoholic Beverage Code Chapters 25, 28, and 69 and §5.31, as well as Government Code §2001.039.

~~§33.3 Brewpub License Fees.~~

~~—(a)— Each applicant for an original or renewal brewpub license, who also holds or is applying for a wine and beer retailer's permit or retail dealer's on-premise license at the same location, shall submit proof of the payment of all state fees, surcharges, and county fees, if applicable, in accordance with the Alcoholic Beverage Code, §61.35 and §61.48.~~

~~—(b)— Each applicant for an original or renewal brewpub license, who also holds or is applying for a mixed beverage permit at the same location, shall submit with the application a cashier's check(s), certified check(s), or money order(s) for all state fees and surcharges.~~

~~—(c)— The annual state license fee for a brewpub license shall be \$500 for each location.~~

Note: Date of Filing: September 27, 2013 Date of Publication: October 11, 2013

Attachment 16

**Approval to Publish Proposed Amendment to Rule
§35.6, Regional Forwarding Centers**

**September 24, 2013 Commission Meeting, Agenda Item 18:
Approval to Publish Proposed Amendment to Rule §35.6, Regional Forwarding Centers**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §35.6, relating to Regional Forwarding Centers, to replace the reporting requirements for such centers with record-keeping requirements.

The proposed amendment eliminates a monthly reporting requirement. The amendment specifies the records to be maintained on-site and provides that they be kept for a period of four years.

Section 35.6 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the regulatory burden on certain members of the manufacturing tier and on the commission's resources will be reduced.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on October 29, 2013 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 37.01(2), 42.01(a), 62.08, and 63.01, and Government Code §2001.039.

§35.6, Regional Forwarding Centers

(a) This rule relates to Alcoholic Beverage Code, §§37.01(2), 62.08, 63.01 and 42.01(a).

(b) Members of the manufacturing tier who are transporting alcoholic beverages into the state, or from point to point within the state under the authority of §§37.01(2), 42.01(a), 62.08(a) and 63.01 may temporarily hold such alcoholic beverages in a regional forwarding center, subject to the following conditions:

(1) A regional forwarding center is a facility wherein alcoholic beverages may be held under the control of the manufacturing tier member responsible for shipping the alcoholic beverages.

(2) The regional forwarding center may be operated by a third party who acts as the agent of the manufacturing tier member in arranging for interstate or intrastate shipments of alcoholic beverages to permittees and licensees authorized to receive such beverages or for shipment to locations outside the state.

(3) No member of the wholesale or retail tiers of the alcoholic beverage industry may, directly or indirectly, hold any interest in, or right of operation of a regional forwarding center.

(4) No sale of alcoholic beverages may be made to a person or entity from a regional forwarding center. For purposes of this rule, a "sale" occurs when an order is taken and/or payment is made.

(5) No member of the retail tier may take delivery of alcoholic beverages at a regional forwarding center.

(6) A regional forwarding center must be located in an area that is wet for the type of alcoholic beverages held therein.

(7) A licensee or permittee, by using a regional forwarding center under the authority of this rule, consents to inspection of such facility by the commission, its agents or employees, or any peace officer, to the same extent as consent is given for inspection of licensed premises by §101.04 of the Alcoholic Beverage Code.

(c) Licensees and permittees using regional forwarding centers under the authority of this rule shall maintain a record at the regional forwarding center with information relating to specific shipments entered into the record on the day the shipment is received or sent. The record shall show; ~~on forms provided by the commission, make monthly reports to the commission of all alcoholic beverages received in or transferred from the regional forwarding center and other information as requested by the commission. Such reports shall be signed by the custodian of the regional forwarding center and filed with the commission at its offices in Austin, Texas, postmarked not later than the 15th day of the month following the calendar month for which the report is submitted.~~

(1) invoice number for each receipt and transfer;

(2) date for each receipt and transfer;

- (3) point of origin for each receipt;
- (4) destination (name and address) for each transfer;
- (5) type of alcoholic beverages and total gallons for each receipt and transfer; and
- (6) name of the TABC permitted carrier making delivery and transfer.

~~(d) The information required by subsection (e) of this section shall be maintained as a contemporaneous record at the regional forwarding center with information relating to specific shipments entered into the record on the day the shipment is received or sent.~~

(d) (e) Licensees and permittees using regional forwarding centers under the authority of this rule shall pay an annual fee of \$1,000 to the commission.

(e) All such records shall be kept for a period of four years.

Note: Date of filing: September 27, 2013 Date of publication: October 11, 2013

Attachment 17

**Approval to Publish Proposed Amendment to Rule
§41.61, Permission and Reports**

**September 24, 2013 Commission Meeting, Agenda Item 19:
Approval to Publish Proposed Amendment to Rule §41.61, Permission and Reports**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.61, relating to Permission and Reports, to remove requirements for (and related to) an Application for Permit to Obtain Tax Free Wine for Sacramental Purposes.

