



COMMISSION MEETING

September 26, 2008

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*John Steen, Chairman
San Antonio*

*José Cuevas, Jr., Member
Midland*

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

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AGENDA

REGULAR COMMISSION MEETING

10:30 a.m. – September 26, 2008

5806 Mesa Drive
Austin, Texas 78731



TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 Mesa Drive, Suite 185
Austin, Texas 78731

John Steen
Chairman-San Antonio

José Cuevas, Jr.
Member-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Alan Steen
Administrator

Friday, September 26, 2008
10:30 a.m.

AGENDA

1. Call to Order		John Steen
2. Approval of Commission Meeting Minutes of August 22, 2008		John Steen
3. Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements		Alan Steen
4. Renewed Protest Process		Susan McElwain
5. Adoption of New Rule 31.10 – Filing a Complaint		Joan Bates
6. Adoption of New Rule 31.11 – Resolution and Information on Complaints		Joan Bates
7. Rule Review Plan		Joan Bates
8. Proposed Repeal of Chapter 47 – Blanket Rules		Joan Bates
9. Proposed Repeal of Chapter 49 – Production of Alcoholic Beverages		Joan Bates
10. Public Comment		John Steen
11. Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Discuss the Duties, Responsibilities, and Evaluation of the Administrator (Govt. Code §551.071, §551.074)		John Steen
12. Next Meeting Date: Friday, October 24, 2008		John Steen
13. Adjourn		John Steen

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

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



MINUTES

REGULAR COMMISSION MEETING

10:30 a.m. – September 26, 2008

5806 Mesa Drive
Austin, Texas 78731



COMMISSION MEETING MINUTES

September 26, 2008

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Friday, September 26, 2008, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING

OFFICER: John Steen

COMMISSIONERS

PRESENT: José Cuevas, Jr.
Steven M. Weinberg, MD, JD

STAFF PRESENT: Alan Steen, Administrator

Joan Bates, Deputy General Counsel, Legal
Carolyn Beck, Public Information Officer, Executive
Lou Bright, General Counsel, Legal Services
Mindy Carroll, Assistant Director, Tax/Education and
Prevention Division
Sherry Cook, Assistant Administrator
Ector Joey Estrada, Education and Prevention Intern
Bobby Gideon, Director, Office of Professional
Responsibility
Diana Gonzalez, Director of Tax Division/Education and
Prevention
Toni Hale, Technical Writer, Education and Prevention
Amy Harrison, Director of Licensing
Joe Iagnemmo, Web Design Specialist, Information
Resources Division
Jackie Jackson, Education and Prevention
Tanya Jimenez, Administrative Assistant, Executive
Dexter Jones, Assistant Chief of Field Operations
Jo Ann Joseph, Assistant Director of Licensing
Charlie Kerr, Director of Business Services
Vanessa Mayo, Quality Review Supervisor, Compliance
Linda McLeod, Human Resources Division
Joel Moreno, Chief of Field Operations

Marla Myers, Education and Prevention
Gloria M. Reed, Executive Assistant, Executive
Jay Webster, Director of Information Resources Division

GUESTS

PRESENT:

Dewey Brackin, Representing Texas Retailers Association
Rick Donley, The Beer Alliance of Texas
Doug DuBois, TPCA
Alan Gray, Licensed Beverage Distributors
Fred Marosko, Texas Package Stores Association
Mignon McGarry, RNDC
Charles E. McGrigg, Wine Institute
Don Walden, Attorney, TWGGA

CALL TO ORDER

Presiding Officer and Chairman John Steen called the meeting of the Texas Alcoholic Beverage Commission to order.

APPROVAL OF COMMISSION MEETING MINUTES OF AUGUST 22, 2008

Chairman Steen called for approval of the Commission meeting minutes of August 22, 2008. Commissioner José Cuevas so moved, and Commissioner Steven Weinberg seconded. The motion carried.

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Steen to provide the Administrator's report on agency activities, budget issues, and staff achievements. Administrator Steen welcomed the Commissioners back to Austin for another Commission meeting. He commented that Hurricane Ike is one of the most significant issues in state government at this time. He noted that Chief Joel Moreno has been the "leader" in areas of focus for Hurricane Ike and asked him to come forward to present on the Hurricane Ike activities.

Chief Moreno reported that on September 19th, Administrator Steen had received a request from Governor Rick Perry's office to send 100 to 150 TABC Commissioned Peace Officers to the hurricane-devastated areas of Houston, Galveston, Port Arthur and Beaumont. On September 22nd, the agency had deployed 110 agents to the requested areas and had an additional 75 agents already in place to assist. The agents performed such tasks as traffic control in areas without electricity, helping to maintain order and peace at the relief shelters, loading and unloading materials and supplies for the shelters, and helping local law enforcement agencies to guard against unlawful entry to neighborhoods. The Chief of the Houston Police Department thanked Chief Moreno for his prompt

response in deploying the TABC agents and commended the agents for their professionalism and willingness to perform whatever tasks needed to be done.

Chief Moreno gave kudos to Assistant Administrator Sherry Cook, Information Resources Division (IRD) Director Jay Webster, and IRD staff in providing laptops and other computer equipment on such a short notice for the agents' use. He also thanked Compliance staff for their support.

Chairman Steen, Commissioner Cuevas, and Commissioner Weinberg commended Administrator Steen, Chief Moreno, and the TABC Commissioned Peace Officers for their positive attitude and work ethic in responding to their state's need during this disaster. Not only did the Commissioners want to thank the agents involved in the disaster, but also to thank those agents who had to step up and take up the slack in other regions of the state to continue the day-to-day operations of the agency.

Commissioner Weinberg asked what the impact the hurricane expenditures had on the budget. Chief Moreno responded that he was confident the City of Houston and the Federal Emergency Management Agency (FEMA) would reimburse some of the expenses incurred by TABC.

Chairman Steen voiced a concern for the agency diverting its people and resources for this disaster and asked if this would be a good time to adjust the agency's performance measures and management goals. Administrator Steen addressed the concern in reporting a recent conversation with Lori Gabbert, the agency's Legislative Budget Board liaison. There are about 25 agencies in Texas that are affected, such as Health and Human Resources and others that are located in the coastal areas, not only those covered by Article V-Public Safety and Criminal Justice. Ms. Gabbert assured Administrator Steen that what TABC was doing for the state would be taken into consideration with regard to the performance measures.

