



COMMISSION MEETING

October 26, 2007

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*John T. Sfeen, Jr., Chairman
San Antonio*

*Gail Madden, Member
Dallas*

*José Cuevas, Jr., Member
Midland*

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AGENDA

REGULAR COMMISSION MEETING

10:30 a.m. – October 26, 2007

5806 Mesa Drive
Austin, Texas 78731



Alan Steen
Administrator

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

John T. Steen, Jr.
Chairman-San Antonio

Gail Madden
Member-Dallas

José Cuevas, Jr.
Member-Midland

Friday, October 26, 2007
10:30 a.m.

AGENDA

1. Call to Order	John T. Steen, Jr.
2. Approval of Commission Meeting Minutes of September 28, 2007	John T. Steen, Jr.
3. Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4. Follow-up Report on FY 2006-2007 Audit Recommendations	Russell Gregorczyk
5. TABC Internal Audit Annual Report for FY 2007	Russell Gregorczyk
6. Fourth Quarter/Year-End Performance Measures	Joel Moreno Amy Harrison Diana Gonzalez
7. Approval to Publish Proposed Amendment to T.A.C. Title 16, 531.4, Relating to Public Information Signs	Lou Bright
8. Approval to Publish Proposed New Rule to T.A.C. Title 16, 533.10, Relating to Citizenship and Status	Lou Bright
9. Approval to Publish Proposed New Rule to T.A.C. Title 16, §33.33 , Relating to Notification Requirements	Lou Bright
10. Approval to Publish Proposed New Rule to T.A.C. Title 16, 537.2, Relating to Contested Case	Lou Bright
11. Approval to Publish Proposed New Rule to T.A.C. Title 16, 545.33, Relating to Distilled Spirits and Wine Label Registration	Lou Bright
12. Approval to Publish Proposed Amendment to T.A.C. Title 16, §45.2 , Relating to Definitions to Clarify the Proposed Amendment to 545.85	Lou Bright
13. Approval to Publish Proposed Amendment to T.A.C. Title 16, §45.85 , Relating to Approval of Labels	Lou Bright
14. Approval to Publish Proposed Amendment to T.A.C. Title 16, 541.56, Relating to Out-of-State Winery Direct Shipper's Permits	Lou Bright
15. Public Comment	John T. Steen, Jr.
16. Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and Personnel Investigations and to Discuss the Duties, Responsibilities, and Evaluation of the Administrator (Govt. Code §551.071, §551.074)	John T. Steen, Jr.
17. Next Meeting: Friday, November 30, 2007	John T. Steen, Jr.
18. Adjourn	John T. Steen, Jr.



Alan Steen
Administrator

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

John T. Steen, Jr.
Chairman-Sun Antonio

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Member-Dallas

José Cuevas, Jr.
Member-Midland

- Note: - Items may not necessarily be considered in the order they appear on the agenda.*
- Executive session for advice of Counsel (pursuant to 5551.071 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. – October 26, 2007

5806 Mesa Drive
Austin, Texas 78731



COMMISSION MEETING MINUTES

October 26, 2007

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Friday, October 26, 2007, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

COMMISSIONERS

PRESENT:

Gail Madden
Jose Cuevas, Jr.

STAFF PRESENT:

Alan Steen, Administrator

Glenda Baker, Assistant Chief of Enforcement
Carolyn Beck, Public Information Officer, Executive
Lou Bright, General Counsel, Legal
Mindy Carroll, Education Specialist, Education and
Prevention
Deborah Dixon, Director of Education and Prevention
Loretta Doty, Director of Human Resources
Jeannene Fox, Assistant Administrator
Bobby Gideon, Captain, Office of Professional
Responsibility, Executive
Diana Gonzalez, Assistant Director of Compliance
Russell Gregorczyk, TABC Contracted Internal
Auditor
Joe Iagnemmo, System Support Specialist,
Information Resources
Linda Jackson, Administrative Assistant, Executive
Renee Johnston, Executive Assistant, Executive
Jo Ann Joseph, Assistant Director of Licensing
Charlie Kerr, Director of Business Services
Joel Moreno, Chief of Enforcement
Santos Saldana, Ports of Entry Supervisor,
Compliance

Jay Webster, Systems Analyst, Information Resources

GUESTS PRESENT:

M.L. Calcote, Republic National Distributing Company
Glen Garey, General Counsel, Texas Restaurant Association

Alan Gray, Licensed Beverage Distributors

Fred Marosko, Texas Package Stores Association

Jack Martin, Attorney at Law

Mike Mims, Director of Licenses and Permits, H-E-B

Alfonso Royal, Budget Analyst, Office of the Governor

Randy Yarbrough, Wholesale Beer Distributors of Texas

CALL TO ORDER

In the absence of Presiding Officer John T. Steen, Jr., Commissioner Gail Madden called the meeting of the Texas Alcoholic Beverage Commission to order.

APPROVAL OF COMMISSION MEETING MINUTES OF SEPTEMBER 28, 2007

Commissioner Madden called for a motion to approve the Commission meeting minutes of September 28, 2007. There being no corrections or deletions, Commissioner Jose Cuevas so moved. Commissioner Madden seconded. The motion carried.

Commissioner Madden read a letter from Gregg Cox, Director of the Public Integrity Unit of the Office of the District Attorney, of which she had been copied.

ADMINISTRATOR'S REPORT

Commissioner Madden called upon Administrator Alan Steen to provide the Administrator's report on Administrator and agency activities, budget issues, and staff achievements. Administrator Steen reported the following:

The conduct surety bonds have been tested in the system and are now in production. While there are a few inconsistencies that are being looked into, going into production was a major milestone.

- The in-car pilot project is ready to begin. Six agents from across the state have had wireless computers installed in their cars. If the pilot project proves beneficial, the agency will apply for a grant to fund expansion of the project.

- The Ports of Entry bar code technology is ready to go live, a week ahead of schedule and within budget. This technology sets the foundation for barcode technology for other areas in TABC. The system involves handheld wireless technology, which scans, calculates, and prints the stamping process. **This project will be demonstrated at the next Commission meeting.**
- Receptions are being held for the three new captains around the state to introduce them to their communities.
- The end of this year's State Employee Charitable Campaign is nearing. Joy Murray, TABC's Chemist, is the statewide coordinator for the campaign, and has been doing an outstanding job. Thus far, over \$13,000 has been pledged by TABC employees.
- The Survey of Organizational Excellence that is administered by the University of Texas at Austin is also nearing completion. TABC has over a 75% participation rate, and incentives have been given to the agency's mid-managers to encourage staff participation in the survey.
- TABC, as are other state agencies, is disputing costs concerning the information resources consolidation project with IBM. TABC has been billed over \$17,000 per month the last two months over what was originally anticipated and budgeted. **Commissioner Cuevas asked that Administrator Steen keep the Commissioners apprised of the situation.**

FOLLOW-UP REPORT ON FY 2006-2007 AUDIT RECOMMENDATIONS/TABC INTERNAL AUDIT ANNUAL REPORT FOR FY 2007

Commissioner Madden called upon Russell Gregorczyk, TABC's contracted Internal Auditor.

Mr. Gregorczyk reviewed the Follow-Up Review of the Status of Implementing FY 2006-2007 Internal Audit Recommendations Report (Attachment 1) and the Internal Audit Annual Report for FY 2007 (Attachment 2).

2007 KEY PERFORMANCE MEASURES

Commissioner Madden called upon Joel Moreno, Chief of Enforcement, Jo Ann Joseph, Assistant Director of Licensing, and Diana Gonzalez, Assistant Director of Compliance. Each presented the 2007 key performance measures for their areas (Attachment 3).

APPROVAL TO PUBLISH PROPOSED AMENDMENTS AND NEW RULES TO T.A.C., TITLE 16, §§31.4, 33.10, 33.33, 37.2, 45.33, 45.71, 45.85, 41.56

Commissioner Madden called upon Lou Bright, General Counsel.

Mr. Bright explained that there were eight proposed amended and new rules (Attachment 4) he recommended Commission approval to post in the *Texas Register* to invite open public discussion.

Mr. Bright discussed the proposed amendment, 931.4, relating to public information signs on fetal alcohol syndrome. He recommended Commission approval to post the proposed amendment in the *Texas Register* for public input. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright recommended Commission approval to post the proposed new rule, §33.10, relating to citizenship and status. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright recommended Commission approval to post the proposed new rule, 933.33, relating to notification requirements. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright reviewed the proposed new rule, 937.2, related to contested cases for a period of administrative litigation. He recommended that the Commission approve the posting of the proposed new rule in the *Texas Register*. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright discussed the proposed new rule, §45.33, regarding distilled spirits and wine label registration, which would repeal the current 945.33. He recommended that the Commission approve the posting of the proposed new rule. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright recommended Commission approval to post the proposed amendment, §45.71, regarding definitions. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright recommended Commission approval to post the proposed amendment, 945.85, relating to the approval of labels. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

Mr. Bright recommended Commission approval to post the proposed amendment, 941.56, relating to out-of-state winery direct shipper's permits. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.

PUBLIC COMMENT

As no one registered or expressed a desire to provide public comment, Commissioner Madden began the announcement for the executive session.

EXECUTIVE SESSION

Commissioner Madden made the announcement that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being **11:18** a.m., October 26, 2007, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and personnel investigations and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§**551.071** and 551.074.

Commissioner Madden announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being October 26, 2007, and the time, **12:45** p.m. No final action, decision, or vote was made in the executive session.

NEXT MEETING

Commissioner Madden announced the next meeting scheduled for Friday, November 30, 2007.

ADJOURNMENT

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

Attachment I

**Follow-Up Review of the Status of
Implementing FY 2006-2007
Internal Audit Recommendations**

**Texas Alcoholic Beverage
Commission
Follow-up Review of the Status of
Implementing FY 2006-07 Internal
Audit Recommendations**

October 16,2007

As Prepared by
Jansen & Gregorczyk
Certified Public Accountants

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**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

**Jansen & Gregorczyk
Certified Public Accountants**

**Telephone
(512) 268-0070**

**P. O. Box 601
Kyle, Tx 78640**

October 16,2007

Commission Members
Texas Alcoholic Beverage Commission

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

- Human Resources Systems and Controls
Agency-wide Contract Management System
- License Division License Processing
- Legal Services Division Administrative Case Processing
- Ports of Entry Operations

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

Signed Copy on File

Jansen & Gregorczyk
Certified Public Accountants

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

**Status of Implementing FY 2006-07
Internal Audit Recommendations**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 1 Audit of Human Resources Systems and Controls Report Issued May 15,2006</p>	<p>Determine if the human resources policies and practices are in compliance with federal and state requirements and if they contain all required provisions designed to protect the agency against liability related to discriminatory practices, sexual harassment, and other potential adverse actions arising from applicants, employees, and former employees.</p>	<p>Minor additions could be made to the <i>Employee Handbook</i> to provide more clarification or information on some matters for the agency's employees.</p> <p>Recommendation 1: <i>The following issues should be addressed in the appropriate sections of the HR Policies and Procedures Manual:</i></p> <p>a.) <i>The criteria for employees exempt from FLSA should be included in section HR-1.03, Equal Employment Opportunity, of the HR Policies and Procedures Manual. Additionally, FLSA should be identified as one of the rules to which TABC complies.</i></p> <p>b.) <i>The confidentiality of employee's personnel files should be addressed. Additionally, employees should be made aware of their rights to review their own files at any time.</i></p> <p>c.) <i>The specific criteria for disability retirement should be included as part of the discussion regarding general state retirement.</i></p>	<p style="text-align: center;">Implemented</p>	<p>Provide more clarification or information on some matters for the agency's employees.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 1 Audit of Human Resources Systems and Controls Report Issued May 15,2006</p>	<p>Determine if the classification and compensation systems are in compliance with state and federal laws and if they are effective in attracting and retaining employees, promoting effective human resource utilization.</p>	<p>The Human Resources Division determines FLSA exempt or non-exempt status using general classifications such as administrative assistant or clerk rather than by individual position.</p> <p>Recommendation 2: <i>The Human Resources Division should complete the appropriate FLSA form for each individual employee to document compliance with FLSA regulations relating to determination of exempt or non-exempt status.</i></p>	<p>Implemented</p>	<p>Document compliance with FLSA regulations relating to determination of exempt or non-exempt status.</p>
		<p>In three of 34 files tested, there was not a Personnel Action Form (PAF) in the employee's file. In five cases the files did not contain a current performance evaluation dated prior to the PAF.</p> <p>Recommendation 3: <i>The Human Resources Division should ensure that all relevant documents and Personnel Action Forms are maintained in each employee's personnel files with regards to any payroll actions. Performance evaluations should be performed before the date of any Personnel Actions Forms to comply with agency policy.</i></p>		

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
Report No. 1 Audit of Human Resources Systems and Controls Report Issued May 15,2006	To determine if the employee performance appraisal system is effective in providing constructive feedback to employees on job performance and if performance evaluations are up-to-date and being performed in accordance with state requirements and agency guidelines.	Analysis of the most recent performance evaluations found that 170 (34%) of 494 were submitted late. <i>Recommendation 4: Each level of management should hold subordinate managers and supervisors responsible for timely preparation and submission of all performance evaluation appraisals by addressing late performance evaluations in the supervisor’s performance evaluation. Supervisors who are continually delinquent in performing employee performance evaluations should not be eligible for merit increases.</i>	Implemented	Ensure timely completion of employee performance evaluations and consequences for those supervisors who are continually delinquent in performing employee performance evaluations.
		The evaluation overdue report currently provides a two-month grace period <i>Recommendation 5: The overdue evaluation report should be revised to indicate all past due evaluations rather than allowing a two-month grace period so that executive management has an accurate reflection of the number of delinquent performance evaluations in each section and division.</i>		

