



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

COMMISSION MEETING

May 22, 2012

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer
Midland*

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

*Melinda Fredricks, Member
Conroe*

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AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – May 22, 2012

**Holiday Inn Austin Midtown
6000 Middle Fiskville Road
Austin, TX 78752**



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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Alan Steen
Administrator

Tuesday, May 22, 2012 – 10:00 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of April 25, 2012	José Cuevas, Jr.
3.	Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4.	Approval of FY 2013-2017 Strategic Plan	Carolyn Beck
5.	Approval of Information Resources Division Internal Audit	Russell Gregorczyk
6.	Approval to Publish Proposed Amendment to Rule §33.21, Amount of Bond Required	Martin Wilson
7.	Approval to Publish Proposed Amendment to Rule §33.22, Tax Bonds	Martin Wilson
8.	Approval to Publish Proposed Amendment to Rule §33.24, Conduct Surety Bond	Martin Wilson
9.	Approval to Publish Proposed Amendment to Rule §41.42, Bonds	Martin Wilson
10.	Approval to Publish Proposed Amendment to Rule §41.46, Beer -- In General	Martin Wilson
11.	Public Comment	José Cuevas, Jr.
12.	Recognition of Assistant Compliance Supervisor Promotion	Joel Moreno

13.	Recognition of Lieutenant Promotions	Joel Moreno
14.	Retirement Recognition of Joel Moreno, Chief of Field Operations	José Cuevas, Jr.
15.	Retirement Recognition of Administrator Alan Steen	José Cuevas, Jr.
16.	Reception to Honor Our Administrator, Chief of Field Operations, Lieutenants and Assistant Compliance Supervisor	José Cuevas, Jr.
17.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, Duties of the Position of Administrator and/or Auditor (Govt. Code §551.071, §551.074, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11)	José Cuevas, Jr.
18.	Approval of Matters Concerning Appointment, Employment, Evaluation, Duties of the Position of Administrator and/or Auditor	José Cuevas, Jr.
19.	Next Meeting Dates: Thursday, June 14, 2012 Tuesday, June 26, 2012 Tuesday, July 24, 2012	José Cuevas, Jr.
20.	Adjourn	José Cuevas, Jr.

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Luann Dickerson at (512) 206-3217 (voice) (512) 206-3203 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – May 22, 2012

**Holiday Inn Austin Midtown
6000 Middle Fiskville Road
Austin, TX 78752**



TABC

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COMMISSION MEETING MINUTES

May 22, 2012

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, May 22, 2012 at the Holiday Inn Austin Midtown, 6000 Middle Fiskville Road, Austin, Texas.

**COMMISSIONERS
PRESENT:**

José Cuevas, Jr.
Melinda Fredricks
Steven M. Weinberg, MD, JD

STAFF PRESENT:

Alan Steen, Administrator

Gilbert R. Alba, Agent, Bryan Area Enforcement Office,
President, Texas Alcoholic Beverage Commission Officers'
Association (TABCOA)

Carolyn Almstedt, Auditor, Arlington Compliance
Regional Office

John Altum, Agent, Austin Enforcement District Office

Alfredo Alvarez, Jr., Agent, San Antonio Enforcement
Regional Office

Mirasol Enriguez Barrera, Agent, Houston Enforcement
Regional Office

Carolyn Beck, Director of Communications and
Governmental Relations

Gene Bowman, Regional Supervisor, Austin Compliance
District Office

David Brandon, Enterprise Development Manager
Information Resources Division

Mindy Carroll, Director, Education and Prevention

Anna Castillo, Administrative Assistant, North Texas
Region

Cathleen Cavazos, Lieutenant, Austin Enforcement District

Joe E. Cavazos, Sergeant, McAllen Area Enforcement
Office

Dennis Chupe, Agent, Corpus Christi Area Enforcement
Charlie Cloud, Major, Arlington Enforcement Regional
David Clowe, Network Operations Manager, Information
Resources Division
Sherry Cook, Assistant Administrator, Executive Division
Joe Cronin, Agent, Austin Enforcement District Office
Darryl Darnell, Lieutenant, Regional Liaison, North Texas
Region
Alejandro de la Garza, Regional Manager, Ports of Entry
Rio Grande Valley
Michael Deans, Agent, Llano Enforcement Outpost
Marc Decatur, Lieutenant, Houston Enforcement Regional
Office
Ryan Decuire, Lieutenant, Houston Enforcement Regional
Office
Luann Dickerson, Executive Assistant, Executive Division
Loretta Doty, Director, Human Resources Division
Elsa Diana Dovalina, Auditor, San Antonio Compliance
Regional Office
David Duncan, Attorney, Legal Division
Darla Elam, Regional Coordinator, Licensing Division
Shelby Eskew, Director, Business Services Division
Joey Estrada, Grants Coordinator, Education and
Prevention
Randy Field, Lieutenant, Bryan Area Enforcement Office
Tiffany Forister, Human Resources Specialist
Joe Franco, Agent, Austin Enforcement District Office
Kathy Gersbach, Executive Assistant, Field Operations
Peter Gonzales, Agent, Houston Enforcement Regional
Office
John Graham, Sergeant, Waco Enforcement Office
Thomas Graham, Marketing Practices
Loretta Green, Supervisor, Arlington Licensing Regional
District
Steve Greinert, Director, Tax Division & Marketing
Practices
Nicolas Gutierrez, Agent, San Antonio Enforcement
Esther Guzman, San Antonio Licensing Regional District
Amy Harrison, Director, Licensing Division
Cindy Hart, Administrative Assistant, Licensing Division
Emily Helm, General Counsel, Legal Division
Joe Iagnemmo, Web Administrator
Heley Young Jaramillo, Agent, Houston Enforcement
Regional Office
Ricardo Jauregui, Major, San Antonio Enforcement
Regional Office

Tanya Jimenez, Administrative Assistant, McAllen Area Enforcement Office
Dexter K. Jones, Assistant Chief, Field Operations, North Texas Region
James Bryant Jones, Agent, Conroe Area Enforcement Office
Dora Jones, Administrative Assistant, Houston Enforcement Regional Office
Ed Jones, Agent, Austin Enforcement District Office
Shaun Jordan, Licensing Supervisor, Austin District
Joann Joseph, Assistant Director, Licensing Division
Judith Kennison, Deputy General Counsel, Legal Division
Johnny K. King, Agent, Georgetown Enforcement Outpost
Victor Kuykendoll, Lieutenant, Waco Enforcement Office
Jeff Lashbrook, Agent, Austin Enforcement District Office
Michael Lockhart, Lieutenant, Regional Liaison, Border Region
Roland D. Luna, Director, Ports of Entry
Richard Maness, System Support Specialist, Information Resources Division
Vanessa Mayo, Compliance Regional Supervisor, Houston Regional Office
Linda McLeod, Benefits Coordinator, Human Resources Division
Yolanda Mena, Administrative Assistant, San Antonio Compliance Regional Office
Mark Menn, Captain, Lubbock Enforcement District Office
J C Molloy, Sergeant, Austin Enforcement District Office
Steven Moore, Regional Compliance Supervisor, Arlington Compliance Regional Office
Joel Moreno, Chief of Field Operations
Paul Morgan, Agent, Brownwood Enforcement Outpost
Merideth Muñoz, Information Specialist, Executive Division
Joy Murray, Chemist, Tax Division & Marketing Practices
Harry Nanos, Captain, Austin Enforcement District Office
Paul Parent, Acting Sergeant, Houston Enforcement Regional Office
Earl Pearson, Assistant Chief, Field Operations, Coastal Bend Region
Andy Peña, Director, Office of Professional Responsibility
Dina Powell, Administrative Assistant, Field Operations
John Clint Powell, Agent, McKinney Area Enforcement Office
Yvette Price, Licensing Supervisor, San Antonio Regional Office