As far as adjusting the performance measure itself, the agency would have the ability to have dispensation for that and a letter could be written to request a change. The management goals would be reduced by region and would be affected differently. The Administrator's Conference will be held October 6th-8th and the management goals will be discussed at the conference. Chairman Steen agreed it would be appropriate to adjust. He would like to see the current goals met at the end of year, but does not want the appearance of having failed to perform at a satisfactory level due to the agency assisting the state during the Hurricane Ike disaster.

Administrator Steen spoke confidently that the agency would be able to accomplish the management goals internally, but said it will be more difficult externally with the Legislative Budget Board (LBB) on the performance measures. He assured

the Commission that Ms. Gabbert was expecting a letter of explanation from TABC and the other agencies that were unable to meet performance measures because of their efforts during Hurricane Ike. The letter should be acceptable documentation for the first quarter and possibly the second quarter. **The Commissioners and Administrator Steen agreed that a letter of explanation for adjusting the management goals and performance measures would be written.**

Administrator Steen reported the following:

- The TABC Commissioned Peace Officers deployed to the disaster areas for Hurricane Ike are set for withdrawal on October 10th. Administrator Steen has spoken with Steve McGraw of the Governor's Homeland Security Office to let him know that the agency is ready to provide any further needed assistance.
- In reference to tracking the budget for Hurricane Katrina, expenditures and costs were submitted to Governor Perry's office for reimbursement from FEMA. Based on past experience, Administrator Steen anticipated 100% reimbursement to TABC from Hurricane Ike efforts.
- Administrator Steen spoke at the annual Texas Package Store Association (TPSA) convention on September 7-9, 2008, held in Galveston, Texas.
- There has been some related weather causing serious flooding and the closing of the agency's Ports of Entry bridge crossings. In some areas, TABC personnel have been trapped across the borders and unable to report to their work duty stations.
- Administrator Steen thanked the Chairman and Commissioners for awarding him a certificate of completion for five years of service to the agency.
- Seller Server Training staff were recognized and congratulated for a job well done. Administrator Steen congratulated Assistant Administrator Cook and staff in eliminating the backlog of Trainee Reports. IRD staff were recognized for their work with Versa to develop software that allows seller training schools to upload data directly to TABC's certified trainee database via the Internet. Staff in Business Services and in Excise Tax assisted with the backlog and were acknowledged as well.
- Diana Gonzalez, Director of Tax Division/Education and Prevention, introduced Toni Hale as the new Technical Writer in Education and Prevention.

Commissioner Cuevas applauded the Education and Prevention Seller Server Training staff for their working together as team to eliminate the backlog. He also applauded Administrator Steen for his leadership and support in pulling together the agency as a whole. Administrator Steen spoke on the success of being able to pull all of the agency's resources together for a common goal and in having the right people with the right attitude and leadership in the right spot on the organizational chart.

- Administrator Steen reported that the Field Operations Division finished work on regional action plans for FY 2009 that emphasizes that division's focus on public safety issues.
- In the areas of challenges, an assessment is being conducted with the Licensing Re-Engineering Project. It is expected to move in a timely manner to actual implementation for the agency and the industry to start to realize tangible results. Administrator Steen stated not only does the retooling engineering affect us and the permittees, but other areas in the local city and county governments where money flows. All of these entities will be better off because of this project. **Administrator Steen will have Assistant Administrator Cook present a business plan for the October Commission meeting that involves the Licensing Re-Engineering Project.**
- Commissioner Weinberg quizzed Administrator Steen about the scanning project in Licensing. Administrator Steen and Assistant Administrator Cook informed Commissioner Weinberg that a contract has been signed for the work to begin for the scanning. However, the server is not installed and there are decisions yet to be made on the logistics of the information to capture for licensing use.
- Administrator Steen and Assistant Administrators Cook and Moreno will be visiting with legislators and their staffs to discuss the agency's Legislative Appropriations Request (LAR) and TABC's Strategic Plan now and the future with regard to Texas population, number of permits, TABC employees, and the need for modernization. He wants them to become familiar with our organization by January 1, 2009, when the legislature convenes and the budget discussion begins.
- Administrator Steen reviewed selected trend information (Attachment 1) which included recidivism rates of sales to minor offenders for the fiscal years of 2007, 2008, and 2009 with recidivism rates after 12, 24, and 36 months. Significant improvement in every area is expected to continue.

Customer satisfaction surveys are one of the agency's performance measures. The surveys are conducted by region and the overall response rate was 16.5%, which is considered high for this type of survey. The survey indicated a high level of satisfaction (96% favorable) in the treatment of customers with courtesy and respect. Administrator Steen reported that Assistant Chief Dexter Jones and his Compliance staff are starting to help with the inspections and that going into an establishment without a gun and badge alleviates a high volume of disruption of the business. The responses received indicate an extremely high level of satisfaction with the agency's auditors. The level of satisfaction expressed by the respondents to the Compliance survey was consistent across the state.

When mailing applicants their original licenses and permits, a survey is included. There is a low response rate of 13% because many surveys are returned with incomplete responses and those responses that are received may be more heavily influenced by applicant interaction with his/her private licensing service than by any real interaction with TABC licensing personnel. On a positive note, those who responded to individual questions within the Licensing survey were overwhelming positive about the services received.

There is an area on the surveys for additional comments from the applicants on how TABC can serve better. This information is forwarded to the Directors and supervisory staff for review.

- Retaining experienced Enforcement agents remains a concern for the agency. During the past five years, 221 Commissioned Peace Officers have been hired, with 58 of these hires (26%) leaving the agency before the fifth year of their employment.
- Administrator Steen and Assistant Administrators Cook and Moreno are researching ways to recruit the best qualified candidates and are holding the requirements toward higher educational standards for the Commissioned Peace Officer positions. The use of affinity organizations was a suggestion that may encourage employment of minority population groups.

At the request of the Commissioners, Administrator Steen will report to the Commission next month on the breakdown of Commissioned Peace Officers' reasons for leaving the agency as reflected in the State Auditor's Office report. When the report from the State Auditor's Office is finalized, Administrator Steen will report on the difference between the five police departments and the Schedule "C" salary chart.

RENEWED PROTEST PROCESS

Administrator Steen briefly gave background information on the protest process. The workings of this project has been in progress for a while and originally came in focus during a hearing in Dallas. It has aligned the agency with its public safety mission statement.