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 2</p> <p>Audit of Agency-wide Contract Management System</p> <p>Report Issued</p> <p>September 26,2006</p>	<p>To determine if there is an effective contract establishment process that holds contractors and grantees accountable for delivery of quality services, prevents the inappropriate or inefficient use of state funds, and includes all required and necessary contract provisions.</p>	<p>The Enforcement of Underage Drinking Laws (EUDL) contracts failed to include a statement regarding the availability of funds. This statement is particularly important because the funds are obtained from federal sources.</p> <p>Recommendation 1: <i>The EUDL grant contract should include specific statements regarding the availability of funds and the monitoring process.</i></p>	<p>Implemented</p>	<p>Ensure the grantees understand that funds for the grant are subject to the availability and receipt of funds from the federal government.</p>
	<p>To determine if there is an effective and efficient system for the review, approval and tracking of all contracts and grants.</p>	<p>Tracking of contracts does not occur in a manner that provides the Business Services Division adequate notification of contract termination dates. This becomes problematic when renewal of a contract is required.</p> <p>Recommendation 2: <i>An automated tracking system should be developed that will maintain the status of all purchase orders and formal contracts.</i></p>	<p>Implemented</p>	<p>Effective and efficient system for determining the status of all purchase orders and formal contracts.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
Report No. 2 Audit of Agency-wide Contract Management System Report Issued September 26,2006	To determine if there is an effective contract close-out and evaluation process for determining whether contracts achieved the desired purpose.	TABC has not developed a formal contract close-out process to ensure all contract outcomes have been achieved. <i>Recommendation 3: The Business Services Division should develop a basic close-out form to be used in conjunction with the final payment of all formal contracts.</i>	In Progress A contract closeout form has been developed, but it has not been used to closeout contracts.	System for ensuring that all contract outcomes have been achieved.
		The Education and Prevention Division has not developed a close-out process for the EUDL grant program ending May 31,2006. <i>Recommendation 4: The Education and Prevention Division should develop a grant close-out process for the EUDL grant. The process, with appropriate modifications, might also be useful for other grant programs. Once grants are closed-out, letters of closure should be sent to grantees for their documentation.</i>	Implemented	System for ensuring that all grant outcomes have been achieved.

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings/ <i>Recommendations</i>	Status Per Follow-up Review	Impact
<p>Report No.3</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits and matching revenues received and recorded in Accounting with licenses and permits issued by the Licensing Division.</p>	<p>There is no system in place to reconcile total license and permit revenues deposited into the State Treasury by the Business Services Division with total fees from licenses and permits issued by the Licensing Division.</p> <p><i>Recommendation 1:</i> <i>Reports that allow reconciliation between revenues received in the Business Services Division's cashier's office and the permits processed and issued in the Licensing Division should be considered a high priority in the development of reports from the LE system. Once the necessary reports are developed, monthly revenue reconciliation should be conducted.</i></p>	<p>In Progress These reports are still being developed by the Information Resources Division.</p>	<p>Strengthen internal controls and accountability over license revenues.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
Report No.3 Audit of Licensing Division- License Processing Report Issued November 17, 2006	To determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits and matching revenues received and recorded in Accounting with licenses and permits issued by the Licensing Division.	There are a number of manual steps required to enter all necessary information in the LE system and balance the revenue batches before the deposit can be made into the State Treasury. Recommendation 2: <i>The Business Services Division Director should contact the Director of the Corporations Section at the Office of the Secretary of State so that appropriate staff from TABC can discuss and observe how the SOS processes incoming revenues and prepares deposits for the State Treasury</i>	Implemented	Enable TABC to automate and streamline the TABC revenue processing function
	To determine if the Licensing Division and Business Services Division have adequate internal controls and effective and efficient procedures for processing temporary receipts and billing local tax authorities for revenues due to the agency.	A report is not available from the LE system to identify outstanding receipts that have not been voided by the county tax office. Recommendation 3: <i>A report should be developed through the LE system to identify temporary receipts that have been outstanding for a significant amount of time for example over 90 days). Once the outstanding temporary receipts are identified, the appropriate counties should be contacted to determine their status.</i>	In Progress These reports are still being developed by the Information Resources Division.	Strengthen internal controls dealing with temporary receipts.

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
<p>Report No.3</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued November 17, 2006</p>	<p>To determine if the Application Processing Section has effective and efficient processes for timely and accurately processing license and permit applications and renewals.</p>	<p>The Application Manual and the Application Procedure Manual have not been updated since the implementation of the LE computer system.</p> <p>Recommendation 4: <i>The Licensing Application Manual and the Applications Procedures Manual should be updated as necessary to address the operational changes caused by the implementation of the LicenseEase computer system.</i></p>	<p>Implemented</p>	<p>Ensure that the applications manuals are consistent with the LicenseEase computer system.</p>
	<p>To determine if there are adequate internal controls and effective and efficient procedures for processing, maintaining and collecting on tax security deposits required by law.</p>	<p>Current internal controls and procedures were not completely successful in avoiding errors in handling tax securities.</p> <p>Recommendation 5: <i>The Licensing Division should implement some type of additional control to ensure that the amount of tax security on file is correct and in agreement with information entered into the LE system.</i></p>	<p>Implemented</p>	<p>Ensure that the correct amount of bonds are obtained and entered into the LE system.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
<p>Report No.3</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued November 17, 2006</p>	<p>To determine if there are adequate internal controls and effective and efficient processing procedures for processing bond exemptions and bond exemption withdrawals.</p>	<p>Inadequate internal controls have allowed erroneous coding in the LE system indicating exemption from bonding requirements when there should have been no exemption.</p> <p>Recommendation 6: <i>The Licensing Division should implement some type of additional control to ensure that the tax security modifier regarding bond exemption is correct in the LE system.</i></p>	<p>Implemented</p>	<p>Ensure that the LE computer system accurately identifies all businesses that are required to post a bond security.</p>
	<p>To determine if the Licensing Division has established effective and efficient procedures for correcting data conversion problems in the LicenseEase system.</p>	<p>Implementation of the LicenseEase computer system as a replacement for the M204 computer system has generated various conversion problems: most significantly, relating to data transfer of the master files.</p> <p>Recommendation 7: <i>Monitoring of the Data Review Plan activities should be conducted throughout the process. Supervisory "spot checking" should be conducted on a random basis to validate the setting of "review flags."</i></p>	<p>Implemented</p>	<p>Ensure timely, accurate, and efficient completion of the project.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16, 2007**

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No.3</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued November 17, 2006</p>	<p>To determine if the Licensing Division has developed an effective daily reporting system for tracking incoming applications and renewals each day and balancing the daily workflow.</p>	<p>The current reports from the LE system do not provide the information necessary to effectively track incoming applications and renewals each day and balancing the daily workflow in the Licensing Division.</p> <p>Recommendation 8: <i>The reports necessary to monitor Licensing Division workload and workflow should be considered a high priority in the LE report development process.</i></p>	<p>In Progress These reports are still being developed by the Information Resources Division.</p>	<p>Enhance the supervisor's ability to remain current in all processing activities, while providing statistical data to validate the performance of the division.</p>
	<p>To determine if the Licensing Division has developed an effective and efficient system for storing and maintaining license and permit applications and related information.</p>	<p>The system for storing and maintaining license and permit applications, and related information is an inefficient, antiquated hard-copy filing system.</p> <p>Recommendation 9: <i>TABC should proceed with the imaging project that was begun under the previous IRD Director. Each division within TABC should look at their individual business needs for hard-copy documents and work with IRD to establish the appropriate protocol for developing a useful and effective imaging and retrieval system for the agency.</i></p>	<p>In Progress A pilot project is currently underway to image time and leave records. Based on the results of the pilot, TABC will proceed with the imaging project for other agency functions.</p>	<p>Improve storage efficiency by upgrading to a modern electronic system.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16, 2007**

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 3</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if the Licensing Division has developed an effective and efficient system for storing and maintaining license and permit applications and related information.</p>	<p>The Office of the Secretary of State (SOS) could be a valuable resource for information regarding imaging.</p> <p>Recommendation 10: <i>The IRD Director should contact the Director of the Corporations Section at the Office of the Secretary of State so that appropriate staff from TABC can discuss and observe how the SOS images and retrieves all documents.</i></p>	<p>Implemented</p>	<p>Assist TABC in implementing an electronic storage system.</p>
<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued:</p> <p>January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>The current system for assigning cases does not take into account all factors necessary for an equitable and efficient case division.</p> <p>Recommendation 1: <i>The case categorization should be revised to include the type of violation and the requested penalty. It may be necessary to develop a case categorization matrix that considers both of these factors and then assigns a score.</i></p>	<p>Implemented</p>	<p>Provide a more efficient means of equalizing the attorney caseloads and equalizing the caseloads among the three locations.</p>

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status Per Follow-up Review	Impact
Report No. 4 Audit of Legal Services Division Administrative Case Processing Report Issued: January 26, 2007	To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.	After the case category assignment has been made, there are cases where the assigned factor should be changed because they require more time to resolve than initially anticipated. <i>Recommendation 2: Each operating location should have the ability to change the category assignments in the LE system and the revised categorization should be used when making new case assignments.</i>	Implemented	Ensure all attorneys are assigned an equitable caseload.
		When assigning cases, the Deputy General Counsel must first laboriously review each case, assign a case category, and review each attorney's weighted caseload. <i>Recommendation 3: Case assignments should be made to the three locations rather than specific attorneys in each location.</i>		

**TABC Internal Audit Follow-up Report on the Status of Implementing
FY 2006-07 Internal Audit Recommendations – October 16,2007**

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>There is no backup for assigning cases so if the Deputy General Counsel is busy with other tasks or out of the office.</p> <p><i>Recommendation 4: The Austin Team Leader should be designated as the backup in the absence of the Deputy General Counsel so all cases can be assigned to the three locations in a timely manner.</i></p>	<p>Implemented</p>	<p>Ensure that cases can be assigned in the absence of the Deputy General Counsel.</p>
		<p>There currently is not a formal process for the Enforcement Division to request Legal Services to prioritize cases for timely action or special processing.</p> <p><i>Recommendation 5: A process and procedure should be developed to prioritize certain types of administrative cases for assignment and processing as quickly as possible. These priority cases should be assigned to the attorney with the most experience in processing these types of cases.</i></p>	<p>Implemented</p>	<p>Ensure that the most egregious cases, which pose a documented threat to public health and safety, are adjudicated in a timely and effective manner.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>There is a need to have a more structured process where an attorney provides guidance to the special investigators in Enforcement before their cases are referred to Legal.</p> <p><i>Recommendation 6:</i> <i>Enforcement and Legal Services should have regular meetings (weekly or biweekly) so that an attorney can provide guidance to the special investigators on cases in process before the cases are referred to Legal.</i></p>	<p>Implemented</p>	<p>Improve efficiency of case resolution by facilitating communication between Enforcement and Legal Services.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>The Case Management Manual does not reflect actual operating procedures or staff responsibilities for many of the functions identified in the manual.</p> <p><i>Recommendation 7: The Case Management Manual should be revised to reflect actual operating procedures. Unnecessary detailed administrative procedures and specific staff responsibilities for many of these detailed procedures should be eliminated with more emphasis on what needs to be accomplished rather than how it must be accomplished. The manual should allow the legal teams the flexibility to perform administrative functions in the manner that works best for their teams. Processes outlined in the manual that are not being used should be eliminated.</i></p>	<p>Implemented</p>	<p>Ensure that the Case Management Manual accurately reflects operating procedures currently in place.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>The Case Management Manual provides few standards or guidelines for the attorneys regarding management's expectations regarding administrative case processing.</p> <p>Recommendation 8: <i>The Case Management Manual should be updated to provide standards and guidelines for the attorneys regarding management's expectations regarding administrative case processing. Such guidelines may include: Legal requirements that must be completed and documented for every case versus those where the attorney has flexibility; parameters and conditions under which the attorney may attempt to settle a case; parameters for determining how much more the attorney should obtain in a settlement depending on the type of violation that occurred and the violation history of the permittee; a system for prioritizing cases that should be placed on a "fast track" for hearing; timelines for scheduling hearings, sending out Notice of Violation Letters, and preparing orders after settlement agreements have been reached.</i></p>	<p>Implemented</p>	<p>Ensure consistency across the state in how cases are processed, the timeliness of processing and the outcomes that are achieved.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>Attorneys do not have discretion and flexibility to settle cases where the elements of the case have not been proven; rather, attorneys must obtain the concurrence of Enforcement staff in order to settle a case.</p> <p><i>Recommendation 9: Legal Services should establish a case peer review process. The peer review team should make decisions about cases that need to be dismissed or settled rather than being taken to hearing. The case peer review team should make the decision on how to proceed, with the General Counsel and Director of Enforcement making the final decision if Enforcement does not agree with the decision of the case peer review team.</i></p>	<p>Implemented</p>	<p>Provide Legal Services with greater flexibility to settle or dismiss weak cases.</p>

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Report No. 4 Audit of Legal Services Division Administrative Case Processing Report Issued: January 26, 2007	To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.	There is confusion about what information can be communicated between the Assistant Administrator and attorneys regarding administrative cases in progress. <i>Recommendation 10: The General Counsel should resolve the issue of ex parte communications between the Assistant Administrator who is responsible for signing the Order and the attorney who prepared the Order.</i>	Implemented	Provide clarification about the allowable communications between the Assistant Administrator and attorneys.
		Legal Services lacks standards and guidelines to evaluate the success of the division and the individual attorneys in processing administrative cases. <i>Recommendation 11: Legal Services should develop quantitative and qualitative performance measures that can be used to evaluate the effectiveness and efficiency of each attorney, each of the legal teams and the Legal Services Division.</i>	Implemented	Provide a mechanism for evaluation of attorneys in order to ensure timely processing of cases with outcomes that the agency expects to obtain.