Gloria Darden Reed, Executive Assistant, Executive Division
John Reney, Jr., Lieutenant, Office of Professional Responsibility
Daniel Reyna, Agent, Houston Enforcement Regional Office
Sharon Roberson, Administrative Assistant, Border Region
Albert Rodriguez, Lieutenant, Office of Professional Responsibility
Raul Ruiz, Agent, San Antonio Enforcement Regional Office
Robert Saenz, Major, Houston Enforcement Regional Office
Raul Salinas, Lieutenant, San Antonio Enforcement Regional Office
Jessica Santiago, McAllen Licensing Office
Michael Sehon, Agent, Houston Enforcement Regional Office
Nicole Shamlin, Assistant Compliance Supervisor, Houston Compliance Regional Office
James Sloan, Agent, Conroe Area Enforcement Office
Loretta Smith, Assistant Director, Business Services Division
Karen Smithwick, Compliance Regional Supervisor, San Antonio Compliance Regional Office
Todd Talley, Regional Liaison, Coastal Bend Region
Jeff Taylor, Lieutenant, Lufkin Area Enforcement Office
Yohannes Teffera, Compliance Assistant Supervisor, Arlington Compliance Regional Office
Dewayne Thompson, Agent, San Antonio Enforcement Regional Office
Eddie Torres, Senior Agent, Laredo Area Enforcement Office
Tana Travis, Lieutenant, Houston Enforcement Regional Office
Rod Venner, Assistant Chief, Field Operations, Border Region
Mario Villarreal, Lieutenant, McAllen Area Enforcement Office
Jay Webster, Director, Information Resources Division
Richard Wills, Regional Supervisor, Houston Licensing
Martin Wilson, Assistant General Counsel, Legal Division
Elizabeth Wuehrmann, Statistician, Business Services Division
Elizabeth Zamora, Assistant Compliance Supervisor, San Antonio Compliance Regional Office

**GUESTS
PRESENT:**

Colleen Buck, Budget Analyst, Office of the Governor
Christopher Burnett, Executive Director, Criminal Justice
Division, Office of the Governor
Nancy Cavazos
Maurice Cook, Captain, Retired Texas Ranger
Charles Cortines
Tisha Cortines
Alfred "Butch" Decuire
Mary Lynn Decuire
Rick Donley, President, The Beer Alliance of Texas
Jennifer Dyer
Belva Field
Carla Field
Terry Field, Agent, Department of Public Safety, CID
Oscar Garza, Policy Analyst, Senator Juan Hinojosa's
Office
Alan Gray, Executive Director, Licensed Beverage
Distributors
Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk
Certified Public Accountants
Justin Guffey
Nicole Holt, Executive Director, Texans Standing Tall
Lance Lively, Executive Director, Texas Package Stores
Association
Mignon McGarry, Consultant, Republic National Distributing
Company
Jeannie Maldonado, Executive Assistant, Travis County
Sheriff's Office
Fred Marosko
Jack Martin, Attorney, Jack Martin and Associates
Helen A. Martinez, Program Specialist, Office of the
Governor
Casey Monahan, Director, Texas Music, Office of the
Governor
Adan Munoz, Jr., Executive Director, Texas Commission on
Jail Standards
David Repp, Budget Analyst, Legislative Budget Board
(LBB)
David Sinclair, Chief of Staff, Texas Parks and Wildlife Law
Enforcement

Linda Steen
Ronnie Steen
Tandy Steen
Judy Switzer, Program Manager, Criminal Justice Division,
Office of the Governor
John Sylvester, Deputy Sheriff, Travis County Sheriff's
Office
Mikhail Timofeyeu "Mischka", President/Secretary/Owner,
Web House Café & Bar
Ralph Townes, Senior Vice President, Licensed Beverage
Distributors/Glazers
Art Valdez, Special Agent, Houston
Gloria Villasenor, Administrative Tech, City of Houston
Randy Yarbrough, Consultant, Wholesale Beer Distributors
of Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:11 a.m. by Presiding Officer José Cuevas.

APPROVAL OF COMMISSION MEETING MINUTES OF APRIL 25, 2012

Presiding Officer José Cuevas called for a motion to approve the Commission meeting minutes of April 25, 2012. Commissioner Melinda Fredricks so moved to approve the minutes as written, and Commissioner Weinberg seconded. The motion carried.

ADMINISTRATOR'S REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS

Presiding Officer José Cuevas called upon Administrator Steen to give his Administrator's report. After welcoming the Commissioners back to Austin for another Commission meeting, Administrator Steen humbly addressed the Commission in this capacity in presenting his last Administrator's report. He stated that he has thoroughly enjoyed his position and service as TABC's Administrator and counts it as a great honor. Before his report presentation, Administrator Steen introduced members of his family: Ronnie Steen, father; Judge Linda Steen, mother; Tandy Steen, wife; Jennifer Dyer, daughter.

Administrator Steen began his report with a discussion on the trends that dealt with licensed in-state businesses. He briefed the Commission in the collection of fees, fines and surcharges and stated that this collection plays an intricate part in the funding for the Agency and these surcharges are directly linked to the licensed

businesses. Administrator Steen commented that during the months from September 2011 through April 2012, retailer experienced losses. In his report, areas that have experienced losses have been in the regions of North Texas, Coastal Bend, and on the Border. He stated that the Border losses may be attributed to the new census information in which a statute was passed during the last legislative session that requires a conduct surety bond to be posted according to the population totals for that region.

Administrator Steen's report compared the licenses and permits issued during the fiscal year beginning September 2010 versus the fiscal year ending April 2012. His findings note that original licenses processed during that period has increased, however there are losses in the license and permit renewals. Administrator Steen cited two possible reasons for the loss; 1) Affect in the increase of the surcharge; 2) Affect of the two-year renewals coupled with the unstable economy in which some businesses cannot financially afford. He offered a suggestion for the Agency to perform a study of retailer businesses' loss and gain to get a better understanding of how the Agency can better serve them through its various departmental personnel. The Administrator offered another suggestion to send out a survey to get feedback or to have an Agency Auditor explore and report the findings of why the retailers are experiencing a hardship to remain in business. Commissioner Weinberg commented that the revenues for licensed in-state businesses are up in spite of the losses shown in the Administrator Steen's report. Administrator Steen concurred.

Administrator Steen's discussion advanced toward the trends in label application approvals and processes. Administrator Steen commented that he foresees the State of Texas to be the number one alcohol consumption state in the nation. He stated that at the present time, California is number one. However with California's decline in population and its other issues, Texas' growth in population, economy and services could surpass California in the upcoming years. He pointed out that the label approvals in the current fiscal year has grown and with the demand for different products on the market, the Agency should closely monitor and report any type of change (loss/gain) in the label application approval process. Administrator Steen commented that from a regulatory prospective that the more a product becomes available on the market, the more issues of competition shelf space, and cash/credit issues that will confront the Agency. He re-emphasized the need to closely monitor the label approval process.

Administrator Steen stated he anticipated about 20,000 new products requesting label approvals to be offered in the State of Texas in the upcoming fiscal year.

Commissioner Weinberg quizzed Administrator Steen if the labels were on-line and the length of time they have been on the website. Administrator Steen answered in the affirmative and stated that labels had been on-line for two months. Commissioner Weinberg asked about how many label inquiries have occurred. IRD Director Jay Webster stated that the site has been very active and the website is working as anticipated.

Presiding Officer Cuevas asked about the inquiry types of label sought on the website. On the next slide of Administrator Steen's presentation, he answered Presiding Officer Cuevas' question stating that malt beverage has experienced a significant increase in change according to the label application per volume. He stated that the sale of wine has become a major product in the state and has outpaced the sale of distilled spirits.

At the conclusion of his report, Administrator Steen bid farewell to Chief Joel Moreno who is retiring on May 31, 2012. He spoke on their relationship in dealing with issues that have played out on the front page of "CNN" and on other media circuits. He stated that the two of them have had a really good relationship and praised Chief Moreno's leadership in bringing the Agency toward a dignified and recognizable image in Austin's City and Community, the State of Texas, and throughout the country. Administrator Steen commented that Chief Moreno has taken the "Agency's Law Enforcement Division to the forefront – where it needed to be and it will be forever changed." He stated that the "Agency will miss him, he will miss him, but his legacy will always be at the Agency." Chief Moreno responded to Administrator Steen's comments thanking him for his leadership and Administratorship.