Susan McElwain handles the policy and processes for the agency. She has interviewed TABC office and field personnel and has developed a policy that will be used in the various offices of the agency. Ms. McElwain's PowerPoint slide presentation (Attachment 2) illustrated the inconsistent perception and relationship problems the agency was experiencing. She spoke on the various protest drivers such as what was the allegation, what organizational structure was in place to deal with the problem, and what would be the outcome. After the presentation, she posed the Commissioners with the questions: Has the agency made the process more understandable to the citizens of Texas? With regard to the Commissioners' responsibility to oversee the agency, is the agency using the staff efficiently, is the process understandable, and are we meeting the expectation that we have set?

Through the process some outcomes were clarified such as a more defined protest, a form was created, and communication between the agency and the complaint was established. Organizational improvements included creating an agency-wide policy where initially there was no policy. A standardized communication letter will be used and an investigation will be divided into two steps (initial inquiry and full investigation).

ADOPTION OF NEW RULE 31.10 – FILING A COMPLAINT

Chairman Steen called upon Joan Bates, Deputy General Counsel, who reviewed the proposed new rule (Attachment 3); no comments from the posting were received. **Chairman Steen called for a motion to adopt the new rule 31.10, relating to filing a complaint. Commissioner Cuevas so moved, and Commissioner Weinberg seconded. The motion carried.**

ADOPTION OF NEW RULE 31.11 – RESOLUTION AND INFORMATION ON COMPLAINTS

Ms. Bates reviewed the proposed new rule relating to resolution and information on complaints (Attachment 4); no comments from the posting were received. **Chairman Steen called for a motion to adopt the new rule 31.11, relating to resolution and information on complaints. Commissioner Cuevas so moved, and Commissioner Weinberg seconded. The motion carried.**

RULE REVIEW PLAN

Ms. Bates discussed the Rule Review Plan (Attachment 5), which serves notice of its intent to review rules under Title 16, Part 3, of the Texas Administrative Code.

PROPOSED REPEAL OF CHAPTER 47 – BLANKET RULES

Ms. Bates briefly discussed the proposed repeal of Chapter 47 on blanket rules (Attachment 6), which is obsolete. **Chairman Steen called for a motion to publish the repeal Chapter 47 on blanket rules. Commissioner Cuevas so moved, and Commissioner Weinberg seconded. The motion carried.**

PROPOSED REPEAL OF CHAPTER 49 – PRODUCTION OF ALCOHOLIC BEVERAGES

Ms. Bates discussed the proposed repeal of Chapter 49 on production of alcoholic beverages (Attachment 7). **Chairman Steen called for a motion to publish the repeal of Chapter 49 on production of alcoholic beverages. Commissioner Cuevas so moved, and Commissioner Weinberg seconded. The motion carried.**

PUBLIC COMMENT

Chairman Steen asked if there was anyone in the audience who wished to provide public comment. Doug Dubois of the Texas Petroleum Marketers and Convenience Store Association commended staff on the reengineering of the licensing process and for involving industry members.

EXECUTIVE SESSION

Chairman Steen made the announcement that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 12:22 p.m., September 26, 2008, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§551.071 and 551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being September 26, 2008, and the time, 1:02 p.m. No final action, decision, or vote was made in the executive session.

NEXT MEETING

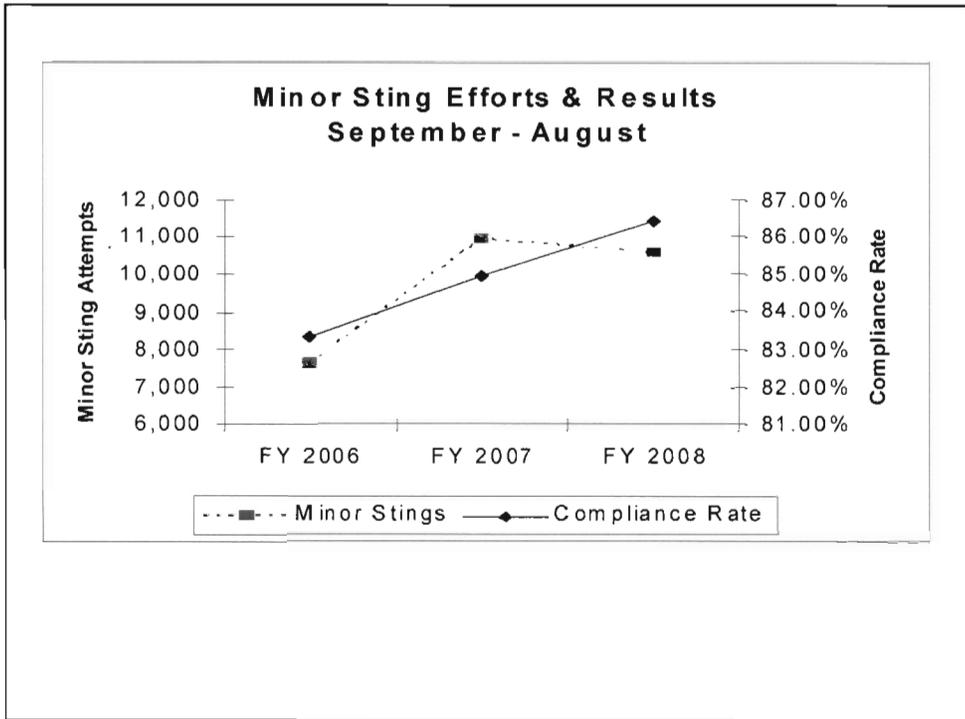
Chairman Steen announced the next meeting date, Friday, October 24, 2008, and the November meeting date would be Friday, November 21, 2008.