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Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>Legal Services does not have a system for evaluating case outcomes and determining whether administrative cases are being processed effectively and timely.</p> <p><i>Recommendation 12: Legal Services should develop a system for evaluating case outcomes that includes a system for categorizing the case dismissals so that management can identify those cases that could have been processed more timely or more effectively. Norms should be established for processing different types of cases and for evaluating the outcomes achieved in processing different types of cases.</i></p>	<p>Implemented</p>	<p>Allow tracking of case outcomes in order to ensure cases are being processed timely and efficiently.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>The Notice of Violation (NOV) letter is not always sent or it is not always sent in a timely manner when an attorney is assigned a case.</p> <p><i>Recommendation 13: The Notice of Violation (NOV) letter should be used by all of the attorneys where a violation has occurred and a deadline for submission of the letter should be established once the attorney assignment has been made. Before the NOV letter is sent, the status of the permit expiration or a pending application should be determined in the LE system and documented in the case file.</i></p>	<p>Implemented</p>	<p>Ensure that all attorneys follow the established agency requirements regarding notification of violations.</p>
		<p>Attorneys often do not document actions taken and contacts made while working on a particular case.</p> <p><i>Recommendation 14: Each attorney should document contacts with the permittee, Enforcement staff and settlement discussions in the case file. A case checklist should also be included with each file; use of such a checklist should be mandatory.</i></p>		

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>Currently, the State Office of Administrative Hearings docket request is made on a form that must be physically mailed to Austin SOAH.</p> <p>Recommendation 15: <i>Legal Services should make a request to SOAH Austin to allow the SOAH docket request form to be submitted electronically via email.</i></p>	<p>Implemented</p>	<p>Improve efficiency of establishing a hearing on the administrative hearing docket.</p>
		<p>The procedure that has been established for sending Orders to the Assistant Administrator is very inefficient.</p> <p>Recommendation 16: <i>Orders from the field offices should be faxed to the Assistant Administrator for her approval and faxed back upon her approval. The field offices should be provided with scanners so that the signed Orders can be scanned and placed in the electronic case file folders.</i></p>	<p>In Progress</p> <p>One scanner has been acquired but is not yet operational. Another scanner needs to be purchased.</p>	<p>Improve efficiency when sending orders to the Assistant Administrator.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Each attorney currently has their own methods of communicating with the field Enforcement staff. Some attorneys communicate directly with the Enforcement agent, while some speak with the sergeant and others with the lieutenant.</p> <p><i>Recommendation 17: Legal Services should confer with Enforcement Division management to determine if a standard method of communications is desirable.</i></p>	<p>Implemented</p>	<p>Ensure that the Enforcement Division captains and lieutenants are in agreement when there is a need to reduce a recommended penalty or dismiss a case.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Communications between the Legal Services and Licensing divisions are not always effective.</p> <p>Recommendation 18: <i>The Deputy General Counsel and the Team Leaders in Legal Services should meet with the Licensing Division Director and her supervisors to identify situations where both parties need to communicate before actions are taken that may impact the other division. A process should be established and the appropriate staff in each division should be instructed regarding what information needs to be communicated and to whom the communication needs to be directed.</i></p>	<p>Implemented</p>	<p>Improve communication between divisions before taking actions that may affect one another.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Ineffective communications between the field offices and the Austin Legal Services office are resulting in high levels of staff frustration.</p> <p>Recommendation 19: <i>The General Counsel, Deputy General Counsel and all of the attorneys should have a meeting to discuss how to improve communications between the field offices and Legal Services in Austin. The specific issues that are causing problems should be identified and corrected.</i></p>	<p>Implemented</p>	<p>Improve communication between offices and reduce staff frustration.</p>
	<p>To determine if the Legal Services Division has an adequate training program for training TABC staff members on administrative case processing.</p>	<p>Some of the attorneys believe that TABC is moving forward on Protests where there is no legal basis for the Protest.</p> <p>Recommendation 20: <i>A future training session by Legal Services should include training on Protests.</i></p>	<p>Planned This will be included in the Protest Project in FY 2008.</p>	<p>Ensure a better understanding by all TABC employees of the Protest Process.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if the Legal Services Division has an adequate training program for training TABC staff members on administrative case processing.</p>	<p>Some of the Enforcement staff may not be adequately trained regarding the threshold necessary to establish a "strong" legal case.</p> <p>Recommendation 21: <i>The training materials for Legal Services training of Enforcement staff should include case comparison studies from actual administrative cases where the legal case was "weak" as compared to an actual case where the legal case was "strong."</i></p> <p>Individual attorneys have developed many different methods for settling cases.</p> <p>Recommendation 22: <i>Future training sessions for the Legal Services staff should include sharing of "bestpractices." Specific topics for discussion should be established in advance so the attorneys can prepare to discuss practices they have found to be effective.</i></p>	<p>Planned</p> <p>To be addressed in FY 2008 training.</p> <p>Planned</p> <p>To be addressed in FY 2008 training.</p>	<p>Ensure that Enforcement staff develops legally strong cases to hand over to the Legal Services division.</p> <p>Ensure all attorneys are aware of the best methods available for settling cases.</p>

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<p>Report No. 4</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if adequate systems have been developed for tracking and reporting on the status of all administrative cases and if accurate information is provided to TABC management and the Commissioners regarding the status of administrative case processing.</p>	<p>The Commission's monthly report does not break down dismissed cases into categories describing why each case was dismissed.</p> <p>Recommendation 23: <i>The dismissed cases on the Commission's monthly report should be revised to include categories of dismissed cases. Legal Services management should determine the categories of dismissed cases that would be most useful.</i></p>	<p>Implemented</p>	<p>Provide the Commission with a more detailed explanation regarding the outcome of each case.</p>
		<p>The General Counsel and Deputy General Counsel are in need of additional reports in order to more effectively monitor the workload of attorneys.</p> <p>Recommendation 24: <i>Legal Services should request that Information Resources revise the Pending Administrative Cases report to show the last action and the date the action was performed. Alternatively, a new report with this information could be requested.</i></p>	<p>In Progress</p> <p>Additional work by the Information Resources Division is required to include all necessary information on the report.</p>	<p>Provide the General Counsel with a more effective means of monitoring attorney workload, while simultaneously providing an incentive to continually update the LE system.</p>

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Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status Per Follow-up Review	Impact
<p>Report No. 5</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30, 2007</p>	<p>To determine if there are effective procedures and adequate internal controls over the collections of taxes and issuance of stamps at Ports of Entry stations and if stamp inventories are monitored and controlled.</p>	<p>There may be a sufficient number of persons using the Falcon Dam Bridge to cross into Texas with unstamped cigarettes to justify manning the bridge on weekends.</p> <p>Recommendation 1: <i>Management should consider staffing the Falcon Dam Bridge on weekends in order to “plug” a hole that allows unstamped liquor and cigarettes to cross into Texas. If it is determined that the cost of staffing the bridge cannot be supported by tax collection, the staffing could be eliminated and the current practice reinstated.</i></p>	<p>Implemented</p>	<p>Ensure that individuals crossing the Falcon Dam Bridge with unstamped cigarettes pay all appropriate taxes.</p>
	<p>To determine if there are effective procedures and adequate internal controls over the collections of taxes and issuance of stamps at Ports of Entry stations and if stamp inventories are monitored and controlled.</p>	<p>An informal policy expecting TCOs to balance at the end of each day may result in shortages going unnoticed and overcharges being pocketed by TCOs.</p> <p>Recommendation 2: <i>The actual amount of cash should be reported at the end of each shift by all TCOs, irrespective of whether it balances, is short, or is over. The practice of making up shortages should be eliminated. If an agent has frequent or significant cash variances, the problem should be considered as a performance issue.</i></p>	<p>Implemented</p>	<p>Enable management to track those TCOs who consistently are not able to balance cash collections with stamps issued.</p>

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<p>Report No. 5</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30, 2007</p>	<p>To determine if there are effective procedures in place for dealing with safety practices and crime issues.</p>	<p>The Los Indios Bridge reported that the exterior lighting was inadequate and the booth alarm didn't work.</p> <p>Recommendation 3: <i>POE management should review the established practices for reporting malfunctioning equipment or safety concerns to determine if any changes are needed to quickly identify and fix safety issues.</i></p>	<p>Implemented</p>	<p>Ensure all POE sites have adequately functioning equipment.</p>
	<p>To determine if the Ports of Entry stations have adequate resources and staffing for performing their duties.</p>	<p>Analysis and documentation of the data available to management has not been formally used to determine the adequacy of staffing at the various POEs.</p> <p>Recommendation 4: <i>Management should conduct analyses, on at least an annual basis, using available data, to ensure staffing at the various POEs remains appropriate. Documentation of all analyses conducted should be maintained.</i></p>	<p>In Progress A report will be completed by October 31, 2007.</p>	<p>Ensure TABC is maximizing its available resources when staffing each POE.</p>

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<p>Report No. 5</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30, 2007</p>		<p>For reasons ranging from size requirements, tears and fading of clothing, and insufficiency in the number of clothing items, many TCOs intimated the need for uniforms provided by a uniform rental company.</p> <p>Recommendation 5: <i>Management should consider using a uniform rental company for obtaining TCO uniforms.</i></p>	<p>Implemented</p> <p>Management did a cost benefit analysis that determined rental of uniforms was not cost effective.</p>	<p>Eliminate the need for purchasing uniforms that may be used for only short periods of time, and reduce problems that arise when uniforms are damaged or don't continue to fit over time.</p>

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<p>Report No. 5</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30,2007</p>	<p>To determine if adequate hiring practices are in place and adhered to in filling Ports of Entry positions.</p>	<p>Some POE cites, particularly El Paso and Hidalgo, have difficulties filling TCO vacancies.</p> <p>Recommendation 6: <i>POE management and the Human Resources Division should establish a process that will minimize the time it takes to fill vacancies at all POEs, but particularly those with the most frequent vacancies. This process should consider the feasibility of maintaining an active eligible candidate list at each of the major POE regions by having an "open" posting for TCOs every four to six months. The postings should be staggered to ensure no lapse in the eligibility list.</i></p>	<p>Implemented</p>	<p>Ensure qualified candidates are available in order to quickly and efficiently fill available TCO vacancies.</p>

Attachment 2

**Internal Audit Annual Report
FY 2007**

**Texas Alcoholic Beverage Commission
Internal Audit Annual Report
for FY 2007**

October 17, 2007

As Prepared by
Jansen and Gregorczyk,
Certified Public Accountants

Jansen & Gregorczyk
Certified Public Accountants

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P. O. Box 601
Kyle, TX 78640

October 17, 2007

The Honorable Rick Perry, Governor
Members of the Legislative Budget Board
Members of the Sunset Advisory Commission
Mr. John Keel, CPA, State Auditor

Dear Ladies and Gentlemen:

Attached is a report on the internal activity at the Texas Alcoholic Beverage Commission as required by the Texas Internal Auditing Act. The report provides a summary of audits completed and significant recommendations for fiscal year 2007.

Please contact me at (512) 268-0070 if you desire further information about the contents of this report.

Sincerely,

SIGNED COPY ON FILE

Russell Gregorczyk, Partner
Jansen & Gregorczyk, CPAs

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I. Audit Plan for Fiscal Year 2007

All audits in the revised audit plan were completed as planned, except the audit of the Executive Office. This audit was postponed until FY 2008.

TEXAS ALCOHOLIC BEVERAGE COMMISSION AS REVISED ON JULY 27, 2007 BY THE TABC COMMISSIONERS

At the June 28, 2007 meeting of the TABC Commission, the Commissioners in Executive Session requested the assistance of the internal auditor in conducting an investigation of a grievance filed by a TABC employee directly with the Commission rather than through the established agency grievance process. Due to timing and budget constraints, it was agreed that this project would be performed in lieu of the planned audit of the Compliance Division- Field Office License Processing audit. As a result the revised internal audits and special projects for FY 2007 are as follows:

- Completion of Licensing Division Audit- 8 hours (September 2006)
- Completion of Legal Division Audit- 48 hours (October 2006)
- Prepare Annual Internal Audit Report for FY 2006 – 12 hours (October 2006)
- Follow-up Review of Audit of Enforcement Division- Homeland Security – 16 hours (October 2006)
- Audit of Compliance Division –Ports of Entry- 140 hours (February 2007 to April 2007)
- Audit of Information Resources Division – 160 hours (June 2007 to August 2007)
- Review of Grievance Investigation – 80 hours (July 2007)
- Audit of Executive Division – 120 hours (July 2007 to August 2007)
- Prior Years Audit Follow-up Reviews – 24 hours (August 2007)
- Update Risk Assessment and Prepare FY 2008 Audit Plan – 12 hours (August 2007)

II. External Quality Assurance Review

Texas Alcoholic Beverage Commission Quality Assurance Review July 2006

Executive Summary

As required by the Texas Internal Auditing Act (article 6252-5d, V.A.C.S.), the Institute of Internal Auditor's (IIA) *International Standards for the Professional Practice of Internal Auditing*, (Standard 1312 – External Assessments), and the Government Accountability Office's (GAO) *Government Auditing Standards*, an external quality assurance review (QAR) was conducted of the Texas Alcoholic Beverage Commission's (TABC) internal audit activity. The Texas Internal Auditing Act requires that internal auditors, for agencies meeting the requirements of the Act, conduct a comprehensive external peer review, also known as a quality assurance review, every three years. An external quality assurance review, as part of a quality assurance program, is intended to provide reasonable assurance that internal audit work is being conducted in accordance with professional standards.