Administrator Steen stated that nine years ago, three Commissioners took a chance on a young man to lead the Agency. He jokingly stated that if he had known then what he knows now he would not have taken the job, however seriously his mentioning the opportunity afforded to him as Administrator is worth mentioning today, Administrator Steen stated that the Commissioners being appointed by the Governor is the best process in the nation. He stated that the appointed Commissioners want and demand strong leadership and he has benefitted from that process. He concluded with commenting that he believes the Executives that report to him, the Agency, industry, and the people of Texas have benefitted from the Governor's appointed Commissioners.

Presiding Officer Cuevas comments to Administrator Steen that the group appreciated his leadership and know that he will do wonderful things in his new employment and sad about his leaving. He stated that his leadership has been valuable in moving the Agency forward into the 21st century. Presiding Officer Cuevas reminisced about some difficult times in 2004, but he, Chief Moreno and the Administrator were able to overcome those times and move the Agency forward.

Commissioner Weinberg commented that he has had a magnificent time working with Administrator Steen and extremely pleased that he is coming to "God's Country" in North Texas. He stated that Administrator Steen will be missed at the Agency, however stated that he wishes him well in his next profession.

Commissioner Fredricks commented that she hates good-byes and hopes that this would not be good bye. She wished Administrator Steen and Tandy the very best and concurs with the other Commissioners on his excellent leadership and stated

that she has learned considerably about leadership through him and wished him "Happy Trails."

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

STRATEGIC PLANNING BRIEFING

Presiding Officer José Cuevas called upon Director Carolyn Beck to present the next agenda report on Approval of FY 2013-2017 Strategic Plan.

Director Beck greeted the Commissioners and began the report stating the only substantive change in the plan is the addition of the Bastrop County Fire incident for the Agency. She stated that at this meeting, the Commissioners are afforded an opportunity to provide feedback, request changes to the plan, and ask questions and to vote on the plan as presented.

Commissioner Weinberg commented that Director Beck is to be commended on a job well done on the strategic plan booklet. Presiding Officer Cuevas concurred with Commissioner Weinberg's comments and added that throughout the year, the strategic plan booklet is a good reference document of the Agency's accomplishments.

Commissioner Fredricks stated that she did not have any changes for the booklet and stated that she liked the cover.

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to approve the Texas Alcoholic Beverage Commission's FY 2013-2017 Strategic Plan. Commissioner Fredricks seconded. The motion carried.

APPROVAL OF INFORMATION RESOURCES DIVISION INTERNAL AUDIT

Presiding Officer José Cuevas asked for Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants for the next agenda item, Approval of Information Resources Division Internal Audit.

Mr. Gregorczyk briefed the Commission of the audit's purpose and scope stating the primary purposes of the internal audit of the Information Resources Division (IRD) was to determine:

- If the IRD is in compliance with all statutory and Department of Information Resources (DIR) requirements for state agencies regarding information resources management;
- If there are adequate controls and effective operating procedures for managing automated information resources; and

- If there are effective processes and procedures for meeting the needs of IR users.

He stated that the scope of the audit included review, analysis, and testing of compliance with laws and Department of Information Resources (DIR) rules regarding information resources management, physical security over information resources, access controls, network security, computer operations, software management, contract management for Information Resources development projects, and computer operating procedures.

Mr. Gregorczyk's report highlighted some key audit observations and significant recommendations and stated the Agency's management concurred with the report conclusions and recommendations. He stated that the Agency's management has implemented 10 of the 12 recommendations and the remaining two recommendations will be implemented by August 31, 2012. (Attachment 2)

Commissioner Fredricks commented that when the audit committee met after the April 25th commission meeting. IRD Director Webster assured her that the recommendations would be implemented and she stated that a follow-up meeting would be occurring.

Commissioner Weinberg commented that the in-depth comprehensive audit was done well and complimented IRD Director Webster and his staff in updating the Agency's technology.

Commissioner Weinberg has requested the new licensing on-line licensing application demonstration and an update of IRD projects update at the July 2012 Commission meeting.

Presiding Officer Cuevas called for a motion. Commissioner Fredricks made a motion to approve the Texas Alcoholic Beverage Commission's Internal Audit of the Information Resources Division. Commissioner Weinberg seconded. The motion carried.

Mr. Gregorczyk asked Presiding Officer Cuevas for final comment. He stated that he was the internal auditor when audits began and it got off to a slow start. He noted that audits only works if the Executive in charge embraces it. Mr. Gregorczyk stated that Administrator Steen embraced his ideas and worked with him better than any other State Executive at a state agency had. He thanked Administrator Steen for his support over the years.

(Presiding Officer Cuevas read agenda items 6 through 10; Assistant General Counsel Martin Wilson gave a brief overview for each agenda item. Presiding Officer Cuevas called for a motion, a motion was given and a vote was taken on the agenda items collectively)

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.21, AMOUNT OF BOND REQUIRED

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §33.21, Amount of Bond Required. Commissioner Fredricks seconded. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.22, TAX BONDS

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §33.22, Tax Bonds. Commissioner Fredricks seconded. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.24, CONDUCT SURETY BOND

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §33.24, Conduct Surety Bond. Commissioner Fredricks seconded. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §41.42, BONDS

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §41.42, Bonds. Commissioner Fredricks seconded. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §41.46, BEER – IN GENERAL

Presiding Officer Cuevas called for a motion. Commissioner Weinberg made a motion to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §41.46, Beer – In General. Commissioner Fredricks seconded. The motion passes.

PUBLIC COMMENT

Presiding Officer Cuevas opened the floor for public comments. Mr. Mikhail Timofeyeu, owner of the Web House Café & Bar at 517 East Woodlawn Avenue in San Antonio, TX came forward to address the Commissioners. He informed the Commissioners that he has owned and managed bars and restaurants for the past 20 years. Mr. Timofeyeu stated that he is dedicated to providing good customer

service and has some ideas regarding the serving of alcohol to the public for both the TABC and city authorities. His first suggestion to the Commissioners was in regards to training. Mr. Timofeyeu would like to see an industry employee training implemented that would deal more with the psychological side of dealing with specific circumstances that occur as part of daily business in bars and restaurants. He would like to see TABC's input in this training. Mr. Timofeyeu's second idea involves underage service. It is his opinion that TABC should require all large bar and restaurant applicants to purchase an ID Scanner to use in their businesses. He states that these scanners range in price from \$100 to \$500. He added that this is a small cost to the industry to prevent people who are underage from being served alcohol. Finally, Mr. Timofeyeu apologized to the San Antonio TABC Office for a misunderstanding of his intentions in coming to the Commission meeting. The Commissioners thanked Mr. Timofeyeu for his comments.

RECOGNITION OF ASSISTANT COMPLIANCE SUPERVISOR PROMOTION

Presiding Officer Cuevas called for the next agenda item, Recognition of Assistant Compliance Supervisor Promotion presentation by Chief Joel Moreno. Chief Moreno read the biographical information and presented the honoree with a certificate. The honoree's family was asked to join her and a photo was taken with the Commissioners, Chief and Administrator.

Honoree

Agency Promotion

Nicole Shamlin

Assistant Compliance Supervisor
Coastal Bend Region

RECOGNITION OF LIEUTENANT PROMOTIONS

Presiding Officer Cuevas called for the next agenda item, Recognition of Lieutenant Promotions presentation by Chief Joel Moreno. Chief Moreno read the biographical information and presented the honorees with a certificate.