ADJOURNMENT

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

Attachment 1

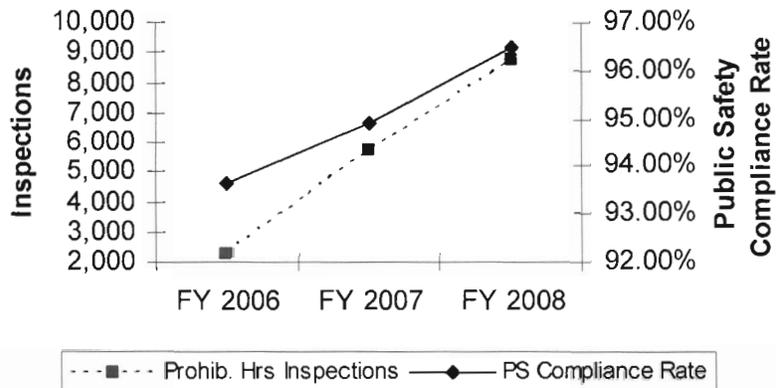
Administrator's Report on Trends



Observed Recidivism Rates Sale to Minor Offenders FY 2007 & FY 2008 September – August

	FY 2007 thru Aug 31	FY 2008 thru Aug 31
Retailers Charged	1,723	1,551
w/ Prior Sale to Minor Case in Previous 12 mo.	280	191
Recidivism Rate After 12 mo.	16.25%	12.31%
w/ Prior Sale to Minor Case in Previous 24 mo.	379	278
Recidivism Rate After 24 mo.	21.99%	17.92%
w/ Prior Sale to Minor Case in Previous 36 mo.	442	348
Recidivism Rate After 36 mo.	25.65%	22.44%

**Prohibited Hours Enforcement
Efforts & Results
September - August**



**Observed Recidivism Rates
Prohibited Hours Offenders
FY 2007 & FY 2008
September - August**

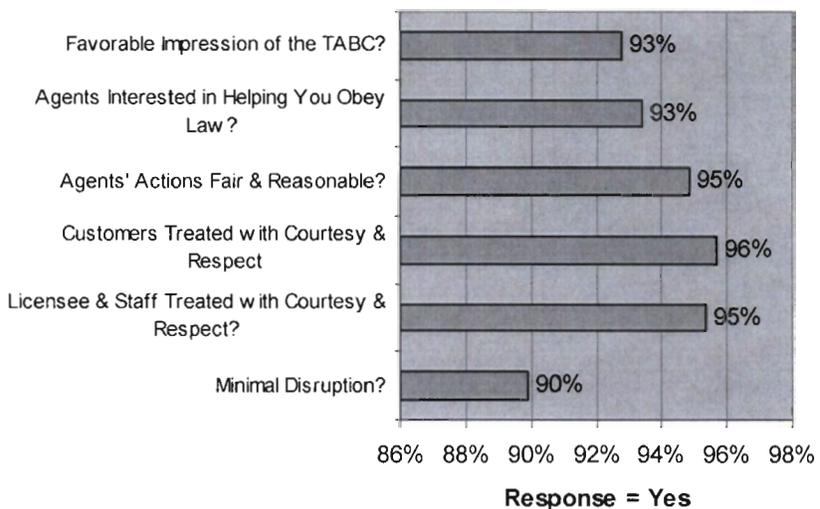
	FY 2007 thru Aug 31	FY 2008 thru Aug 31
Retailers Charged	269	281
w/ Prior Prohibited Hrs Case in Previous 12 mo.	29	25
Recidivism Rate After 12 mo.	10.78%	8.89%
w/ Prior Prohibited Hrs Case in Previous 24 mo.	32	30
Recidivism Rate After 24 mo.	11.89%	10.68%
w/ Prior Prohibited Hrs Case in Previous 36 mo.	36	32
Recidivism Rate After 36 mo.	13.38%	11.39%

Enforcement Division
Post-Inspection Licensee Satisfaction Survey Results
September 2007 - August 2008

Region	# Returned Surveys	# Surveys Indicating Overall Satisfaction	% Satisfied Respondents
Region 1 - West Texas	226	216	95.60%
Region 2 - North Texas	323	309	95.70%
Region 3 - Southeast Texas	255	234	91.80%
Region 4 - Central Texas	267	255	95.50%
Region 5 - South Texas	205	194	94.60%
Statewide	1,276	1,208	94.70%

Number of Surveys Mailed - 7,729 Response Rate- 16.51%

Enforcement Survey Responses - State

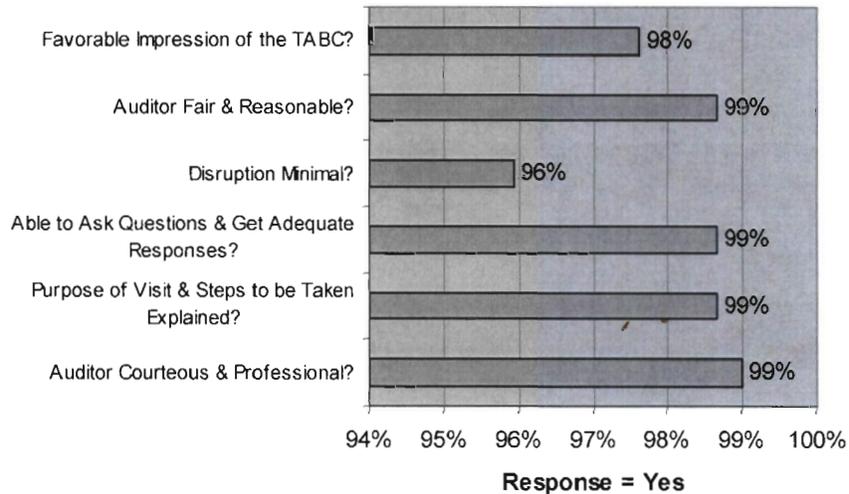


**Compliance Division
Post Inspection/Audit Licensee Survey Results
May 2008 - August 2008**

Region	# Returned Surveys	# Surveys Indicating Overall Satisfaction	% Satisfied Respondents
Region 1 - West Texas	17	17	100.00%
Region 2 - North Texas	23	23	100.00%
Region 3 - Southeast Texas	76	75	98.70%
Region 4 - Central Texas	105	103	98.10%
Region 5 - South Texas	75	74	98.70%
Statewide	296	292	98.60%