The principal objectives of the review were to assess whether the internal audit activity at TABC conforms to the Texas Internal Auditing Act and whether Jansen & Gregorczyk, Certified Public Accountants (the Contractor), is performing the work in compliance with professional standards. Also, during the review an attempt was made to identify opportunities that would enhance the audit process and improve the value of the internal auditing activity at TABC.

Contracting for internal auditing services has been a very efficient and effective way for smaller agencies to meet the requirements of the Texas Internal Auditing Act. Because TABC cannot utilize a full-time internal staff to conduct internal audits, it has an agreement with an outside contractor to conduct its internal auditing work. While 35% of the available staff hours of in-house internal audit departments will typically be used for tasks not directly related to individual audit projects (holidays, vacations, administration, training, etc.), TABC only pays for the hours spent directly on their audit projects. Any inefficiency in performing the work is at the risk of the Contractor because the project hours and costs are reviewed and approved by the Board in advance of the work being performed. This approach is very efficient for small agencies and also helps insure that the agency undertakes only worthwhile audit projects.

The scope of the review included a review of existing internal auditing policies, procedures, and audit project workpaper files, as well as interviews with the TABC Commission Chair, the Administrator, and the Contractor's staff.

The Internal Audit Charter, reporting relationships, communications with the TABC Commission and the Administrator, and the objectivity of the work performed were reviewed to determine the independence of the Contractor. An examination of the Contractor's administrative records and a review of selected workpapers were done to evaluate the staff's knowledge, skills, discipline and training. An inventory of current audit work and the scope and performance of the audit work that had been performed was evaluated. A review was also conducted of the risk assessment and audit planning processes, and the Contractor's engagement and staff management processes.

Overall Opinion

Based on the work outlined above, it is the opinion of the reviewer that the internal audit activity, at the Texas Alcoholic Beverage Commission, is in accordance with the Texas Internal Auditing Act, and the audit work being performed by the Contractor **fully complies** with applicable professional standards.

This opinion, representing the best possible evaluation, means that the Texas Alcoholic Beverage Commission, and the Contractor, have in place the relevant structures, policies, and procedures, including the processes by which they are applied, that comply with the Texas Internal Auditing Act and the professional standards in all material respects.

Mr. Russell Gregorczyk, CPA, a principal in the Contract firm, manages the audit work conducted at TABC. He has extensive audit experience, is well respected and has a good relationship with both agency management and the Board. His reporting relationship to the Commission, and his communication with the Commission, complies with the requirements of the Texas Internal Auditing Act and enables him to be independent and have an impartial and unbiased attitude, essential to the proper conduct of audit work. He annually performs a thorough risk assessment and develops an audit plan that is reviewed and approved by the Board.

A review of selected workpapers showed that Mr. Gregorczyk's staff is proficient and knowledgeable in the areas they review. He makes available continuing professional education and training for his staff. Each staff member receives, on average, 40 hours of internal audit related training each year. Mr. Gregorczyk and his staff have extensive experience with Texas government agencies.

The workpapers that were reviewed showed that individual audit projects are well planned and audit conclusions and recommendations are adequately supported. The workpapers were very professionally prepared and supported levels of professional care appropriate for the complexities of the work being performed. The audit programs were appropriately referenced to the audit steps and tests performed during the audit and the support for the conclusions expressed in the audit reports. They contained evidence that they are thoroughly reviewed by Mr. Gregorczyk before audit reports were issued.

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While the internal activity at TABC is complying with the Texas Internal Auditing Act and the Contractor is fully complying with professional standards, there are opportunities that could improve the activity that should be considered.

It was noted during the review that the Commission has implemented a Management Audit Committee (MAC), comprised of the Administrator and other senior TABC executives, that meets quarterly to review and follow-up on the implementation of audit report recommendations. Frequently organizations lack an effective method for insuring that recommendations are effectively implemented. This approach is considered a management good-practice for effectively overseeing that audit recommendations are adequately implemented in a timely manner.

The following comments and recommendation are intended to build on the foundation that is already in place with the objective of further improving the value and the effectiveness of the audit work being performed.

The implementation of this recommendation will enhance the internal audit activity at the Texas Alcoholic Beverage Commission and improve the value, efficiency and effectiveness of the services being provided by Jansen & Gregorczyk, Certified Public Accountants.

Recommendations

The disposition of observations and findings in audit workpapers should be better referenced.

Audit workpapers provide the principal support for an audit report and aid in the supervision of the work being performed. Workpapers also allow for the review of the quality of the audit work by providing a reviewer written documentation of the evidence supporting an auditor's conclusions and recommendations.

A review of selected workpapers showed that the work performed by the Contractor was meeting the intended audit objectives. The workpapers contained evidence that the audits were well planned and included objectives, an appropriate scope of work, background information, evidence of audit tests, and summaries of the purpose, procedures performed, results, conclusions, and recommendations.

However, in the workpapers that were reviewed, the references forward from the steps in the audit program to where the work was performed, and then to the disposition of any findings or observations, (audit report, discussion, etc.), were not always clear. While it was noted that findings and observations in the various sections of the workpapers appeared to always be included in the audit report, it was difficult to follow each item to a final disposition.

The Contractor should consider referencing each finding or observation to a schedule or point sheet. The items on the point sheet could then be documented as to the disposition of the item. (Audit report, discussion, etc.). This approach would aid in any review of the audit workpapers and help insure that all findings and observations are properly addressed.



Richard Tarr, CIA, CISA

III. Key Audit Findings/Recommendations

Audit reports for the Licensing Division-License Processing and the Legal Services Division had not been finalized and approved by the TABC Commissioners in time for inclusion in the FY 2006 Internal Audit Annual Report; therefore, these audits are reported in the table below.

Rpt Name and No.	High-Level Audit Objectives	Findings1 Recommendations	Status	Impact
Report No.1 Audit of Licensing Division-License Processing Report Issued November 17, 2006	To determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits and matching revenues received and recorded in Accounting with licenses and permits issued by the Licensing Division.	There is no system in place to reconcile total license and permit revenues deposited into the State Treasury by the Business Services Division with total fees from licenses and permits issued by the Licensing Division. <i>Recommendation 1: Reports that allow reconciliation between revenues received in the Business Services Division's cashier's office and the permits processed and issued in the Licensing Division should be considered a high priority in the development of reports from the LE system. Once the necessary reports are developed, monthly revenue reconciliation should be conducted.</i>	In Progress These reports are still being developed by the Information Resources Division.	Strengthen internal controls and accountability over license revenues.

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Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No.1</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits and matching revenues received and recorded in Accounting with licenses and permits issued by the Licensing Division.</p>	<p>There are a number of manual steps required to enter all necessary information in the LE system and balance the revenue batches before the deposit can be made into the State Treasury.</p> <p>Recommendation 2: <i>The Business Services Division Director should contact the Director of the Corporations Section at the Office of the Secretary of State so that appropriate staff from TABC can discuss and observe how the SOS processes incoming revenues and prepares deposits for the State Treasury</i></p>	<p>Implemented</p>	<p>Enable TABC to automate and streamline the TABC revenue processing function</p>
	<p>To determine if the Licensing Division and Business Services Division have adequate internal controls and effective and efficient procedures for processing temporary receipts and billing local tax authorities for revenues due to the agency</p>	<p>A report is not available from the LE system to identify outstanding receipts that have not been voided by the county tax office.</p> <p>Recommendation 3: <i>A report should be developed through the LE system to identify temporary receipts that have been outstanding for a significant amount of time (for example over 90 days). Once the outstanding temporary receipts are identified, the appropriate counties should be contacted to determine their status.</i></p>	<p>In Progress</p> <p>These reports are still being developed by the Information Resources Division.</p>	<p>Strengthen internal controls dealing with temporary receipts.</p>

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<p>Report No.1</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if the Application Processing Section has effective and efficient processes for timely and accurately processing license and permit applications and renewals.</p>	<p>The Application Manual and the Application Procedure Manual have not been updated since the implementation of the LE computer system.</p> <p><i>Recommendation 4: The Licensing Application Manual and the Applications Procedures Manual should be updated as necessary to address the operational changes caused by the implementation of the LicenseEase computer system.</i></p>	<p>Implemented</p>	<p>Ensure that the applications manuals are consistent with the LicenseEase computer system.</p>
	<p>To determine if there are adequate internal controls and effective and efficient procedures for processing, maintaining and collecting on tax security deposits required by law.</p>	<p>Current internal controls and procedures were not completely successful in avoiding errors in handling tax securities.</p> <p><i>Recommendation 5: The Licensing Division should implement some type of additional control to ensure that the amount of tax security on file is correct and in agreement with information entered into the LE system.</i></p>	<p>Implemented</p>	<p>Ensure that the correct amount of bonds are obtained and entered into the LE system.</p>

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Report No.1 Audit of Licensing Division- License Processing Report Issued November 17, 2006	To determine if there are adequate internal controls and effective and efficient processing procedures for processing bond exemptions and bond exemption withdrawals.	Inadequate internal controls have allowed erroneous coding in the LE system indicating exemption from bonding requirements when there should have been no exemption. <i>Recommendation 6: The Licensing Division should implement some type of additional control to ensure that the tax security modifier regarding bond exemption is correct in the LE system.</i>	Implemented	Ensure that the LE computer system accurately identifies all businesses that are required to post a bond security.
	To determine if the Licensing Division has established effective and efficient procedures for correcting data conversion problems in the LicenseEase system.	Implementation of the LicenseEase computer system as a replacement for the M204 computer system has generated various conversion problems: most significantly, relating to data transfer of the master files. <i>Recommendation 7: Monitoring of the Data Review Plan activities should be conducted throughout the process. Supervisory "spot checking" should be conducted on a random basis to validate the setting of "review flags."</i>	Implemented	Ensure timely, accurate, and efficient completion of the project.

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<p>Report No.1</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if the Licensing Division has developed an effective daily reporting system for tracking incoming applications and renewals each day and balancing the daily workflow.</p>	<p>The current reports from the LE system do not provide the information necessary to effectively track incoming applications and renewals each day and balancing the daily workflow in the Licensing Division.</p> <p>Recommendation 8: <i>The reports necessary to monitor Licensing Division workload and workflow should be considered a high priority in the LE report development process.</i></p>	<p>In Progress</p> <p>These reports are still being developed by the Information Resources Division.</p>	<p>Enhance the supervisor's ability to remain current in all processing activities, while providing statistical data to validate the performance of the division.</p>
	<p>To determine if the Licensing Division has developed an effective and efficient system for storing and maintaining license and permit applications and related information.</p>	<p>The system for storing and maintaining license and permit applications, and related information is an inefficient, antiquated hard-copy filing system.</p> <p>Recommendation 9: <i>TABC should proceed with the imaging project that was begun under the previous IRD Director. Each division within TABC should look at their individual business needs for hard-copy documents and work with IRD to establish the appropriate protocol for developing a useful and effective imaging and retrieval system for the agency.</i></p>	<p>In Progress</p> <p>A pilot project is currently underway to image time and leave records. Based on the results of the pilot, TABC will proceed with the imaging project for other agency functions.</p>	<p>Improve storage efficiency by upgrading to a modern electronic system.</p>