Honoree

Agency Promotion

Victor Kuykendoll
Ryan Decuire
Randy Field
Jeff Taylor
Tana Travis
Cathleen Cavazos
Raul Salinas

Lieutenant – North Texas Region
Lieutenant – Coastal Bend Region
Lieutenant – Border Region
Lieutenant – Border Region

Presiding Officer Cuevas, Commissioner Weinberg and Commissioner Fredricks congratulated each employee on their promotion. Commissioner Weinberg commented that as these promotions happen in the agency, these personnel not only move up, but

move out to different areas of the state as well. He also stated that he understands how hard this can be on families. Commissioner Weinberg expressed his appreciation and thanked them for their leadership in the Agency and their ability to make the sacrifices to become leaders in the Agency.

Presiding Officer Cuevas commented that it was indeed an honor for these personnel to have served with and receive their promotions from Chief Moreno as he prepares to retire. The Commissioners, Administrator Steen, Chief Moreno, honorees and their families gathered for photographs.

RETIREMENT RECOGNITION OF JOEL MORENO, CHIEF OF FIELD OPERATIONS

Presiding Officer Cuevas called for the recognition of Chief of Field Operations Joel Moreno. He asked for Chief Moreno to come forward.

Presiding Officer Cuevas read and presented the TABC Proclamation to Chief Joel Moreno. Commissioner Weinberg read and presented a Proclamation from the State of Texas, Office of the Governor on a well-deserved retirement after 27 years of service to the people to Texas. Commissioner Fredricks read a Resolution sponsored by Texas House of Representative Eddie Lucio III.

Presiding Officer Cuevas recognized the Texas Parks and Wildlife Department Chief of Staff David Sinclair to come forward with a presentation to Chief Moreno from the Texas Parks and Wildlife Department. Chief Sinclair thanked the Commission for the strong partnership TABC has with the Texas Parks and Wildlife Department. He stated that game wardens and TABC agents have worked hand in hand out in the field for many years. Chief Sinclair stated that the leadership of Administrator Steen and Chief Moreno has been a key element in developing a relationship between the two agencies. Chief Sinclair read and presented a Certificate of Appreciation from the Texas Parks and Wildlife Department to Chief Moreno. The Certificate was signed by the Director of the Law Enforcement Division Colonel Peter Flores. Presiding Officer Cuevas thanked Chief Sinclair on behalf of the Texas Alcoholic Beverage Commission.

The Texas Alcoholic Beverage Commission Officers' Association (TABCOA) was next to come forward with a presentation to Chief Moreno. TABCOA's President Alfredo Alvarez addressed the Commission. He asked for the Association board members and representatives in attendance to stand for recognition and to express their appreciation and respect for Chief Moreno and to the Commissioners. President Alvarez personally thanked Chief Moreno for his support and encouragement he received throughout his career with TABC and as President of the TABCOA. An engraved plaque was then presented to Chief Moreno that awards him a lifelong membership in the TABCOA and thanked him for his continuous support to the members of the association.

Presiding Officer Cuevas recognized Administrator Steen and Assistant Administrator Sherry Cook to come forward to make a presentation from the employees of the Texas Alcoholic Beverage Commission. Assistant Administrator Cook started off the presentation by personally thanking Chief Moreno for his friendship and guidance. She stated that his shared knowledge has been invaluable to her during her career at TABC and he will be missed more than words can convey.

Administrator Steen and Assistant Administrator Cook presented Chief Moreno with his duty-issued firearm and his retired TABC Badge in a beautiful wood display box with a brass engraved plaque. Administrator Steen read the inscription, "Presented to Chief Joel Moreno on your retirement and recognition of 27 years of dedicated service to the Texas Alcoholic Beverage Commission and the people of Texas." Administrator Steen ended the presentation by personally thanking Chief Moreno for his leadership, support, and service.

Presiding Officer Cuevas made the last presentation to Chief Moreno, the TABC Certificate of Merit. He stated that it was bittersweet that this day had come as he and Chief Moreno had developed a strong friendship, both professionally and personally, that began when Chief Moreno transported Presiding Officer Cuevas to his first Commission meeting. Presiding Officer Cuevas expressed his hope that their friendship would continue in the future.

Chief Joel Moreno began his address to the Commission by saying that where he comes from they speak from the heart. He spoke of his humble beginnings in the valley and the love and support of his parents and family. Chief Moreno thanked Administrator Steen for his leadership and mentorship. He stated that they have brought this agency to a point that reflects Texas and makes it proud. Chief Moreno thanked Assistant Administrator Cook and said that he could not have asked for a better colleague. He thanked the Commissioners collectively as well as individually for their support, leadership and mentorship.

Chief Moreno's final remarks were to sincerely thank his Executive Assistant Kathy Gersbach, Assistant Chief Earl Pearson, Assistant Chief Rod Venner and Assistant Chief Dexter Jones for their years of support. He commented that this was not goodbye, but "Hasta la Vista -- until next time." (Photographs were taken with Chief Moreno's Field Operations Divisional Staff)

RETIREMENT RECOGNITION OF ADMINISTRATOR ALAN STEEN

Presiding Officer Cuevas called for the retirement recognition of Administrator Alan Steen. He asked for Administrator Steen to come forward. Presiding Officer Cuevas read and presented the TABC Proclamation to Administrator Steen.

Commissioner Weinberg read and presented a Proclamation from the State of Texas, Office of the Governor on a well-deserved retirement after 25 years of service to the people to Texas. Commissioner Fredricks read and presented the TABC Certificate

of Merit to Administrator Steen in recognition of achievement of over 8 years of dedicated and unselfish service to the Texas Alcoholic Beverage Commission.

Presiding Officer Cuevas asked the Texas Alcoholic Beverage Commission Officers' Association (TABCOA) President Alfredo Alvarez to come forward to make a presentation to Administrator Steen. TABCOA President Alvarez invited the past Association Presidents, Regional Liaison Darryl Darnell, Agent Johnny King, Captain Harry Nanos and Agent Gilbert Alba to come forward and join him. He explained that he had asked the past presidents to join him because they paved the road for the Association. He stated that Administrator Steen is the reason the Association has been so successful. Past President Darryl Darnell was invited by Agent Alvarez to speak on the history of the Texas Alcoholic Beverage Commission Officers' Association (TABCOA). Past President Darnell explained that when it was decided to reinstitute the Officer's Association, Administrator Steen's openness and leadership combined with Chief Moreno's willingness to embrace the association allowed the association to grow and work together to achieve what was best for TABC, its employees and the citizens of Texas. He also stated that Administrator Steen and Chief Moreno's desire to build a strong partnership not only between the TABC and the TABCOA, but with other agencies such as Texas Parks and Wildlife, the Department of Public Safety and their Officer's Association has formed fantastic friendships between agencies. Past President Darnell expressed how much they appreciate everything Administrator Steen has done for them. Agent Alvarez presented Administrator Steen with an engraved plaque that awards him a lifelong membership in the TABCOA and thanked him for his continuous support to the members of the Association.

Presiding Officer Cuevas called on Chief Moreno to come forward to make a presentation from Field Operations. On the behalf of Field Operations and the Agency, Chief Moreno presented Administrator Steen with his retired TABC badge, to be worn with honor, in recognition for his 8 plus years of service to the Agency.

Assistant Administrator Sherry Cook and Chief of Field Operations Joel Moreno came forward to make the final presentation to Administrator Steen. Assistant Administrator Cook stated that Texas is a better place after the public service of the two men we honored here today. She also stated that she will miss Administrator Steen's friendship, his leadership, common sense, reasoning and the calmness he brought to the Agency.

On behalf of the employees of the Texas Alcoholic Beverage Commission, Assistant Administrator Cook and Chief Moreno presented Administrator Steen with a beautiful rifle engraved with his badge and badge number from the Texas Alcoholic Beverage Commission.

Presiding Officer Cuevas spoke of how Administrator Steen thinks big and has big visions. He stated that Administrator Steen shows true leadership by creating energy and excitement in the people around him, they want to share in his vision and make it

happen. Presiding Officer Cuevas stated that Administrator Steen has done a wonderful job for TABC and stated that the Association he is going to hire the right person for the job.