The section currently requires a minister, priest, rabbi, or authorized head of any religious organization who wishes to obtain wine tax free for sacramental purposes to apply for a permit. The proposed amendment eliminates that requirement. It retains the requirement that the wholesaler or winery providing such wine obtain a letter from the minister, priest, rabbi, or authorized head of the religious organization verifying that the wine will be used for sacramental purposes.

Section 41.61 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the regulatory burden on ministers, priests, rabbis, or authorized heads of religious organizations will be reduced.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on October 29, 2013 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §109.51, and Government Code §2001.039.

§41.61. Permission and Records Reports.

(a) Any minister, priest, rabbi, or the authorized head of any religious organization may who ~~desires to~~ obtain any wine, tax free, for sacramental purposes, ~~tax free, shall first procure special permission from the administrator on a form prescribed by the administrator (Application for Permit to Obtain Tax-Free Wine for Sacramental Purposes).~~

~~(b) The application must be approved by the administrator before wine may be obtained tax free. Such application shall show:~~

- ~~—— (1) the date of application;~~
- ~~—— (2) the name and address of the supplier;~~
- ~~—— (3) the number and size of cases or barrels;~~
- ~~—— (4) alcoholic content; and~~
- ~~—— (5) total gallons, and it shall be signed by the applicant, shall give his address, and the name of the religious organization he represents.~~

~~(b) [(c)]~~ Each wholesaler, class B wholesaler, or winery, ~~or wine bottler~~ shall, for each transaction, obtain a letter from the minister, priest, rabbi, or other authorized head of any religious organization who obtains from him any wine for sacramental purposes, tax-free, to the effect that said wine will be used for sacramental purposes. In computing tax liability, no credit shall be allowed for such transactions unless such letter is submitted as documentary proof that such wine was delivered to a minister, priest, rabbi, or other authorized head of a religious organization, and such letter shall be kept available for the inspection of a representative of the commission for a period of at least two years.

Note: Date of filing: September 27, 2013 Date of publication: October 11, 2013

Attachment 18

**Approval to Publish Proposed Amendment to Rule
§50.2, Definitions**

**September 24, 2013 Commission Meeting, Agenda Item 20:
Approval to Publish Proposed Amendment to Rule §50.2, Definitions**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §50.2, relating to Definitions, to add a definition of “commission-approved personal identification number” in connection with seller server training programs.

The proposed amendment defines “commission-approved personal identification number” to be one of four types of numbers: a social security number; an individual taxpayer identification number (referred to as an ITIN); an alien registration number (referred to as an “A” number); or the IV case number from a machine-readable immigrant visa (referred to as an MRIV). The first two types of numbers are issued by the Internal Revenue Service. The remaining two types of numbers are issued by the United States Department of Homeland Security, United States Citizenship and Immigration Services.

The phrase “commission-approved personal identification number” is used in §50.10(e)(3) and (f)(2)(D) of this title to designate information that each seller server training school must include in its report of seller training, along with the student’s name, date of birth, test score and certificate number. The phrase has not heretofore been defined in the commission’s rules. This new definition, along with a proposed amendment to §50.28 of this title that is being considered simultaneously, may allow seller server training schools to report more students to the commission. The commission uses these reports, among other things, to issue affidavits verifying that certificates have been issued to certain students.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because more sellers and servers of alcoholic beverages will have incentive to receive training aimed at preventing service to minors and to intoxicated persons.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on October 29, 2013 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Alcoholic Beverage Code §106.14, which requires the commission to adopt rules establishing the minimum requirements for approved seller training programs.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §106.14.

§50.2 Definitions.

Words used in this chapter have their common and ordinary meaning unless they are given a specific meaning in the code or are defined in this section.

(1) Applicant--The individual and/or each owner, officer, director, manager or trainer of a legal entity who applies to the commission for a certificate under this chapter.

(2) Branch Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Seller Server School Certificate granting the same authority as the

Primary Certificate but at a site that is designated on the Branch Certificate and that is different from that designated on the Primary Certificate.

(3) Break--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) Classroom-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate.

(5) Commission-Approved Personal Identification Number – A social security number, an individual taxpayer identification number (ITIN), an alien registration number (“A” number), or the IV case number from a machine-readable immigrant visa (MRIV).

(6) ~~{(5)}~~ Course of Instruction--The mandatory curriculum and the optional curriculum used to teach a seller server certificate course.

(7) ~~{(6)}~~ Incomplete application--An application that fails to include all facts, disclosures, documents, statements, authorizations, signatures and fees required by this chapter or requested by the commission for issuance of a certificate.