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<p>Report No.1</p> <p>Audit of Licensing Division- License Processing</p> <p>Report Issued</p> <p>November 17, 2006</p>	<p>To determine if the Licensing Division has developed an effective and efficient system for storing and maintaining license and permit applications and related information.</p>	<p>The Office of the Secretary of State (SOS) could be a valuable resource for information regarding imaging.</p> <p>Recommendation 10: <i>The IRD Director should contact the Director of the Corporations Section at the Office of the Secretary of State so that appropriate staff from TABC can discuss and observe how the SOS images and retrieves all documents.</i></p>	Implemented	<p>Assist TABC in implementing an electronic storage system.</p>
<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued:</p> <p>January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>The current system for assigning cases does not take into account all factors necessary for an equitable and efficient case division.</p> <p>Recommendation 1: <i>The case categorization should be revised to include the type of violation and the requested penalty. It may be necessary to develop a case categorization matrix that considers both of these factors and then assigns a score.</i></p>	Implemented	<p>Provide a more efficient means of equalizing the attorney caseloads and equalizing the caseloads among the three locations.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>After the case category assignment has been made, there are cases where the assigned factor should be changed because they require more time to resolve than initially anticipated.</p> <p>Recommendation 2: <i>Each operating location should have the ability to change the category assignments in the LE system and the revised categorization should be used when making new case assignments.</i></p>	<p>Implemented</p>	<p>Ensure all attorneys are assigned an equitable caseload.</p>
		<p>When assigning cases, the Deputy General Counsel must first laboriously review each case, assign a case category, and review each attorney's weighted caseload.</p> <p>Recommendation 3: <i>Case assignments should be made to the three locations rather than specific attorneys in each location.</i></p>	<p>Implemented</p>	<p>Improve the efficiency and effectiveness of the case assignment system.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>There is no backup for assigning cases so if the Deputy General Counsel is busy with other tasks or out of the office.</p> <p>Recommendation 4: <i>The Austin Team Leader should be designated as the backup in the absence of the Deputy General Counsel so all cases can be assigned to the three locations in a timely manner.</i></p>	<p>Implemented</p>	<p>Ensure that cases can be assigned in the absence of the Deputy General Counsel.</p>
		<p>There currently is not a formal process for the Enforcement Division to request Legal Services to prioritize cases for timely action or special processing.</p> <p>Recommendation 5: <i>A process and procedure should be developed to prioritize certain types of administrative cases for assignment and processing as quickly as possible. These priority cases should be assigned to the attorney with the most experience in processing these types of cases.</i></p>		<p>Implemented</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there is an effective and efficient intake process for receiving and assigning administrative cases.</p>	<p>There is a need to have a more structured process where an attorney provides guidance to the special investigators in Enforcement before their cases are referred to Legal.</p> <p>Recommendation 6: <i>Enforcement and Legal Services should have regular meetings (weekly or biweekly) so that an attorney can provide guidance to the special investigators on cases in process before the cases are referred to Legal.</i></p>	<p>Implemented</p>	<p>Improve efficiency of case resolution by facilitating communication between Enforcement and Legal Services.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>The Case Management Manual does not reflect actual operating procedures or staff responsibilities for many of the functions identified in the manual.</p> <p><i>Recommendation 7: The Case Management Manual should be revised to reflect actual operating procedures. Unnecessary detailed administrative procedures and specific staff responsibilities for many of these detailed procedures should be eliminated with more emphasis on what needs to be accomplished rather than how it must be accomplished. The manual should allow the legal teams the flexibility to perform administrative functions in the manner that works best for their teams. Processes outlined in the manual that are not being used should be eliminated.</i></p>	<p>Implemented</p>	<p>Ensure that the Case Management Manual accurately reflects operating procedures currently in place.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>The Case Management Manual provides few standards or guidelines for the attorneys regarding management's expectations regarding administrative case processing.</p> <p>Recommendation 8: <i>The Case Management Manual should be updated to provide standards and guidelines for the attorneys regarding management's expectations regarding administrative case processing. Such guidelines may include: Legal requirements that must be completed and documented for every case versus those where the attorney has flexibility; parameters and conditions under which the attorney may attempt to settle a case; parameters for determining how much more the attorney should obtain in a settlement depending on the type of violation that occurred and the violation history of the permittee; a system for prioritizing cases that should be placed on a "fast track" for hearing; timelines for scheduling hearings, sending out Notice of Violation Letters, and preparing orders after settlement agreements have been reached.</i></p>	<p>Implemented</p>	<p>Ensure consistency across the state in how cases are processed, the timeliness of processing and the outcomes that are achieved.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>Attorneys do not have discretion and flexibility to settle cases where the elements of the case have not been proven; rather, attorneys must obtain the concurrence of Enforcement staff in order to settle a case.</p> <p>Recommendation 9: <i>Legal Services should establish a case peer review process. The peer review team should make decisions about cases that need to be dismissed or settled rather than being taken to hearing. The case peer review team should make the decision on how to proceed, with the General Counsel and Director of Enforcement making the final decision if Enforcement does not agree with the decision of the case peer review team.</i></p>	<p>Implemented</p>	<p>Provide Legal Services with greater flexibility to settle or dismiss weak cases.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are adequate guidelines and standards to ensure that administrative cases are processed consistently in all locations.</p>	<p>There is confusion about what information can be communicated between Assistant Administrators and attorneys regarding administrative cases they are reviewing.</p> <p>Recommendation 10: <i>The General Counsel should resolve the issue of ex parte communications between the Assistant Administrator who is responsible for signing the Order and the attorney who prepared the Order.</i></p>	<p>Implemented</p>	<p>Provide clarification about the allowable communications between Assistant Administrators and attorneys.</p>
		<p>Legal Services lacks standards and guidelines to evaluate the success of the division and the individual attorneys in processing administrative cases.</p> <p>Recommendation 11: <i>Legal Services should develop quantitative and qualitative performance measures that can be used to evaluate the effectiveness and efficiency of each attorney, each of the legal teams and the Legal Services Division.</i></p>	<p>Implemented</p>	<p>Provide a mechanism for evaluation of attorneys in order to ensure timely processing of cases with outcomes that the agency expects to obtain.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>Legal Services does not have a system for evaluating case outcomes and determining whether administrative cases are being processed effectively and timely.</p> <p><i>Recommendation 12: Legal Services should develop a system for evaluating case outcomes that includes a system for categorizing the case dismissals so that management can identify those cases that could have been processed more timely or more effectively. Norms should be established for processing different types of cases and for evaluating the outcomes achieved in processing different types of cases.</i></p>	<p>Implemented</p>	<p>Allow tracking of case outcomes in order to ensure cases are being processed timely and efficiently.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>The Notice of Violation (NOV) letter is not always sent or it is not always sent in a timely manner when an attorney is assigned a case.</p> <p><i>Recommendation 13: The Notice of Violation (NOV) letter should be used by all of the attorneys where a violation has occurred and a deadline for submission of the letter should be established once the attorney assignment has been made. Before the NOV letter is sent, the status of the permit expiration or a pending application should be determined in the LE system and documented in the case file.</i></p>	<p>Implemented</p>	<p>Ensure that all attorneys follow the established agency requirements regarding notification of violations.</p>
		<p>Attorneys often do not document actions taken and contacts made while working on a particular case.</p> <p><i>Recommendation 14: Each attorney should document contacts with the permittee, Enforcement staff and settlement discussions in the case file. A case checklist should also be included with each file; use of such a checklist should be mandatory.</i></p>	<p>Implemented</p>	<p>Provide a ready reference regarding what has been done on a case and what information has been entered into the LE system.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if administrative cases are being processed effectively, in accordance with established procedures, and in a timely manner.</p>	<p>Currently, the State Office of Administrative Hearings docket request is made on a form that must be physically mailed to Austin SOAH.</p> <p><i>Recommendation 15: Legal Services should make a request to SOAH Austin to allow the SOAH docket request form to be submitted electronically via email.</i></p>	Implemented	<p>Improve efficiency of establishing a hearing on the administrative hearing docket.</p>
		<p>The procedure that has been established for sending Orders to the Assistant Administrator is very inefficient.</p> <p><i>Recommendation 16: Orders from the field offices should be faxed to the Assistant Administrator for her approval and faxed back upon her approval. The field offices should be provided with scanners so that the signed Orders can be scanned and placed in the electronic case file folders.</i></p>	In Progress	<p>Improve efficiency when sending orders to the Assistant Administrator.</p> <p>One scanner has been acquired but is not yet operational. Another scanner needs to be purchased.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Each attorney currently has their own methods of communicating with the field Enforcement staff. Some attorneys communicate directly with the Enforcement agent, while some speak with the sergeant and others with the lieutenant.</p> <p><i>Recommendation 17: Legal Services should confer with Enforcement Division management to determine if a standard method of communications is desirable.</i></p>	<p>Implemented</p>	<p>Ensure that the Enforcement Division captains and lieutenants are in agreement when there is a need to reduce a recommended penalty or dismiss a case.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Communications between the Legal Services and Licensing divisions are not always effective.</p> <p><i>Recommendation 18: The Deputy General Counsel and the Team Leaders in Legal Services should meet with the Licensing Division Director and her supervisors to identify situations where both parties need to communicate before actions are taken that may impact the other division. A process should be established and the appropriate staff in each division should be instructed regarding what information needs to be communicated and to whom the communication needs to be directed.</i></p>	<p>Implemented</p>	<p>Improve communication between divisions before taking actions that may affect one another.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if there are effective communications processes for informing the TABC operating divisions about the reasons for dismissed cases, the status of cases in progress and the actions taken or required on completed cases.</p>	<p>Ineffective communications between the field offices and the Austin Legal Services office are resulting in high levels of staff frustration.</p> <p>Recommendation 19: <i>The General Counsel, Deputy General Counsel and all of the attorneys should have a meeting to discuss how to improve communications between the field offices and Legal Services in Austin. The specific issues that are causing problems should be identified and corrected.</i></p>	<p>Implemented</p>	<p>Improve communication between offices and reduce staff frustration.</p>
	<p>To determine if the Legal Services Division has an adequate training program for training TABC staff members on administrative case processing.</p>	<p>Some of the attorneys believe that TABC is moving forward on Protests where there is no legal basis for the Protest.</p> <p>Recommendation 20: <i>A future training session by Legal Services should include training on Protests.</i></p>	<p>Planned This will be included in the Protest Project in FY 2008.</p>	<p>Ensure a better understanding by all TABC employees of the Protest Process.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if the Legal Services Division has an adequate training program for training TABC staff members on administrative case processing.</p>	<p>Some of the Enforcement staff may not be adequately trained regarding the threshold necessary to establish a "strong" legal case.</p> <p><i>Recommendation 21: The training materials for Legal Services training of Enforcement staff should include case comparison studies from actual administrative cases where the legal case was "weak" as compared to an actual case where the legal case was "strong."</i></p>	<p>Planned To be addressed in FY 2008 training.</p>	<p>Ensure that Enforcement staff develops legally strong cases to hand over to the Legal Services division.</p>
		<p>Individual attorneys have developed many different methods for settling cases.</p> <p><i>Recommendation 22: Future training sessions for the Legal Services staff should include sharing of "best practices." Specific topics for discussion should be established in advance so the attorneys can prepare to discuss practices they have found to be effective.</i></p>	<p>Planned To be addressed in FY 2008 training.</p>	<p>Ensure all attorneys are aware of the best methods available for settling cases.</p>

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<p>Report No. 2</p> <p>Audit of Legal Services Division Administrative Case Processing</p> <p>Report Issued: January 26, 2007</p>	<p>To determine if adequate systems have been developed for tracking and reporting on the status of all administrative cases and if accurate information is provided to TABC management and the Commissioners regarding the status of administrative case processing.</p>	<p>The Commission's monthly report does not break down dismissed cases into categories describing why each case was dismissed.</p> <p>Recommendation 23: <i>The dismissed cases on the Commission's monthly report should be revised to include categories of dismissed cases. Legal Services management should determine the categories of dismissed cases that would be most useful.</i></p>	<p>Implemented</p>	<p>Provide the Commission with a more detailed explanation regarding the outcome of each case.</p>
		<p>The General Counsel and Deputy General Counsel are in need of additional reports in order to more effectively monitor the workload of attorneys.</p> <p>Recommendation 24: <i>Legal Services should request that Information Resources revise the Pending Administrative Cases report to show the last action and the date the action was performed. Alternatively, a new report with this information could be requested.</i></p>		

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<p>Report No. 3</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30,2007</p>	<p>To determine if there are effective procedures and adequate internal controls over the collections of taxes and issuance of stamps at Ports of Entry stations and if stamp inventories are monitored and controlled.</p>	<p>There may be a sufficient number of persons using the Falcon Dam Bridge to cross into Texas with unstamped cigarettes to justify manning the bridge on weekends.</p> <p>Recommendation 1: <i>Management should consider staffing the Falcon Dam Bridge on weekends in order to “plug” a hole that allows unstamped liquor and cigarettes to cross into Texas. If it is determined that the cost of staffing the bridge cannot be supported by tax collection, the staffing could be eliminated and the current practice reinstated.</i></p>	<p>Implemented</p>	<p>Ensure that individuals crossing the Falcon Dam Bridge with unstamped cigarettes pay all appropriate taxes.</p>

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Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 3</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30, 2007</p>	<p>To determine if there are effective procedures and adequate internal controls over the collections of taxes and issuance of stamps at Ports of Entry stations and if stamp inventories are monitored and controlled.</p>	<p>An informal policy expecting TCOs to balance at the end of each day may result in shortages going unnoticed and overcharges being pocketed by TCOs.</p> <p>Recommendation 2: <i>The actual amount of cash should be reported at the end of each shift by all TCOs, irrespective of whether it balances, is short, or is over. The practice of making up shortages should be eliminated. If an agent has frequent or significant cash variances, the problem should be considered as a performance issue.</i></p>	<p>Implemented</p>	<p>Enable management to track those TCOs who consistently are not able to balance cash collections with stamps issued.</p>
	<p>To determine if there are effective procedures in place for dealing with safety practices and crime issues.</p>	<p>The Los Indios Bridge reported that the exterior lighting was inadequate and the booth alarm didn't work.</p> <p>Recommendation 3: <i>POE management should review the established practices for reporting malfunctioning equipment or safety concerns to determine if any changes are needed to quickly identify and fix safety issues.</i></p>	<p>Implemented</p>	<p>Ensure all POE sites have adequately functioning equipment.</p>