Commissioner Weinberg commented that a wonderful example of the leadership Administrator Steen has created over the past eight years is the TABC Officer's Association. He stated that Administrator Steen was able to create an environment where everyone worked together. He added that it is a fantastic organization and he wished everyone could have an Officer's Association and a leader like Administrator Steen. It sets a good example and although it is just a small part of his leadership, it shows you what kind of difference it can make in running a state agency. Commissioner Weinberg expressed his appreciation for all that Administrator Steen has done for the Agency and congratulated him in his new endeavor.

Commissioner Fredricks expressed that Texas State Government is losing a very good leader. She wished Administrator Steen and his wife, Tandy the very best going forward and that their new endeavor sounds very exciting. Commissioner Fredricks stated that she looks forward to the future of TABC and continuing to work with everyone at TABC.

Administrator Steen began his address to the Commission with these words, "Thanks to the team. This is a team like no other -- diverse, smart, educated and strong. This team can do just about whatever you can imagine and the good part about it is that I got to carry what they imagined and got credit for a lot of it."

Administrator Steen wished the best to everyone and hoped that we will keep the door open because he's going to keep the door open too. (Photographs were taken with Administrator Steen's Executive Staff)

RECEPTION TO HONOR OUR ADMINISTRATOR, CHIEF OF FIELD OPERATIONS, LIEUTENANTS, AND ASSISTANT COMPLIANCE SUPERVISOR

Presiding Officer announced that a reception was being held in the foyer for the honorees.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF ADMINISTRATOR AND/OR AUDITOR (Govt. Code §551.071, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11)

Presiding Officer Cuevas announced the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time, 12:07 p.m., May 22, 2012 and an executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the Agency and to deliberate the appointment, employment, evaluation, duties of the position of Administrator

and/or Auditor (Govt. Code §551.071, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11)

The Texas Alcoholic Beverage Commission has concluded its Executive Session and is now in open regular session. The date is May 22, 2012 and the time is 1:44 p.m. No final action, decision or vote was made in Executive Session.

APPROVAL OF MATTERS CONCERNING APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF AUDITOR

Presiding Officer Cuevas called for a motion on agenda item, Approval of Matters concerning appointment, employment, evaluation, duties of the position of Auditor. Commissioner Fredricks made a motion that the Director of Business Services Shelby Eskew contact the top three (3) potential applicants for the position of Auditor and schedule them to be interviewed at the convenience of all the Commissioners. Commissioner Weinberg seconded the motion. The motion passes.

APPROVAL OF MATTERS CONCERNING APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF ADMINISTRATOR AND/OR AUDITOR

Presiding Officer Cuevas called for a motion on the agenda item regarding the position of Administrator. Commissioner Weinberg made a motion that the Director of Human Resources Loretta Doty contact the top candidates for the position of Executive Director and schedule them for interviews with the Commissioners on Wednesday, June 13, 2012 and/or Thursday, June 14, 2012. Commissioner Fredricks seconded the motion. The motion passes.

NEXT MEETING

Presiding Officer José Cuevas announced the next meeting dates are scheduled for Wednesday, June 13, 2012; Thursday, June 14, 2012; Tuesday, July 24, 2012.

ADJOURNMENT

Presiding Officer José Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion. Commissioner Fredricks seconded. The motion was made and seconded. The motion carried, and Presiding Officer José Cuevas announced that the meeting was adjourned at 1:46 p.m.

Attachment 1

**Administrator's Report: Administrator and
Agency Activities, Budget Issues, Staff
Achievements**

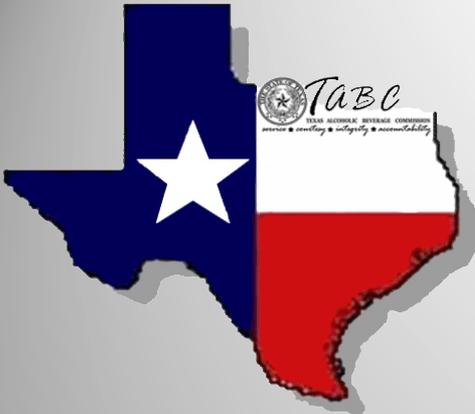


Administrator's Report

Alan Steen, Administrator

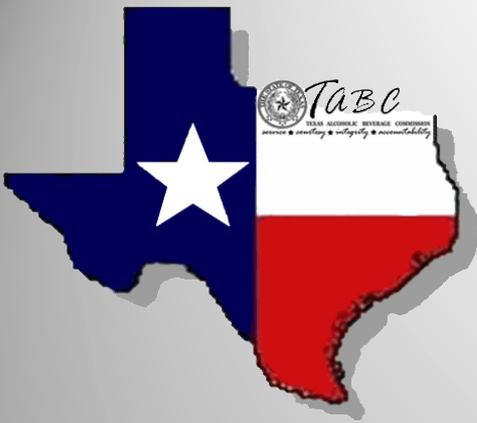
TABC Commission Meeting

May 22, 2012



Acknowledgements

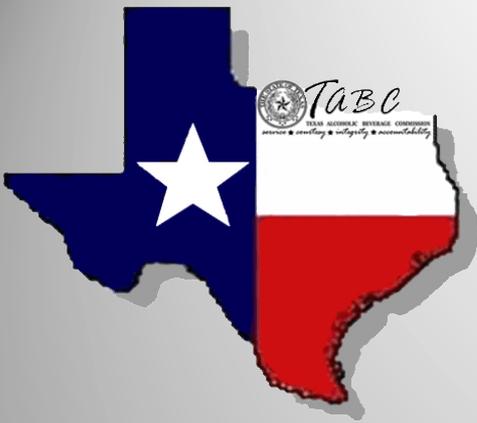




Trends

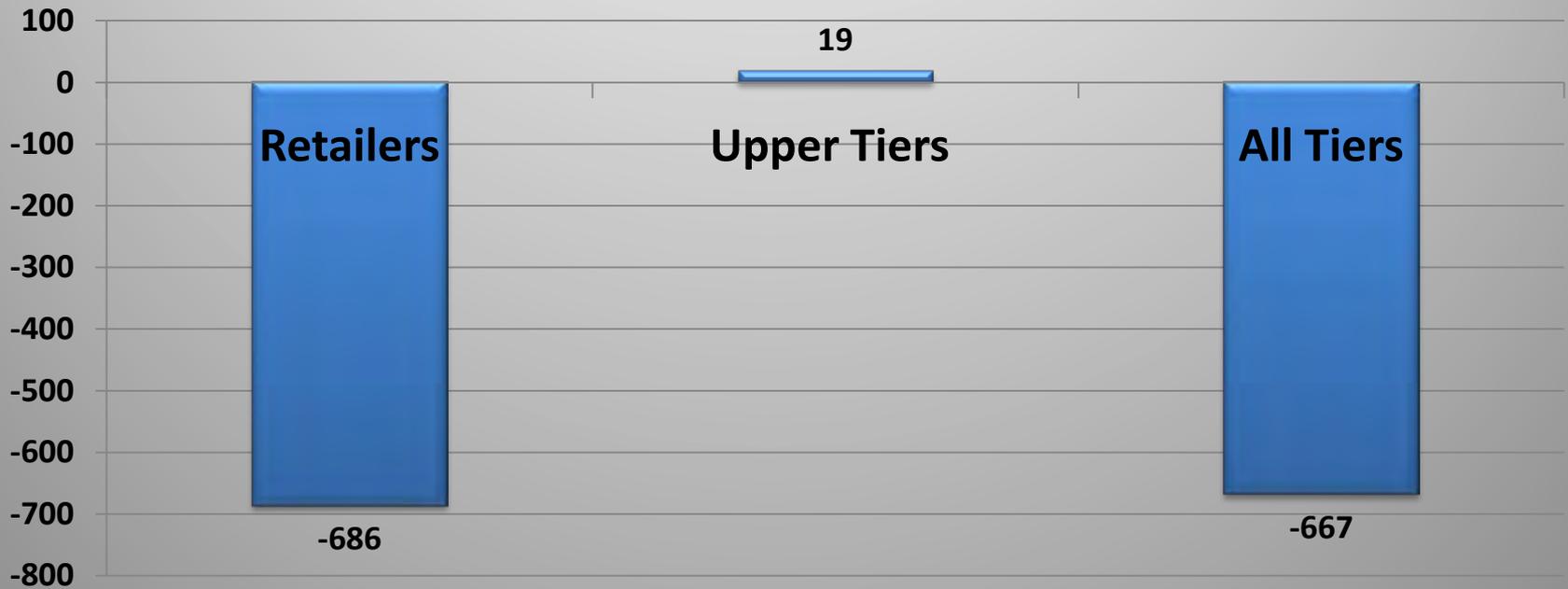
Licensed In-State Businesses September 2011 - April 2012