(8) ~~{(7)}~~ In-House Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school sponsored or operated by a retail permittee or licensee and that has authority under this chapter to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

(9) ~~{(8)}~~ Internet-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school offering an interactive course on the internet or intranet that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate.

(10) ~~{(9)}~~ Mandatory Curriculum--The curriculum provided by the commission that must be used by a certified school teaching a seller server certificate course.

(11) ~~{(10)}~~ Optional Curriculum--Any curriculum not provided by the commission that is used by a school to teach a seller server certificate course.

(12) ~~{(11)}~~ Primary Seller Server School Certificate--A certificate issued by the commission under this chapter granting authority to:

(A) offer instruction and maintain records at the school's principal site designated on the primary certificate; and

(B) issue seller server certificates.

(13) ~~{(12)}~~ School--The holder of a Primary or Branch Seller Server School Certificate issued by the commission.

(14) ~~{(13)}~~ Seller Server Certificate--A certificate issued to an individual who completes a course of instruction offered by a school and who passes the Commission Standard Competence Test.

(15) ~~{(14)}~~ Seller Server Certificate Course--A class providing instruction in the sale, service, dispensing, delivery and consumption of alcoholic beverages to or by persons in private clubs, minors or intoxicated persons, and that is designed to enable students to pass the Commission Standard Competence Test and receive a seller server certificate.

(16) ~~{(15)}~~ Trainer--An individual who holds a Seller Server Trainer Certificate issued under this chapter.

Note: Date of filing: September 27, 2013 Date of publication: October 11, 2013

Attachment 19

**Approval to Publish Proposed Amendment to Rule
§50.28, General Requirements**

**September 24, 2013 Commission Meeting, Agenda Item 21:
Approval to Publish Proposed Amendment to Rule §50.28, General Requirements**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §50.28, relating to General Requirements, to delete the requirement that a seller server student be a United States citizen or be legally authorized to work in the United States and to specify the information that must be provided to the commission with a request to verify that a student has been certified. As a result of these changes, the section is also retitled.

It is the employer's responsibility to determine the legal work status of its sellers and servers. The purpose of the certification process is to encourage as many sellers and servers as possible to be trained on how to avoid selling alcoholic beverages to minors and to intoxicated persons. Therefore, the commission has determined that it is appropriate to eliminate this impediment to seller server certification.

The existing citizenship/legal status requirement functioned to dictate acceptable forms of identification that could be provided by the student to the school, and in turn reported to the commission pursuant to §50.10(e)(3) and (f)(2)(D) of this title. With the elimination of the citizenship/legal status requirement, it is appropriate to designate what forms of identification are now acceptable. The commission is simultaneously proposing an amendment to §50.2 to define acceptable forms of identification in terms of a commission-approved personal identification number.

The proposed amendment to §50.28 specifies the information that must be provided to the commission when a request is made for the commission to issue an affidavit verifying that a student has been certified. The commission will use the student's name, date of birth and the commission-approved personal identification number to affirm that a student with that name and date of birth, and who provided that personal identification information, was certified by a specific school on a certain date.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because more sellers and servers of alcoholic beverages

will have incentive to receive training aimed at preventing service to minors and to intoxicated persons.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on October 29, 2013 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Alcoholic Beverage Code §106.14, which requires the commission to adopt rules establishing the minimum requirements for approved seller training programs.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §106.14.

§50.28 Verification and Expiration of Certificate ~~[General Requirements]~~ .

(a) The commission can only issue an affidavit verifying that a seller server certificate has been issued to a student if: ~~[An applicant for a seller server certificate must be a United States citizen or be legally authorized to work in the United States at the time of application.]~~

(1) the request for verification includes the students name, date of birth, and a commission-approved personal identification number; or

(2) the request for verification includes the students name, date of birth, and the certificate number of the certificate that is the subject of the verification request, if a commission-approved personal identification number is not available.

~~[(b) An applicant for a seller server certificate attending a classroom based seller server school must present evidence of compliance with subsection (a) to the trainer or responsible person.]~~

~~[(c) An applicant for a seller server certificate enrolled in an internet based seller server school must:]~~

~~[(1) register on the school's website and obtain a user name and password; and]~~

~~[(2) enter the secured website and complete the personal identification information and authorization to allow the school or commission to verify compliance with subsection (a) of this section.]~~

~~(b)-(d)~~ A certificate issued under this chapter section will expire on the second anniversary of the date it is issued.

Note: Date of filing: September 27, 2013 Date of publication: October 11, 2013

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – September 24, 2013

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 September 24, 2013.

A handwritten signature in black ink that reads "Sherry K. Cook".

Sherry Cook
Administrator

Sworn and subscribed before me this the 10th day of October 2013.



A handwritten signature in black ink that reads "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County