Texas Alcoholic Beverage Commission - FY 2007 Internal Audit Annual Report

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 3</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30,2007</p>	<p>To determine if the Ports of Entry stations have adequate resources and staffing for performing their duties.</p>	<p>Analysis and documentation of the data available to management has not been formally used to determine the adequacy of staffing at the various POEs.</p> <p>Recommendation 4: <i>Management should conduct analyses, on at least an annual basis, using available data, to ensure staffing at the various POEs remains appropriate. Documentation of all analyses conducted should be maintained.</i></p>	<p>In Progress A report will be completed by October 31,2007.</p>	<p>Ensure TABC is maximizing its available resources when staffing each POE.</p>
		<p>For reasons ranging from size requirements, tears and fading of clothing, and insufficiency in the number of clothing items, many TCOs intimated the need for uniforms provided by a uniform rental company.</p> <p>Recommendation 5: <i>Management should consider using a uniform rental company for obtaining TCO uniforms.</i></p>	<p>Implemented Management did a cost benefit analysis that determined rental of uniforms was not cost effective.</p>	<p>Eliminate the need for purchasing uniforms that may be used for only short periods of time, and reduce problems that arise when uniforms are damaged or don't continue to fit over time.</p>

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Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 3</p> <p>Audit of the Ports of Entry Operations</p> <p>Report Issued: April 30,2007</p>	<p>To determine if adequate hiring practices are in place and adhered to in filling Ports of Entry positions.</p>	<p>Some POE cites, particularly El Paso and Hidalgo, have difficulties filling TCO vacancies.</p> <p><i>Recommendation 6: POE management and the Human Resources Division should establish a process that will minimize the time it takes to fill vacancies at all POEs, but particularly those with the most frequent vacancies. This process should consider the feasibility of maintaining an active eligible candidate list at each of the major POE regions by having an "open" posting for TCOs every four to six months. The postings should be staggered to ensure no lapse in the eligibility list.</i></p>	<p>Implemented</p>	<p>Ensure qualified candidates are available in order to quickly and efficiently fill available TCO vacancies.</p>

Texas Alcoholic Beverage Commission - FY 2007 Internal Audit Annual Report

Rpt Name and No.	High-Level Audit Objectives	Findings¹ Recommendations	Status	Impact
<p>Report No. 4</p> <p>Audit of the Information Resources Division</p> <p>Report Issued: September 28, 2007</p>	<p>To determine if the Information Resources Division is in compliance with all statutory requirements for state agencies regarding information resources management.</p>	<p>TABC has not addressed the statutory requirement to ensure that Spanish-speaking persons of limited English proficiency can meaningfully access state agency information online</p> <p><i>Recommendation 1: The Information Resources Division should address the requirement to ensure that Spanish-speaking persons of limited English proficiency can meaningfully access state agency information online. If it is not feasible or cost effective to provide information in Spanish on the agency website, the reasons should be documented and the decision should be approved by the Administrator since this is a statutory requirement.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Provide agency information to Spanish-speaking persons, or, in the alternative, documented reasons why such access is not feasible.</p>

Texas Alcoholic Beverage Commission - FY 2007 Internal Audit Annual Report

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 4</p> <p>Audit of the Information Resources Division</p> <p>Report Issued: September 28, 2007</p>	<p>To determine if the Information Resources Division is in compliance with all statutory requirements for state agencies regarding information resources management.</p>	<p>TABC is not in compliance with the state rule requiring that all system identification/ logon banners must have a warning statement regarding unauthorized use, stating that usage may be tested and monitored, misuse is subject to criminal prosecution, and there are no expectations of privacy other than those provided by applicable privacy laws.</p> <p><i>Recommendation 2: The required network logon banner warning should be developed and implemented.</i></p>	<p>Implemented</p>	<p>Ensure compliance with Department of Information Resources administrative rules.</p>
	<p>To determine if the Information Resources Division has implemented adequate security measures and effective procedures for the security of automated information resources, including physical security, access controls and network security.</p>	<p>Network security controls could be strengthened through the use of intrusion detection software.</p> <p><i>Recommendation 3: The IR Division should consider the use of intrusion detection software to enhance network security</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Provide a feedback mechanism to inform the security staff as to the effectiveness the security system, while also creating a trigger mechanism that determines when to activate planned responses to an incident.</p>

Texas Alcoholic Beverage Commission - FY 2007 Internal Audit Annual Report

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 4</p> <p>Audit of the Information Resources Division</p> <p>Report Issued: September 28, 2007</p>	<p>To determine if the Information Resources Division has implemented adequate security measures and effective procedures for the security of automated information resources, including physical security, access controls and network security.</p>	<p>There are several DIR requirements related to information resources security where TABC has not fully documented compliance with the rules.</p> <p>Recommendation 4: <i>The IR Division Director should take the actions necessary to bring TABC into compliance with all DIR administrative rules by conducting an annual independent review of compliance with DIR security standards, preparing and updating a security risk analysis and security risk management plan, and conducting and documenting an annual review of physical security measures as part of the security risk analysis.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Ensure complete compliance with all DIR administrative rules.</p>
	<p>To determine if the Information Resources Division has implemented adequate internal controls and effective procedures for managing use of the Internet and Intranet and maintaining the agency web site.</p>	<p>The current Internet Services Procedures Manual has not been updated since 2001.</p> <p>Recommendation 5: <i>IRD should update the Internet Services Procedures Manual to address: current practices, staff responsibilities for maintaining the agency webpage, maintenance of the Intranet, and issues such as the DIR administrative rules related to website accessibility.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Ensure the Internet Services Manual accurately reflects current practices, staff responsibilities, and relevant DIR administrative rules.</p>

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Rpt Name and No.	High-Level Audit Objectives	Findings Recommendations	Status	Impact
<p>Report No. 4</p> <p>Audit of the Information Resources Division</p> <p>Report Issued: September 28, 2007</p>	<p>To determine if the Information Resources Division has implemented adequate internal controls and is following an effective software development life cycle methodology for the design, development and maintenance of automated information systems projects.</p>	<p>The Information Resources Division does not have a viable software development life cycle (SDLC) methodology for the design, development and maintenance of automated information systems projects.</p> <p>Recommendation 6: <i>Before TABC undertakes any in-house application development projects, a SDLC methodology should be developed with a level of detail sufficient for project team members to understand, follow and document all critical steps in the development process.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Establish a SDLC methodology that can be applied towards future in-house development of information technology projects.</p>
		<p>Current contract management procedures do not provide specific guidance and tools for managing information technology projects.</p> <p>Recommendation 7: <i>IRD should develop an information technology contract management procedure that can be used to ensure appropriate management of all information technology project contracts.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Establish procedures to be followed should TABC contract with any vendors on future automation products.</p>

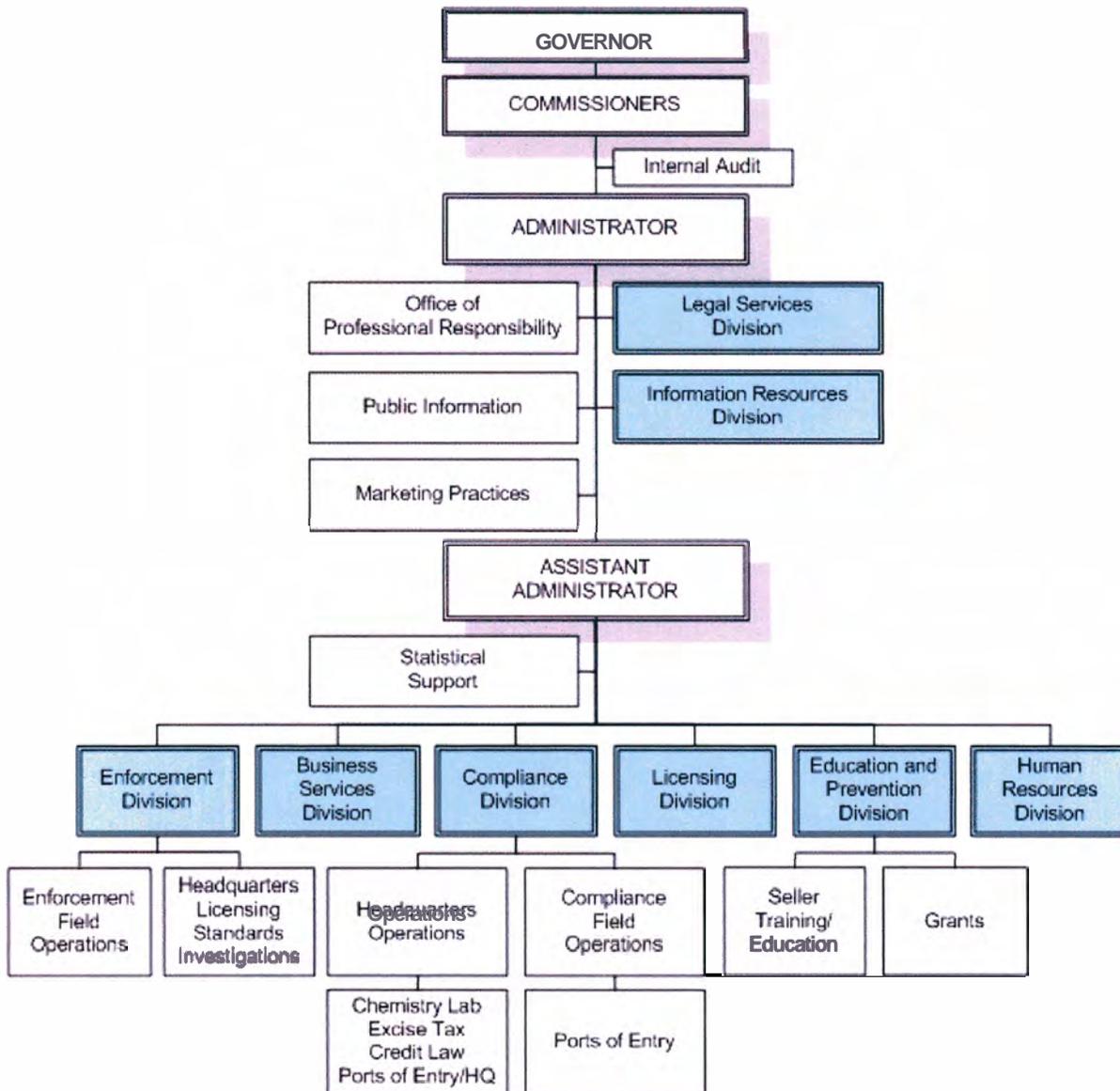
Texas Alcoholic Beverage Commission - FY 2007 Internal Audit Annual Report

Rpt Name and No.	High-Level Audit Objectives	Findings/ Recommendations	Status	Impact
<p>Report No. 4</p> <p>Audit of the Information Resources Division</p> <p>Report Issued: September 28, 2007</p>	<p>To determine if there are adequate internal controls and effective procedures to ensure that all hardware and software acquisitions are compatible with existing systems, approved by the Information Resources Division and in accordance with a documented computer replacement cycle.</p>	<p>The TABC PC Life Cycle Plan contains information that is outdated, it does not include a cost-benefit analysis of the costs of leasing versus purchasing computer equipment, and it was developed before the most recent DIR guidelines were issued.</p> <p>Recommendation 8: <i>The PC Life Cycle Plan should be updated to include a cost-benefit analysis of the costs of leasing versus purchasing computer equipment and should incorporate the guidelines issued by DIR in January 2003.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Ensure complete compliance with all DIR requirements and guidelines.</p>
	<p>To determine if the Information Resources Division has developed effective processes for meeting the needs of the users of the agency's automated information resources.</p>	<p>The division does not perform any type of customer service surveys to gauge the effectiveness of the division in meeting the expectations of user divisions.</p> <p>Recommendation 9: <i>The IRD should conduct periodic customer satisfaction surveys. Results of the survey should be used to make any necessary changes to procedures and operations that would improve overall customer satisfaction.</i></p>	<p>Planned</p> <p>The audit report was recently issued.</p>	<p>Ensure the IRD continues to meet the needs and expectations of user divisions and staff.</p>

IV. Consulting Engagements and Non-Audit Services Completed

The internal auditor conducted a special grievance investigation at the request of the Commission. This special project was not an audit, but was included in the revised audit plan presented in Section I.

V. Organizational Chart



Alan Steen, Administrator, is the designated Chief Audit Executive for the agency. The full Commission deals with all matters involving internal audit, although one Commissioner has been designated as the Commission liaison with the internal auditor.

VI. Report on Other Internal Audit Activities

The internal auditor was not involved in any activities other than those activities outlined in the FY 2007 Internal Audit Plan.

VII. Audit Plan for Fiscal Year 2008

The FY 2008 Internal Audit Plan for the TABC is based on the results of the risk assessment presented in the previous section, audits required to be performed on a periodic basis by the Internal Auditing Act and management's input on areas where internal audits would be helpful. For FY 2008, the following topics will be audited:

- Compliance Division- License Processing- Field (Maximum Risk)
- Office of Professional Responsibility (High Risk)
- Executive Administration (High Risk)
- Education and Prevention Division (High Risk)
- Marketing Practices (Average Risk)
- Protest Process (Average Risk)

The audit of the Compliance Division-License Processing will focus on the effectiveness and efficiency of the field offices in processing license applications to sell alcoholic beverages. It is anticipated that a component of this audit will be evaluating the accuracy and effectiveness of license processing services in submitting license applications to TABC.