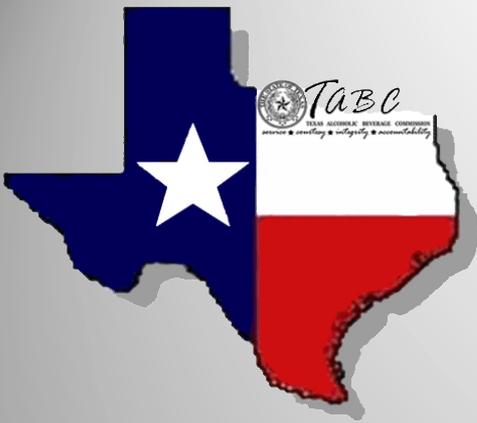




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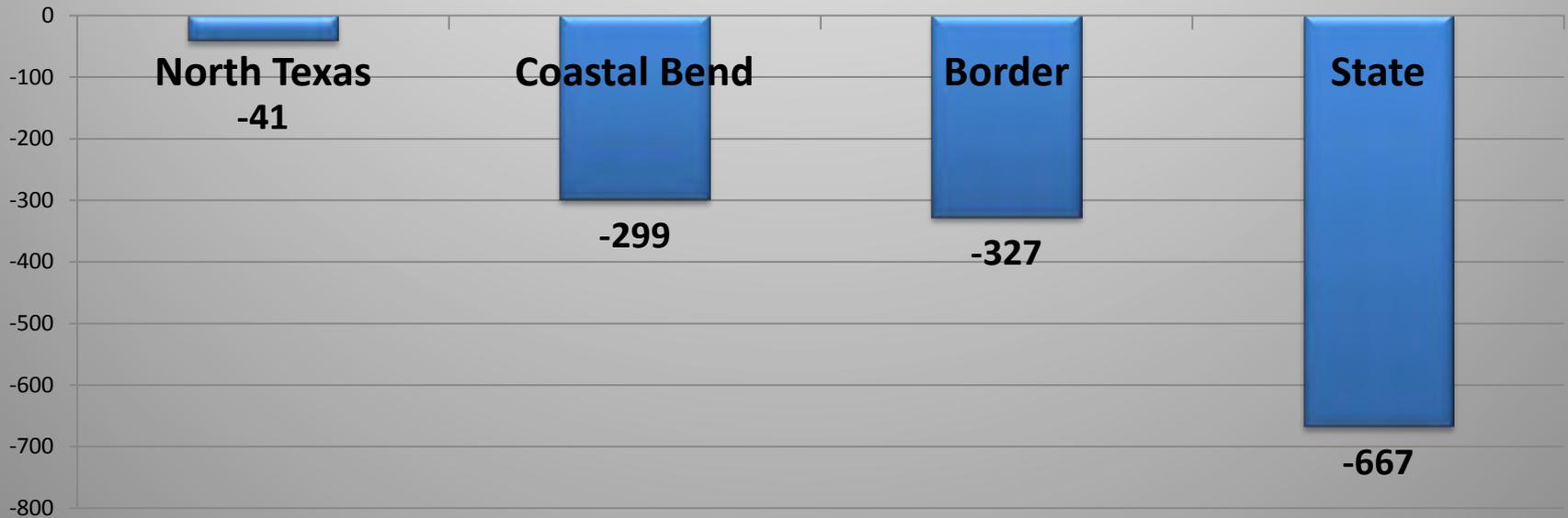
Losses/Gains by Tier
September 2011 - April 2012

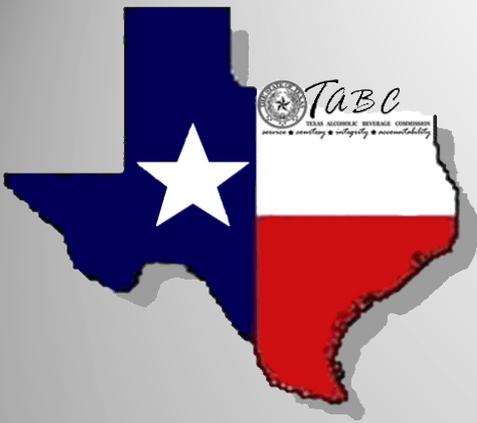




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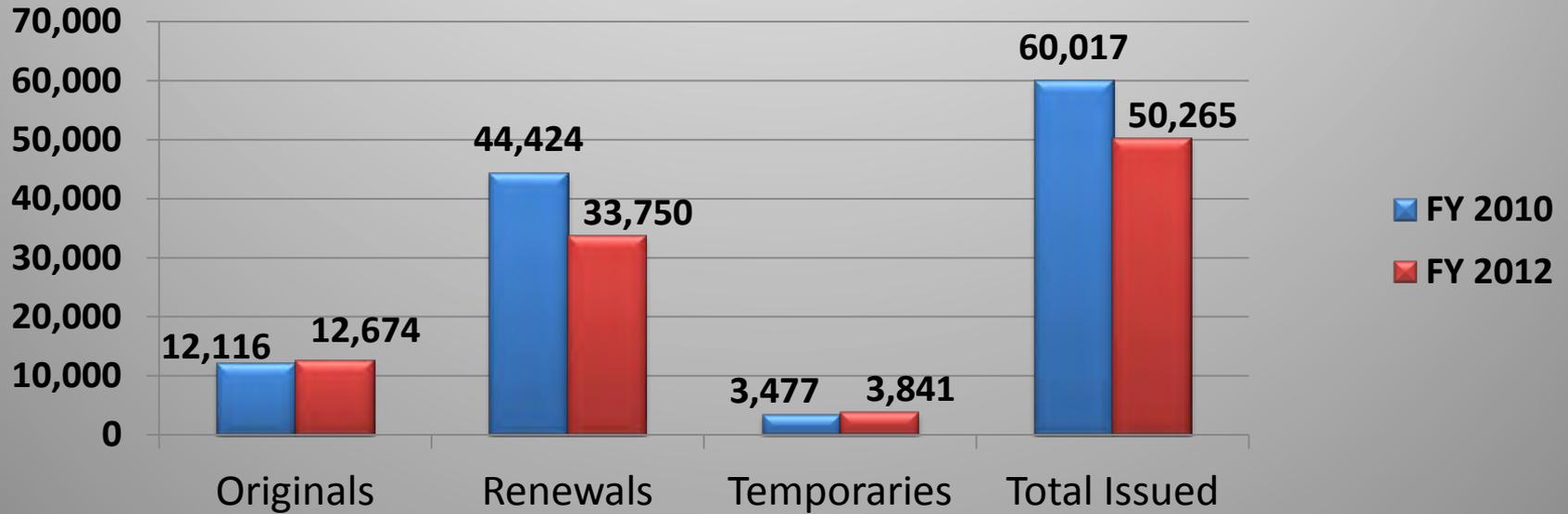
**Loss of Licensed Businesses
By Region
September 2011 - April 2012**