Number of Surveys Mailed - 1,588 Response Rate- 18.64%

Survey Responses - State

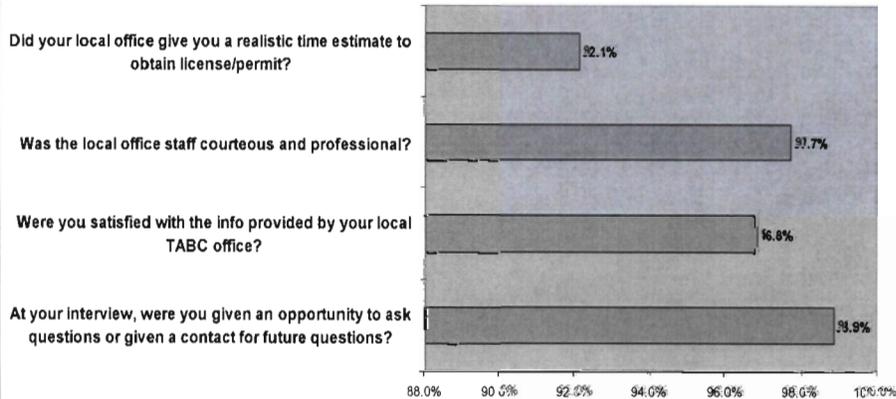


Licensing Applicant Satisfaction Survey FY 2008 Responses

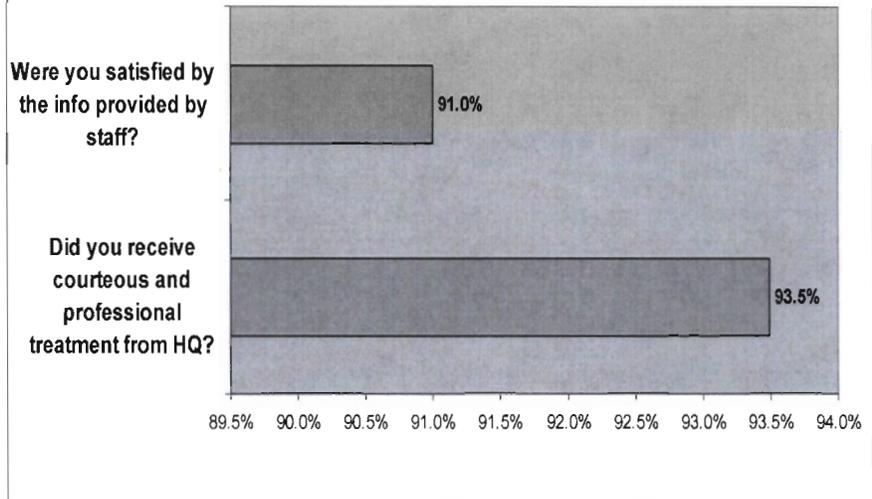
	Yes	No	N/A	% Yes (excl. N/A)
Field Service Questions				
1. At your interview, were you given an opportunity to ask questions or given a contact for future questions?	873	10	19	98.90%
2. Were you satisfied with the info provided by your local TABC office?	855	28	19	96.80%
3. Was the local office staff courteous and professional?	864	20	18	97.70%
4. Did your local office give you a realistic time estimate to obtain license/permit?	807	69	26	92.10%
Totals - Field	3399	127	82	96.40%
HQ Service Questions				
1. Did you receive courteous and professional treatment?	201	14	687	93.50%
2. Were you satisfied by the information provided by staff?	192	19	691	91.00%
Totals - HQ	393	33	1378	92.30%
Totals – Field & HQ	3792	160	1460	96.00%

Surveys Mailed = 9,025 Surveys Returned = 902 Response Rate = 12.84%

Local Office Licensing Customer Satisfaction

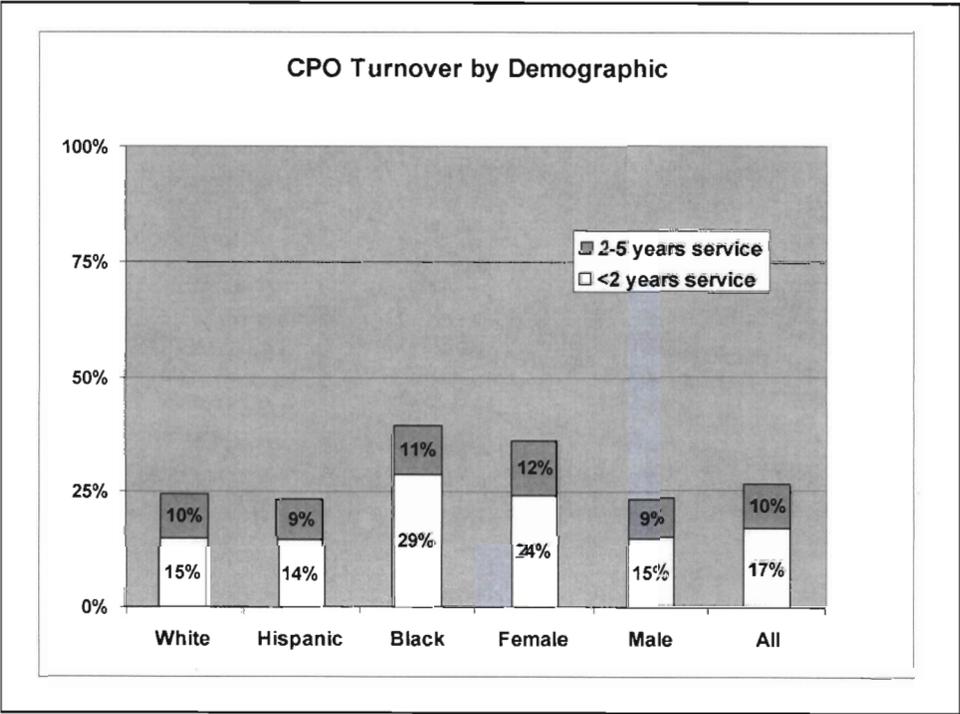
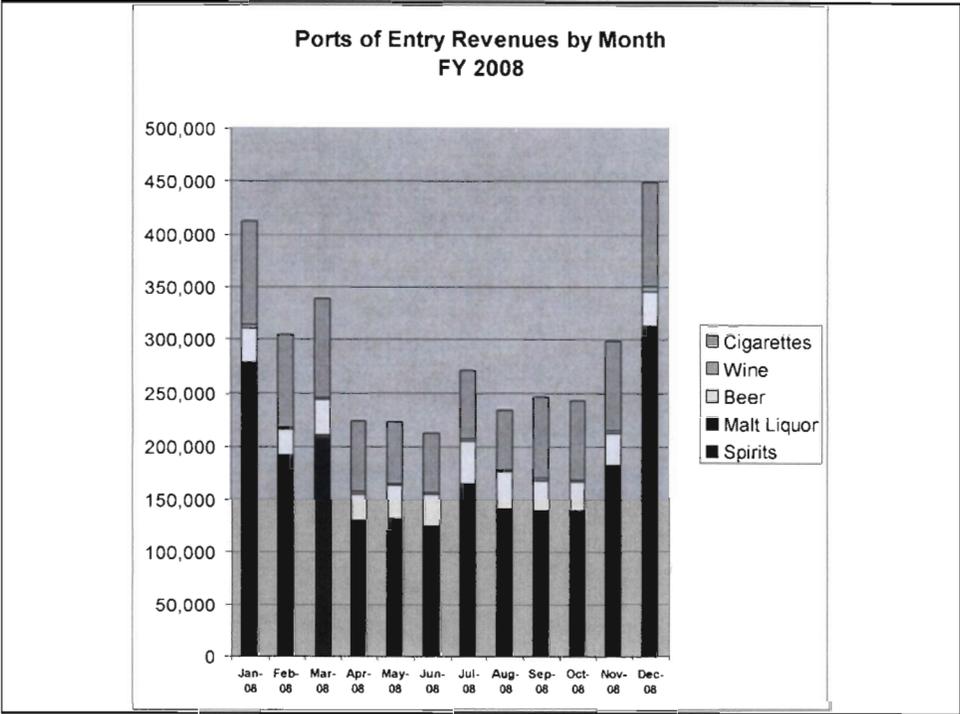