The audit of the Office of Professional Responsibility will focus on the effectiveness and efficiency of the established process for performing investigations. The audit will include evaluating the adequacy and effectiveness of the complaint investigation policy and staffing for the Office.

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The internal audit of Executive Administration will follow the guidelines found in the *State Auditor's Office Methodology Manual* for audits of state agency management. The audit will focus on governance, organization structure, strategic and tactical planning, risk assessment and fraud prevention, problem solving and decision-making, policy environment, management reporting system, budget execution and budget oversight, succession planning, and reporting to the Commission. Specific audit objectives will be developed in conjunction with executive management and the Commissioners prior to starting the audit.

The audit of the Education and Prevention Division will focus on the effectiveness and efficiency of the functions performed by this division and the accomplishment of goals and objectives established for the division. The adequacy of internal controls will also be evaluated for functions where controls are required.

The audit of the Marketing Practices will focus on the effectiveness and efficiency of the functions performed by Marketing Practices and the accomplishment of goals and objectives established for Marketing Practices. Compliance with statutory requirements and Sunset Commission recommendations will also be evaluated.

The audit of the Protest Process is an audit requested by the Administrator. The focus of this audit will be on evaluating the effectiveness and efficiency of established procedures for all aspects of the Protest Process.

Follow-up audit reviews will be performed on all audits completed in FY 2006 and FY 2007. The purpose of this work will be to determine the status of implementation of any recommendations made in those audits. In addition to these proposed audits and audit work, the risk assessment will be updated and an audit plan developed for FY 2009.

The proposed time estimates and time frames for the FY 2008 audit work are:

- Follow-up Review of FY 2006 Audits – 12 hours (September 2007)
- Audit of Office of Professional Responsibility (September 2007 to October 2007) – 100 hours
- Audit of Education & Prevention Division – (September 2007 to October 2007) – 100 hours
- Prepare Annual Internal Audit Report for FY 2006 – 8 hours (October 2007)
- Audit of Protest Process – 100 hours (November 2007 to December 2007)
- Audit of Marketing Practices – 100 hours (February 2008 to March 2008)

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- Audit of Executive Administration – 100 hours (April 2008 to May 2008)
- Follow-up Review of FY 2007 Audits – 8 hours (May 2008)
- Audit of Compliance Division –License Processing- 140 hours (June 2008 to July 2008)
- Update Risk Assessment and Prepare FY 2009 Audit Plan – 8 hours (August 2008)

VIII. External Audit Services Procured in Fiscal Year 2007

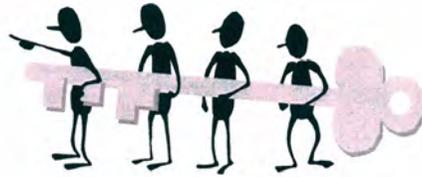
The Texas Alcoholic Beverage Commission contracted with the CPA firm of Jansen & Gregorczyk to provide contract internal audit services for the agency in FY 2007. No other external audit services were procured in FY 2007.

Attachment 3

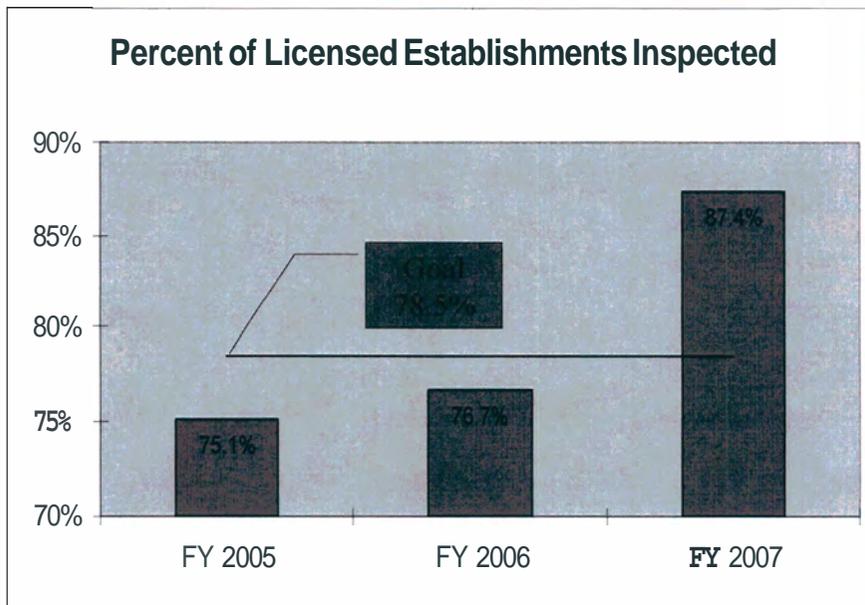
FY 2007 Key Performance Measures

ENFORCEMENT DIVISION Key Performance Measures

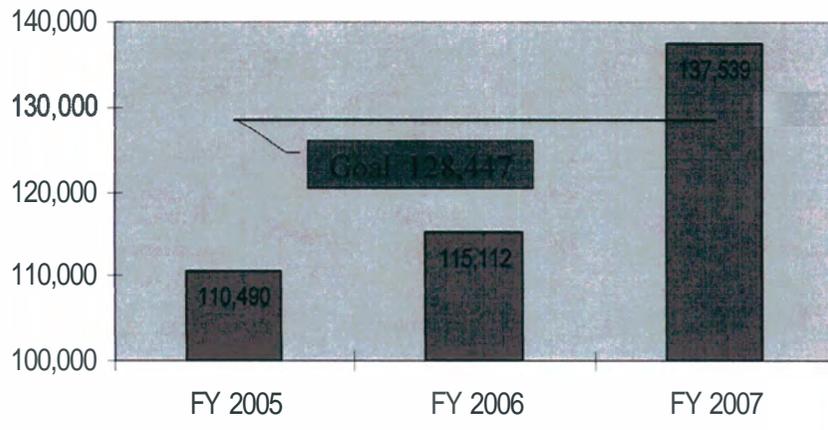
Fiscal Year 2007



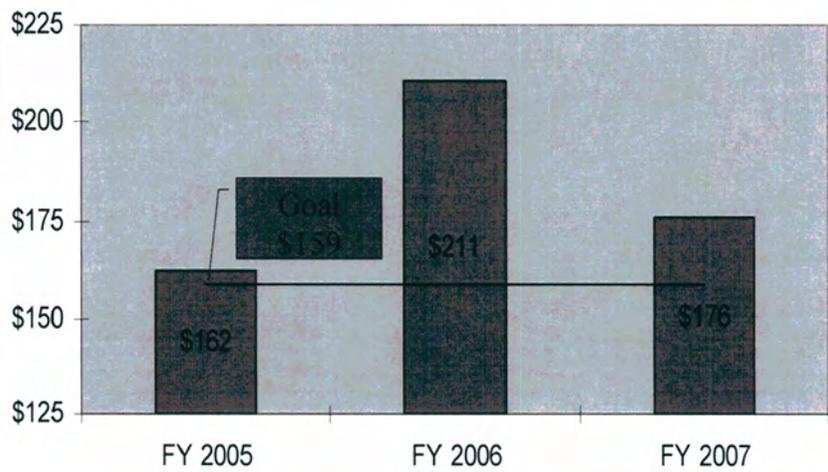
Percent of Licensed Establishments Inspected



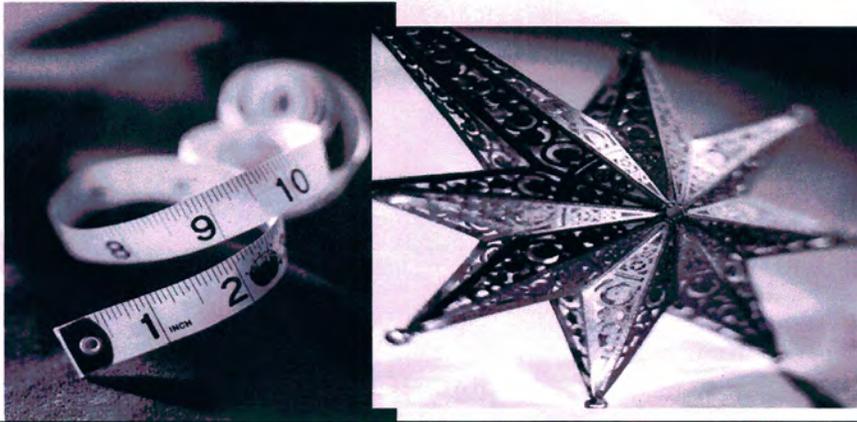
Inspections of Licensed & Unlicensed Locations



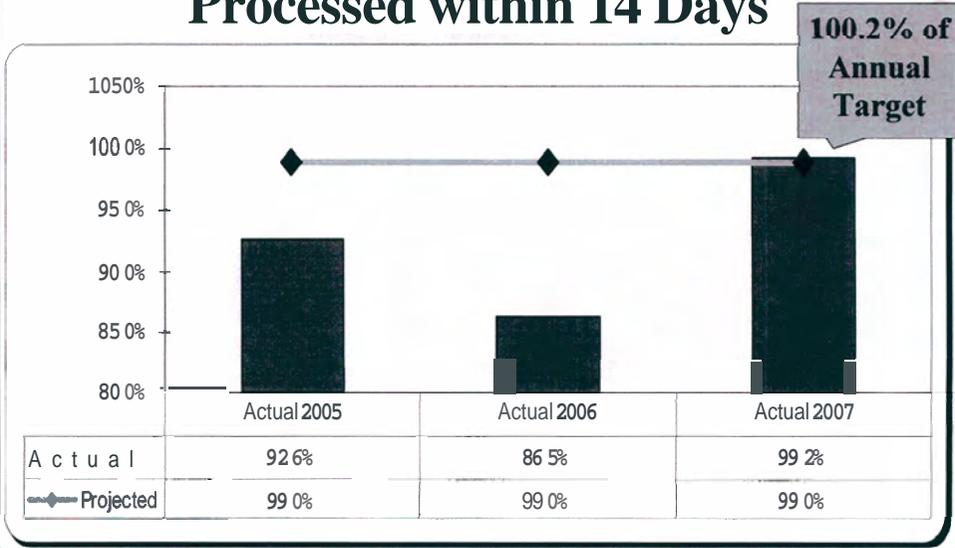
Average Cost Per Inspection



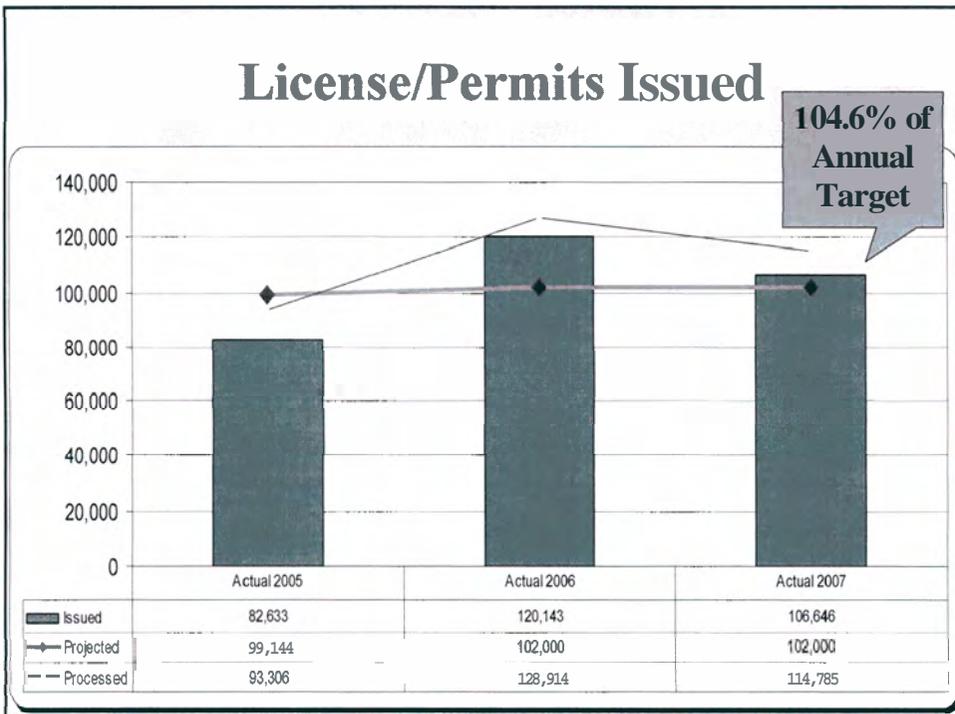
Licensing Division Fiscal Year 2007 Key Measures