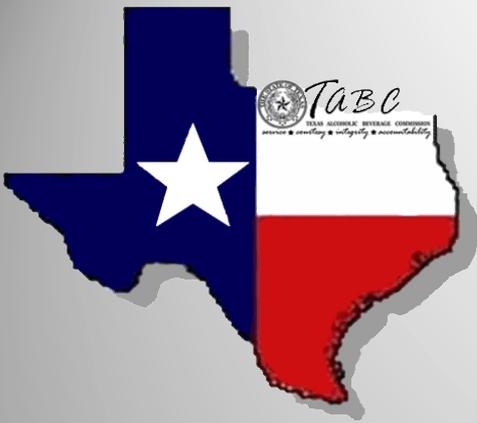




Trends

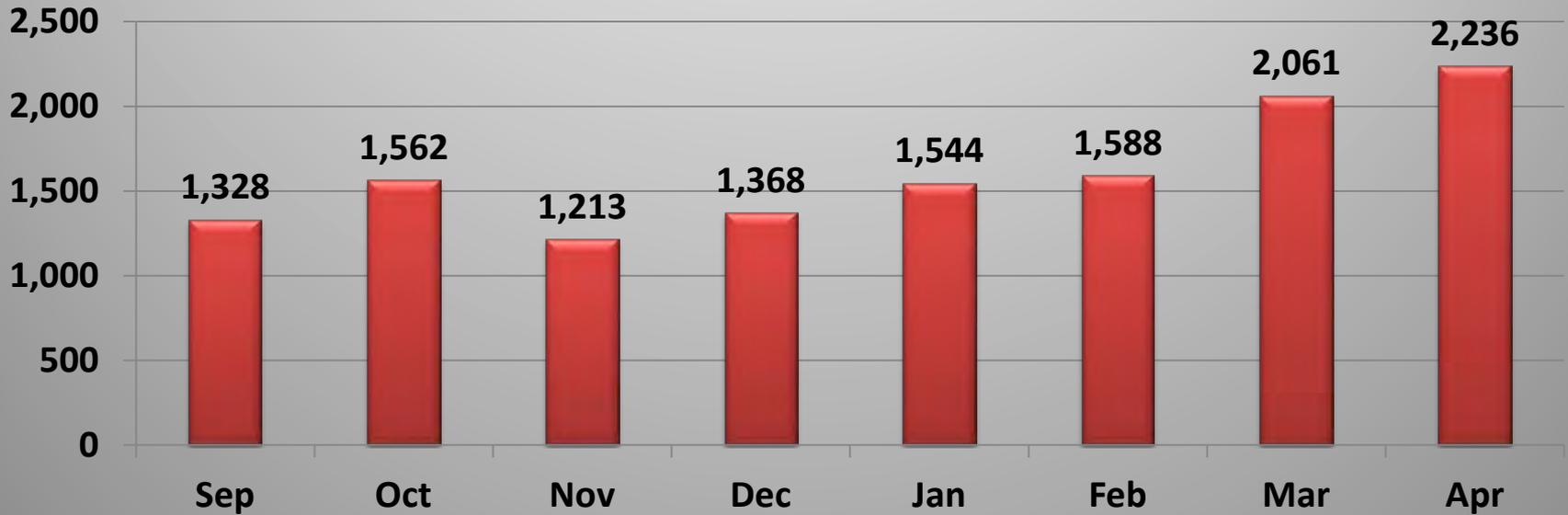
Licenses & Permits Issued September - April FY 2010 vs FY 2012

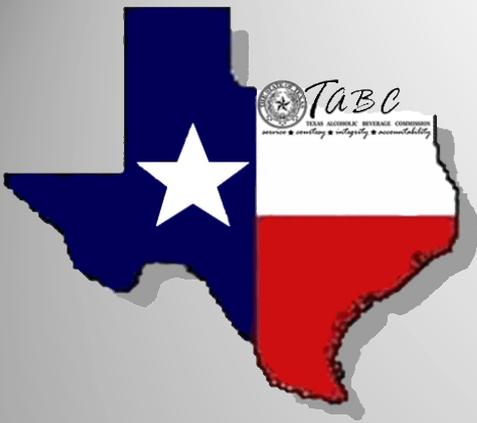




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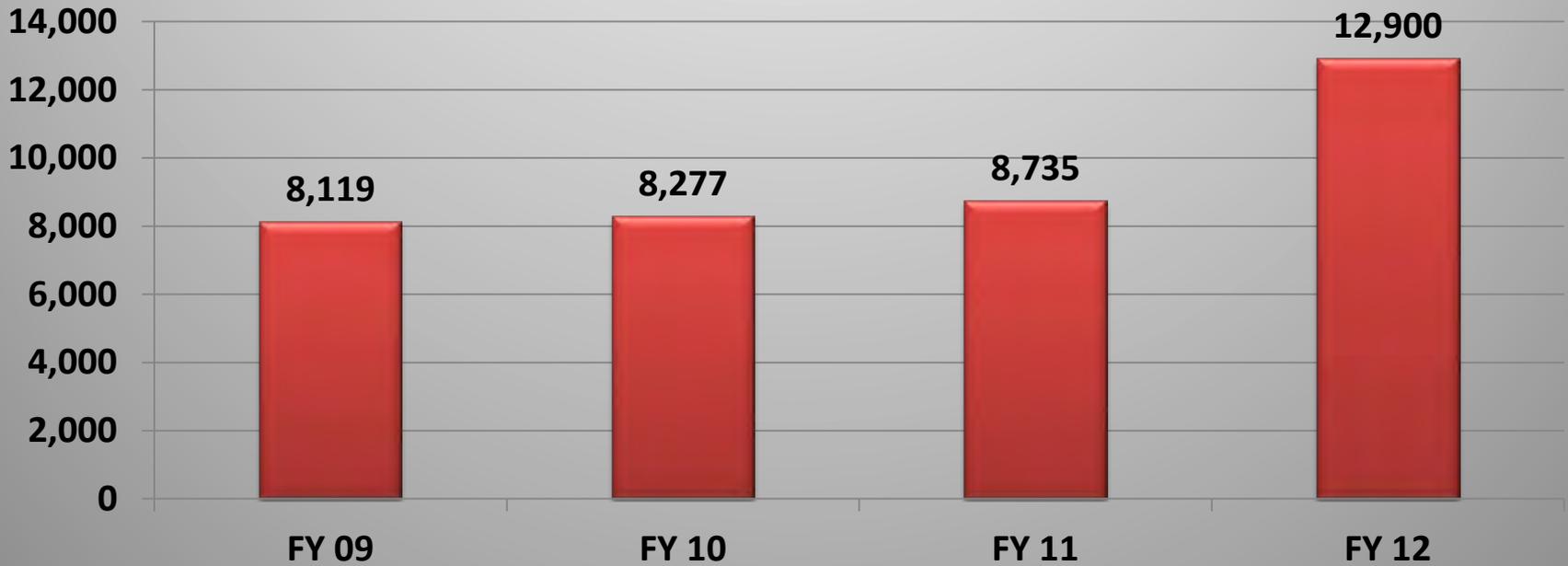
**Label Applications Approved
Or Denied
FY 2012**