Licensing Headquarters Customer Satisfaction



Ports of Entry Revenues By Product Type September 2007 - August 2008

Product	Revenues
Spirits	\$2,107,906
Wine	\$31,226
Beer	\$366,542
Malt Liquor	\$44,406
Cigarettes	\$906,680
Total	\$3,456,760



Attachment 2

Protest Process

Protest Process

September 2008

Protests

The way we were...

- **Inconsistent**
- **Perception and relationship problems**
- **Varying degrees of attention to the investigation**
- **Mismanaged resources**
- **Communication avenues undefined**

Protest Drivers

Initiating Event	Allegation	Protestant (s) Applicant Others
Organizational Structure	People Procedures	Agents Licensing Legal
Outcome	Legal Basis Join Yes or No	All Parties

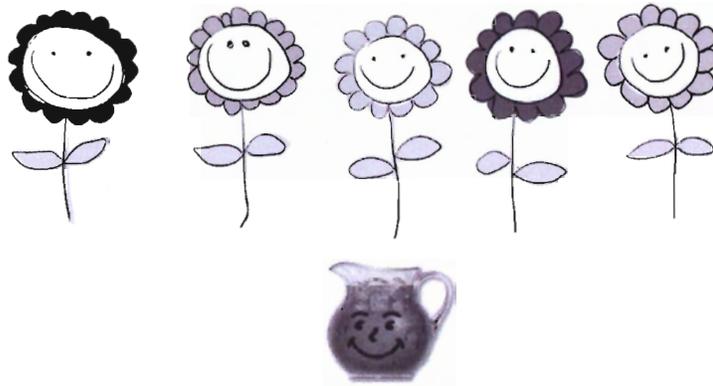
Clarify - Initiating Event

1. **Defined protest** ...written allegation, legal grounds exist, to deny the application for a license or permit
2. **Created a Protest Form**...to help the protestant document the legal basis
3. **Established communication points**
...TABC will let you know when ...

Organizational Improvements

1. Created an agency-wide policy ... defining roles, responsibilities, process, workflow
2. Standardized communication ... use of letter templates when appropriate
3. Divided the investigation into 2 steps ... initial inquiry and full investigation
4. Placed Legal early in the process ... to assist, dismiss, and communicate
5. Designed protest reporting and tracking in ARTS ... trained and talked, and trained and talked, and trained and talked some more

Let's all drink the kool-aid slide



Outcome - Transparency

- **Place or Manner** ...whether there are reasonable grounds to conclude that granting the application will present a distinct and ongoing threat of the public health, safety, and welfare
- **Collective Decision Making**
- **Tailored Letters** ...the reviewing attorney will communicate the conclusion and the reasons therefore...

Protests – The Past

That way we were....

- Inconsistent
- Perception and relationship problems
- Varying degrees of attention to the investigation
- Mismanage resources
- Communication avenues undefined

Protests – The New TABC

- **Consistency**
- **Growing community relationships**
- **Accurate perception of TABC policy**
- **Cross-divisional process, reported and tracked, open and reviewed**
- **Communication avenues - known, well traveled, two-way street between parties**

Attachment 3

**Proposed New Rule
Relating to Filing a Complaint**

NEW RULE FOR ADOPTION (w/TXREG change)

§31.10. Filing a Complaint.

(a) This section relates to §5.53 of the Texas Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt a rule to define the agency's complaint process from the time a complaint is received until the complaint is resolved.

(b) The public, consumers, commission and persons and entities regulated by the commission may file a complaint against an individual or entity holding a license, permit or certificate issued by the commission.

(1) A complaint may be submitted anonymously. If the complainant wishes to be informed of the resolution of the complaint, the complainant must provide contact information.

(2) A complaint may be submitted: in writing to the Texas Alcoholic Beverage Commission (TABC), P.O. Box 13127, Austin, Texas 78711-3127; in person at any TABC office; by phone at (512) 206-3333 or the phone number of the nearest TABC office, or by electronic mail at complaints@tabc.state.tx.us.

(c) A written complaint form, instructions on how and where to file a complaint, and a list of local TABC offices may be found on the commission's public website at www.tabc.state.tx.us. A complainant can also request that a form and instructions be mailed to a complainant by calling the commission at (512) 206-3333, or a local TABC office. A complainant may also file a complaint on plain paper without using the form by providing the following information:

(1) Complainant name and how the complainant may be contacted if they wish to be notified of the outcome or resolution of the complaint.

(2) The name or identity of the individual or entity being complained about and how the commission may find or contact the individual or locate the entity. This may include physical, mailing and e-mail address, phone numbers and persons the complainant has contacted or spoken with regarding the complaint.

(3) A brief statement of the nature of the complaint and relevant facts, including the names of persons with knowledge, times, dates, and location.

(4) If the complainant has documents or records related to the complaint, a copy of these should be attached to the complaint. Do not send original records with a complaint.

Attachment 4

**Proposed New Rule Relating to
Resolution and Information on Complaints**

NEW RULE FOR ADOPTION (w/TXREG changes)

§31.11. Resolution and Information on Complaints.

(a) The commission investigates all complaints. The time and resources allocated to an investigation will be based on facts stated in the complaint. Complaints alleging conduct that presents a serious risk to the public health and safety will be given priority.