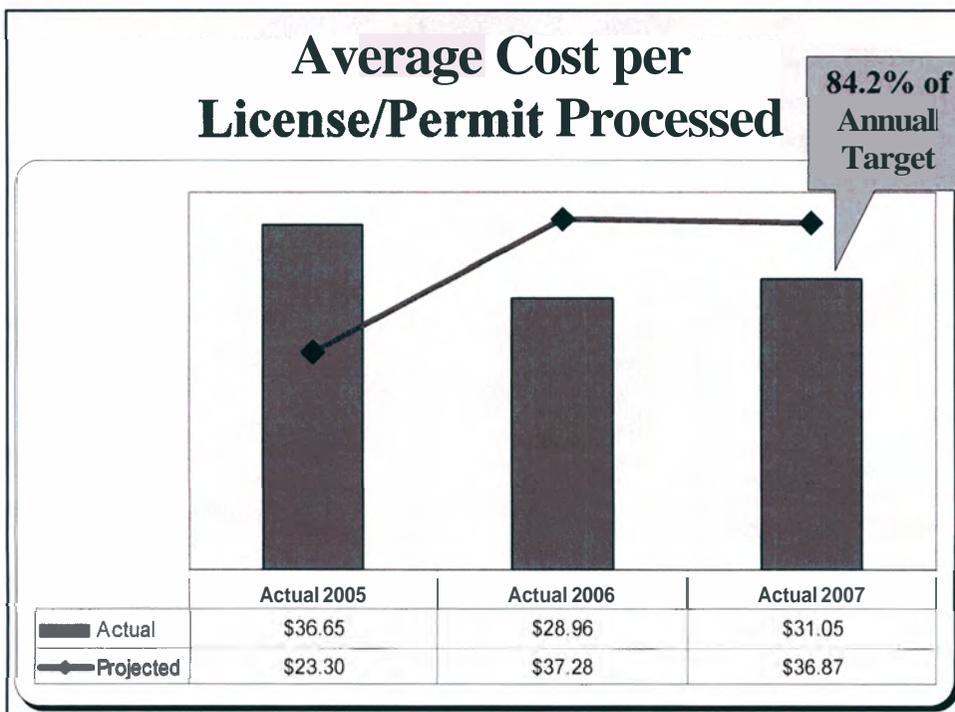
Percent of Original License/Permit Applications Processed within 14 Days



License/Permits Issued



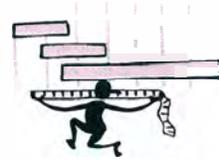
Average Cost per License/Permit Processed



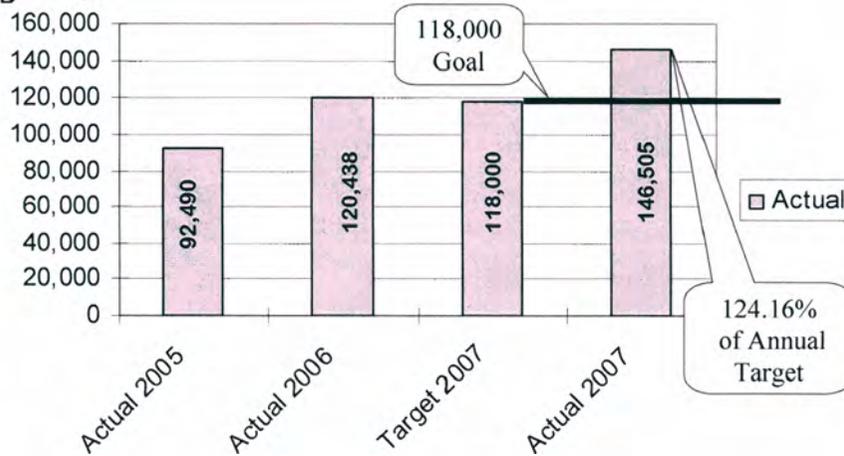
COMPLIANCE DIVISION

Fiscal Year 2007

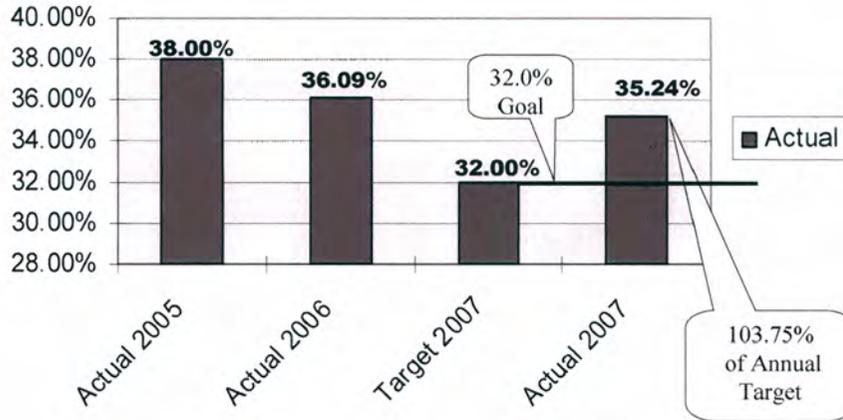
measuring performance



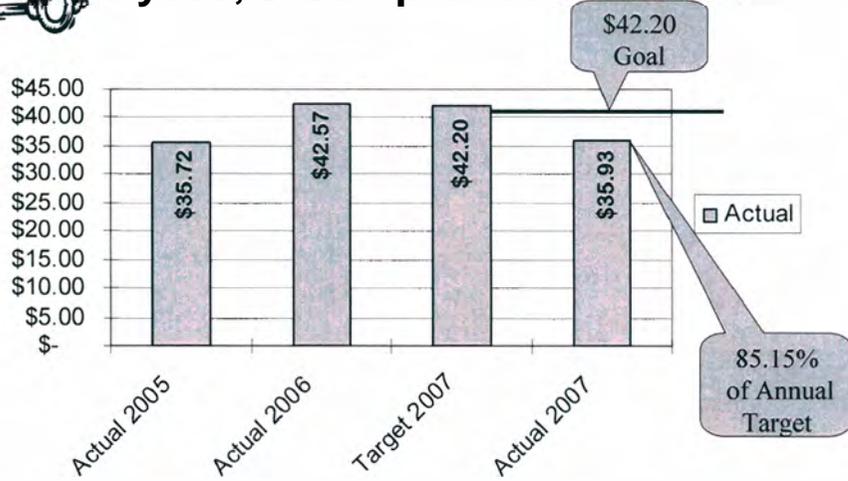
 Number of inspections, Analyses, & Compliance Activities



Percentage of Inspections/Compliance Activities Resulting in Administrative or Compliance Actions

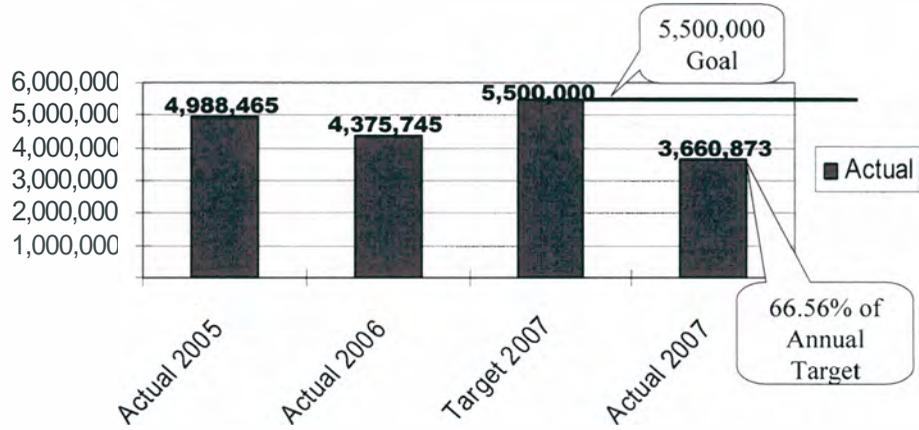


Average Cost per Inspection, Analyses, & Compliance Activities



Ports of Entry

Number Of Alcoholic Beverage Containers & Cigarette Packages Stamped



Attachment 4

**Approval to Publish Proposed
Amendments and New Rules to T.A.C., Title 16,
§§31.4, 33.10, 33.33, 37.2, 45.33, 45.71, 45.85, 41.56**

PROPOSED AMENDMENT

§31.4. Public Information Signs.

(a) Any licensed business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711-3127, or phone (512) 458-2500."

(b) The holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption shall display a warning sign on the egress to each public restroom on the permitted premises that provides the following information: "WARNING: According to the surgeon general, women should not drink alcoholic beverages, including distilled spirits, beer, coolers and wine during pregnancy because of the risk of birth defects."

~~(c)~~(b) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

~~(d)~~(e) The sign shall be made of sturdy material; if made of paper, the paper weight shall be no less than 65# stock.

~~(e)~~(d) The responsibility of furnishing the required sign is the sole responsibility of the licensee or permittee.

PROPOSED NEW RULE

§33.10. Citizenship and Status

(a) An individual who applies for a license or permit shall, at the time of filing the application, be a United States citizen or legally authorized to work in the United States.

The commission will not issue a permit or license to a person that will cause the person to be in violation of the person's immigration status and/or result in them being illegally in the United States.

(b) No permit shall be issued to a corporation, partnership, firm, association or other legal entity, other than an individual, unless the entity is incorporated or organized under the laws of the State of Texas.

(1) This requirement does not apply to an entity holding a brewer's permit, and other licenses and permits as are necessary to the operation of the brewer's permit.

(2) This requirement does not apply to foreign corporation that was engaged in the legal alcoholic beverages business in this state under charter or permit prior to August 24, 1935.

PROPOSED NEW RULE

933.33. Notification Requirements

(a) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall maintain a current mailing address and telephone number on file with the division that has issued the license, permit or certificate.

(b) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall send a written notice of change of mailing address to the Commission within seven (7) business days of the change.

(1) A person who holds a license or permit issued by the Commission shall file a change of address with the Licensing Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(2) A person who holds a certificate issued by the Commission shall file a change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(c) A notice sent to a person by the Alcoholic Beverage Commission shall be sent by first class mail to the last known mailing address of a person.

(1) A person notified by mail under this subsection is presumed notified on the third day after the date on which the notice is mailed.

(2) This subsection does not apply to a notice required by Government Code §2001.054.

Sections 37.2, 37.3, 37.4 are to be repealed and new section 37.2 is to be adopted as follows:

PROPOSED NEW RULE

537.2. Contested Case.

(a) This rule relates to any contested case under the Alcoholic Beverage Code (Code) where notice and hearing are required, or an opportunity for public participation is provided under the Code

(b) All notices and pleadings in a contested case shall comply with the provisions of Texas Government Code, Chapter 2001, Subchapters C, D, and F and the rules of procedure adopted by the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155.

Current 95.33 will be repealed and new §45.33 to be adopted as follows:

PROPOSED NEW RULE

545.33. DISTILLED SPIRITS AND WINE LABEL REGISTRATION.

(a) Before an authorized permittee may ship distilled spirits or wine into the state or sell distilled spirits or wine within the state, the permittee must register the distilled spirits or wine with the commission on forms prescribed by the administrator.

(b) The Application for Approval of Labels shall be made and filed with the commission at its offices in Austin, Texas, and shall show:

- (1) brand name;
- (2) **class/type**;
- (3) fanciful name (wine only);
- (4)** appellation and vintage (wine only);
- (5) alcohol content;
- (6) size of container.

(c) A legible copy of the Federal Label Approval (COLA) issued by the Department of Treasury must accompany the application. If the COLA is not legible, the actual labels or exact color copy must be provided.

(d) Remittance of \$25.00 is required per application.

(e) A Certificate of Label Approval will be mailed to the permittee or designee when processing is complete. Product may not be marketed in the state until the label application is approved.

(9) The commission shall not require additional approval for the product unless there is a change to the label or product that requires reissuance of the federal certificate of label approval.

PROPOSED AMENDMENT

545.71. Definitions.

(revised formerly proposed as §45.2)

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Beer - A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.

Bottler - Any person who places malt beverages in containers.

Brand label - The label carrying, in the usual distinctive design, the brand names of the malt beverage.

Container - Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify sections 101.44 and 1.04(18) of the Alcoholic Beverage Code.

Domestic malt beverages - A malt beverage manufactured in the United States.

Gallon - United States gallon of 231 cubic inches of malt beverages at 39.2° F. (4°C.). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

Independent laboratory - A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

Independent, reputable laboratory - A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

Malt beverage - A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

Malt liquor - Any malt beverage containing more than 4.0% of alcohol by weight.

Territory - Puerto Rico.

United States - The several states and territories and the District of Columbia; the term "state" includes a territory and the District of Columbia; and the term "territory" means the Commonwealth of Puerto Rico.

PROPOSED AMENDMENT

545.85. Approval of Labels.

(a) Application for label approval shall be made to the administrator at Austin, Texas, and shall be accompanied by a legible copy of the Federal Label Approval issued by the Department of Treasury. ~~{three labels for which approval is sought. In all such instances where the label has been approved by the Federal Bureau of Alcohol, Tobacco and Firearms, a photostatic copy of the certificate of approval must be furnished to the commission upon demand.}~~

(b) A sample of the beveraae must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual samples.

(c) A fee in the amount of \$25.00 is required for each size requested on the application.

PROPOSED AMENDMENT

541.56. 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 fiscal year quarterly ~~[a monthly]~~ 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 quarterly reporting period ~~[calendar month]~~ for which the report is made and shall show:

(1) the fiscal quarter and year ~~[month]~~ 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, carrier making delivery, and freight bill number 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 quarterly reporting period ~~[month]~~ 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 quarterly ~~[monthly]~~ report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas ~~[State]~~ Comptroller of Public Accounts ~~[Texas]~~.

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

(f) Quarterly Reporting Periods: September 1, through November 30; December 1, through February 28 or 29; March 1, through May 31; and June 1, through August 31.



CERTIFICATION

REGULAR COMMISSION MEETING

10:30 a.m. – October 26, 2007

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 October 26, 2007.

Alan Steen
Administrator

Sworn and subscribed before me this the 20th day of November 2007.

Renee G. Johnston
Notary in and for Travis County