(b) If an investigation results in a finding that a provision of the Texas Alcoholic Beverage Code (Code) or commission rules have been or may have been violated, the commission may proceed with an action to cancel, suspend, or refuse to issue a permit or license under Chapters 11 and 61 of the Code, and the complainant will be informed if contact information is provided.

(c) If an investigation results in a finding that no violation of the Code or commission rules has occurred, the complainant will be informed of this result if contact information has been provided.

(d) General information and the nature and disposition of complaints can be accessed on the Texas Alcoholic Beverage Commission (TABC) public website at www.tabc.state.tx.us.

(e) The public can access the violation history of a license or permit issued by the commission on the TABC public website at www.tabc.state.tx.us.

(f) Information about a specific complaint against an individual or entity holding a license, permit or certificate issued by the commission may be obtained by filing a request under the Texas Public Information Act (TPIA). Some information in a complaint or investigation of a complaint may not be subject to disclosure under the TPIA.

Attachment 5

Rule Review Plan

Texas Alcoholic Beverage Commission

Rule Review Plan

In accordance with §2001.039, Government Code, the Texas Alcoholic Beverage Commission (TABC) is serving notice of its intent to review rules under Title 16, Part 3 of the Texas Administrative Code.

The rule review will be conducted on a chapter-by-chapter, and in some instances subchapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register*. Review of the rules under each chapter listed in this plan will determine whether the reason for adoption of the rules continues to exist. During the review process, the TABC may also determine that a rule may need to be amended to further refine the directives and goals of the TABC, and to update the language and formatting of the rules. Rules will also be combined, reorganized or reduced for simplification and clarity. Readopted rules without changes will be noted in the *Texas Register* Rule Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

The TABC invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or joan.bates@tabc.state.tx.us.

The TABC will initiate the review of rules within each of the following chapters in accordance with §2001.039, Government Code. The review will begin in September 2008 and proceed under the following schedule.

[attach schedule]

Texas Alcoholic Beverage Commission Rule Review Plan

Pursuant to the Texas Government Code §2001.039, the Commission files the following rule review plan.

CHAPTERS	REVIEW DATE
Chapter 31. Administration	November 2008
Chapter 32. Subchapter A. Grants General Provisions	February 2009
Chapter 32. Subchapter B. Grant Budget	February 2009
Chapter 32. Subchapter C. Grant Funding	February 2009
Chapter 32. Subchapter D. Grant Administration	February 2009
Chapter 32. Subchapter E. Grant Monitoring and Audits	February 2009
Chapter 33. Licensing	January 2009
Chapter 35. Enforcement	July 2009
Chapter 36. Gun Regulation	July 2009
Chapter 37. Legal	January 2009
Chapter 39. Ports of Entry	December 2008
Chapter 41. Auditing	December 2008
Chapter 43. Accounting	September 2008
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	February 2009
Chapter 45. Subchapter B. Standards of Identity Wine	February 2009
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	February 2009
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	June 2009
Chapter 45. Subchapter E. Advertising and Promotion Malt Beverages	July 2009
Chapter 45. Subchapter E. Advertising and Promotion Liquor	August 2009
Chapter 47. Blanket Rules	Repeal-September 2008
Chapter 49. Production of Alcoholic Beverages	Repeal-September 2008
Chapter 50. Alcohol Awareness and Education	August 2009

For further information, please contact Joan Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711 or call (512) 206-3496 or email to jbates@tabc.state.tx.us.

Attachment 6

**Proposed Repeal of Chapter 47
Relating to Blanket Rules**

CHAPTER 47. BLANKET RULES

RULES APPLICABLE TO OTHER RULES

§47.1. Severability.

(a) Except to the extent otherwise specifically provided in a rule enacted previously, concurrently or in the future, if any provision of a rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of each rule are declared to be severable.

(b) Nothing in this section affects the power or the duty of a court in an appropriate case to ascertain and effectuate the intent of the commission with regard to the severability of a rule.

§47.2. Blanket Penalty.

The administrator may, after notice and hearing, suspend for a period not to exceed 60 days or cancel the license or permit of any licensee or permittee upon finding that the licensee or permittee has violated any provision of any sections enacted concurrently, previously, or in the future.

Attachment 7

**Proposed Repeal of Chapter 49
Relating to Production of Alcoholic Beverages**

CHAPTER 49. PRODUCTION OF ALCOHOLIC BEVERAGES

WINE

§49.1. Production Practices in General.

(a) Each permittee operating under a winery, wine bottler's or a rectifier's permit shall operate in a building:

- (1) which is completely floored;
- (2) which has a separate space set aside and known as the "bottling department" in which the cleaning of bottles, the filtration and bottling of wine, and the stoppering and sealing of filled bottles shall be performed;
- (3) in which the entire floor of the bottling department is in good repair and constructed of concrete, brick, tile, asphalt, macadam, or other composition material laid so as to be impervious to water and to drain properly;
- (4) having whole and sound walls and ceiling;
- (5) in the bottling department of which there is window space evenly distributed and equal to or greater than one-tenth of the floor space, to give needed natural light during the daylight hours, or which is lighted artificially with at least one 25 watt electric light (235 lumens), or its equivalent for each 100 square feet of floor area, reasonably evenly distributed;
- (6) which is well ventilated at all times;
- (7) in which there is no toilet opening directly into any part of the bottling department or space where crushing or pressing is done;
- (8) which is provided with handwashing facilities consisting of a lavatory, soap and clean individual or disposable towels;
- (9) in which outside doors, windows and ventilators are effectively screened with 16 mesh to the inch, or finer, wire screen; and
- (10) in which all screened doors shall be outward opening and of the automatically closing type.

(b) It is provided, however, that subsection (a) of this section shall not apply to wineries none of whose products are sold to the holder of a retailer's, wholesaler's, or bottler's permit.

(c) The toilet and lavatory shall be maintained in a state of full efficiency, and shall be clean at all times. Durable, legible signs shall be posted conspicuously directing employees to wash their hands before returning to work.

(d) All pumps, filters, bottling machines, flexible tubing, piping, hose and all other equipment or machinery coming in contact with fruit or vegetable juices, grape must or wine shall be thoroughly cleaned by flushing with a 1.0% sal soda or chlorine solution and rinsing twice with clean water immediately after each use. Such equipment and machinery shall be flushed with clean water before each use immediately after any period of disuse greater than six hours and shall be sterilized with a hypochlorite or other solution containing between 50 and 100 parts per million available chlorine and rinsed three times by flushing with clean water before each use immediately, after any period of disuse exceeding six days.

(e) If the bottling room, including the floor, was in existence when this section became effective, a tight floor of tongue and groove flooring, rubber composition, or sheet metal, which

has been painted or otherwise treated to make it waterproof, may satisfy the floor requirements for these rooms until such floor needs repair, or is destroyed or removed, or is in any way changed in its construction, at which time the floor shall be entirely constructed to conform to the requirements of subsection (a)(3) of this section.

(f) The floor of the bottling department shall at the end of each working day be swept and flushed or scrubbed until clean. All floors shall at all times be free of trash and articles not used in regular work, such as empty cap cartons, paste board boxes, *etc.* At the end of each season of usage and at the end of each period of six working days such floors shall be sterilized by washing with a solution containing at least 200 parts per million of available chlorine, or by burning sulphur in the closed rooms.

(g) All shelves, tables, racks, *etc.*, used in the bottling of wine shall be scrubbed clean with soap and water, or other cleaning agent, and rinsed at the end of each period of usage, and shall be washed with clean water before each use immediately after a 24 hour interval of disuse, and shall be sterilized with a chlorine solution, containing at least 50 parts per million of available chlorine at intervals of six working days. Unless the boards of table tops, racks and shelves are tight fitting, they shall be separated by spaces at least of an inch wide.

(h) All bottle caps and stoppers shall be stored only in dust proof containers until used. They shall be covered at all times so as to be dust free.

(i) All fruit or vegetable juice, grape must, or wine which is spilled on the outside of any keg, barrel, tank or vat, shall be completely removed by rinsing with water at the end of each day. The outside of all kegs, barrels, vats and tanks, shall be clean at all times.

(j) All kegs, barrels, tanks and vats, used as containers during fermentations of fruit or vegetable juices, or grape must, or during racking of wine, shall immediately after being emptied, be freed from lees, cheese or other solid matter which might adhere to the inside of the container, by shaking the container with a chair or other heavy, flexible object or by scrubbing with a stiff brush. Such container shall be then washed with a one percent solution of sal soda, rinsed twice with water, and sterilized; with sulphur dioxide as by burning sulphur, or by introducing sulphur dioxide from a cylinder or from any other source; or by exposure to a jet of steam for at least three minutes, and such container shall then be closed to exclude air currents and dust until refilled. All kegs, barrels, tanks and vats, used for storage of wine shall immediately after being emptied be washed with a one percent sal soda solution, rinsed twice with water and sterilized by either of the methods listed above in this section.

(k) All wine bottled, sold or offered for sale in this state shall be bottled in new and unused bottles. All new bottles shall before being filled be rinsed by spraying with water or by blowing with air in an air cleansing device, designed and normally used for cleaning new bottles by blowing with compressed air.

(l) All barrels, kegs, vats and tanks used in the manufacturing, blending, or storage of wine, and all open gravity filters shall be kept covered at all times while being used, to exclude all dust or other extraneous matter.

(m) Each permittee whose business includes the filling of bottles shall be equipped with and use at all times a mechanical bottling machine. The term "mechanical bottling machine" as used in this rule refers to a device having one or a series of nozzles, made of metal, wood, or of any inflexible material which is impervious to water and which is capable of conveying wine into the bottles being filled with wine, each of such nozzles or devices being equipped with a readily cleanable mechanical valve which can instantaneously start or stop the flow of wine through the

nozzle into the bottle. When said bottling machine is in operation such nozzle shall be inserted into bottles being filled.

(n) All transfers of wine from one container to another shall be carried out through hose or piping, the flow being maintained either by pump or by gravity. Siphonage shall not be induced by suction through the mouth. This shall apply also to the transfer of fruits or vegetable juices, grape must, and any other material, used in the manufacture of wine.

(o) All wine shall be filtered in the process of being bottled either by means of a gravity filter, or a power filter, whereby all solid matter is removed. Any filtering medium, such as cloth or filter pump, which is to be reused after any period of disuse exceeding one hour, shall be thoroughly cleaned by washing and sterilizing after cleaning by an approved process.

(p) All accumulation of bottles, fragments and other rubbish shall be kept in appropriate, covered receptacles or containers, and shall be removed from the bottling plant daily.

(q) No person engaged in the manufacturing, bottling, blending, or rectifying of wine in this state shall employ or keep on or about any said place any person infected with or affected by any infectious or contagious disease, or employ any person to work in or about said place or deliver any alcoholic beverage from said place, who at the time of his employment had not in his possession a certificate signed by the city or county health officer residing in the city or county where said person is to be employed, attesting the fact that the bearer had been examined by such physician within a week prior to the time of employment and that said examination disclosed the fact that such person to be employed was free from any infectious or contagious disease; or fail to institute and have made medical examination of all employees at intervals of time not exceeding six months, and after such examinations promptly discharge from their employment in or about said place after such examinations any and all persons found to be infected with or affected by an infectious or contagious disease.

(r) All employees of any permittee herein mentioned handling wine shall wear clean clothes at all times while thus employed. Arrangements facilitating this observance of personal hygiene by employees actually engaged in the bottling, manufacturing, rectifying or blending of wine shall be maintained by the management of the winery, bottling plant, or rectifying plant.

(s) All bottles filled with wine in this state shall be stoppered by means of new corks or new screw caps.

(t) All bottles filled with wines in this state shall be protected from tampering or contamination by being sealed immediately after bottling with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

(u) All spilled wine, fruit or vegetable juices except that which may be recovered in a sanitary receptacle normally attached to and used to receive overflow from the bottling machine, shall be treated as waste and shall not be sold for human consumption.

(v) It shall be unlawful for any holder of a winery, wine bottler's or rectifier's permit to fail or refuse to comply with each provision of this section.

(w) No permit shall be issued to, or renewed by, any winery, wine bottler or rectifier, unless and until the applicant shall have shown to the satisfaction of the administrator that the premises and appurtenances thereto, appliances and all equipment of the applicant are suitable and adequate for compliance with this section.



CERTIFICATION

REGULAR COMMISSION MEETING

10:30 a.m. – September 26, 2008

5806 Mesa Drive
Austin, Texas 78731



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 26, 2008.

A handwritten signature in black ink, appearing to read "Alan Steen".

Alan Steen
Administrator

Sworn and subscribed before me this the 16th day of October 2008.

A handwritten signature in black ink, appearing to read "Renee G. Johnston".

Renee G. Johnston
Notary in and for Travis County