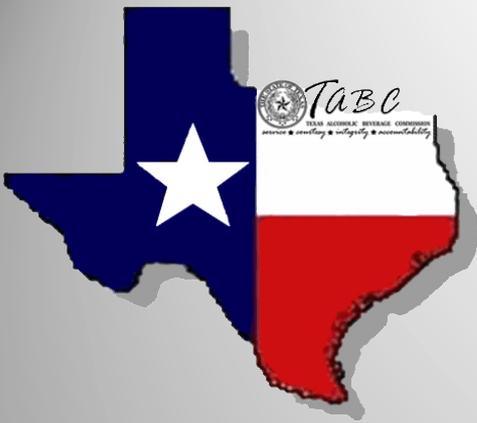




Trends

Labels Processed
September - April

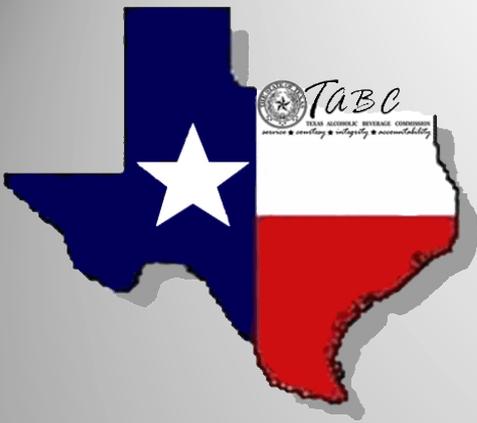




Trends

**Change in Label Application Volume
From FY 2011 to FY 2012**

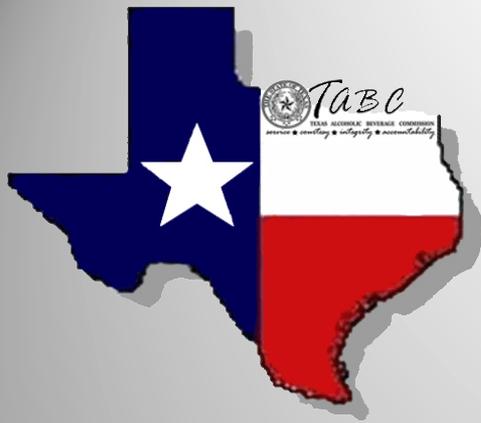




Trends

Change in Label Application Volume From FY 2011 to FY 2012





Farewell



QUESTIONS



Texas Alcoholic Beverage Commission

Happy Trails

Attachment 2

**Approval of Information Resources Division
Internal Audit**

Internal Audit of the Information Resources Division

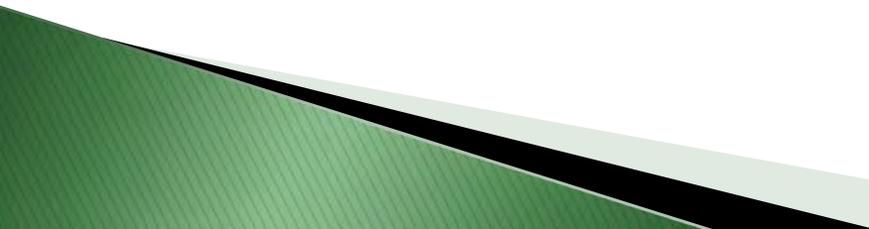
By Jansen & Gregorczyk, CPAs



Audit Purpose

- ▶ Evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures for managing information resources and meeting the needs of information resources users.

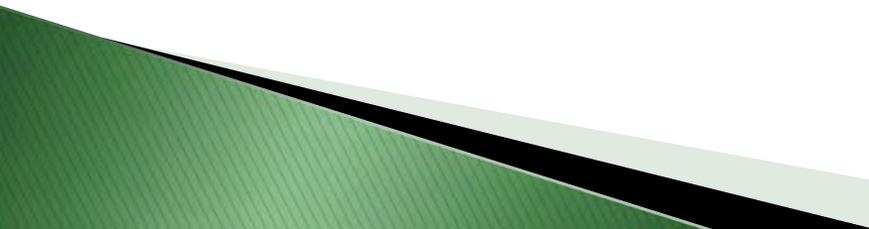
Key Audit Observations:

- ▶ TABC is in compliance with laws and regulations regarding IR management.
 - ▶ The IR Division needs to take action to address IR accessibility requirements.
 - ▶ TABC has implemented adequate security measures for information resources.
 - ▶ Some changes should be made to strengthen access controls.
- 

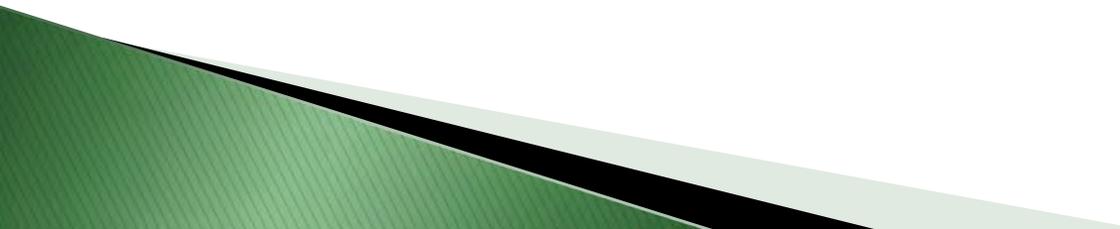
Key Audit Observations:

- ▶ All required information security polices have been developed, but some policies are not up-to-date.
 - ▶ There are adequate controls over computer operations, but the Disaster Recover Plan needs to be tested.
 - ▶ There are effective procedures for managing software licenses.
- 

Key Audit Observations:

- ▶ There are effective procedures for meeting the needs of IR users.
 - ▶ Effective processes are in place for prioritizing and reporting on IR projects.
 - ▶ There are effective procedures in place for managing software development projects.
- 

Key Audit Observations:

- ▶ The change management process appears to be effective, but better documentation needs to be maintained of user testing.
 - ▶ IR Division procedures are not organized and indexed in a meaningful manner and some procedures are not up-to-date.
- 

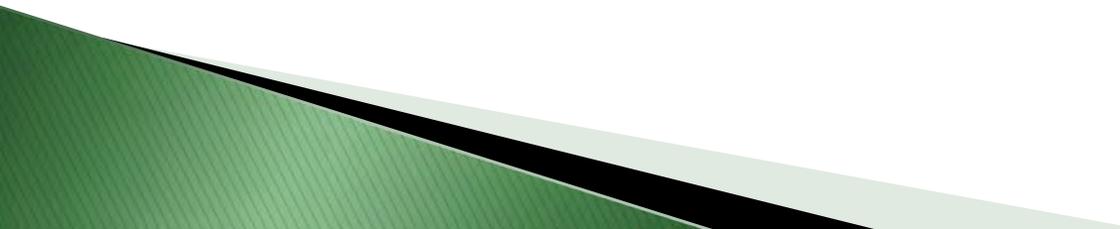
Recommendations:

- ▶ IRD should develop an internal accessibility policy that addresses all DIR requirements.
 - ▶ All contractors other than the DCS contractors should sign the Confidential Information Non-Disclosure Agreement and take the Security Awareness course.
- 

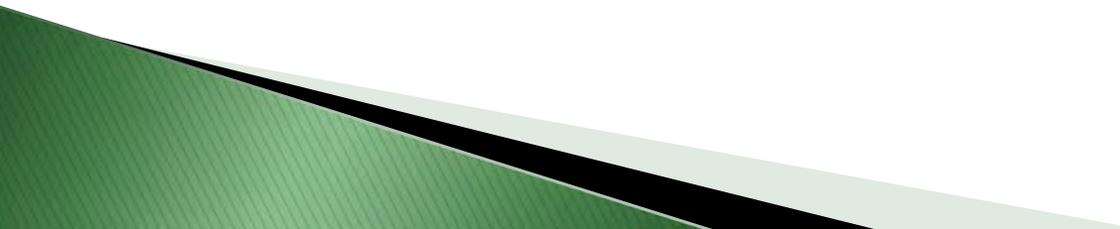
Recommendations:

- ▶ A process should be established to terminate contractors when their work at TABC is completed.
 - ▶ The IRD policies should be revised to reflect the actual operations of the IRD.
 - ▶ The IRD and the DCS contractor should complete a test of the Disaster Recovery Plan.
- 

Recommendations:

- ▶ The change management policy should be revised to include actual agency practices.
 - ▶ IRD and executive management should determine the priority of developing a new automated change management system.
 - ▶ IRD should develop a system to organize all IRD electronic procedures and update those that are not current.
- 

TABC Management Response:

- ▶ Management concurs with the report findings and recommendations.
 - ▶ Ten recommendations have already been implemented and the remaining two recommendations will be implemented by August 31, 2012.
- 

**Texas Alcoholic Beverage
Commission
Internal Audit of the
Information Resources Division**

Final Report

As Approved by the Commission on

May 22, 2012

As Prepared by
Jansen & Gregorczyk
Certified Public Accountants

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TABC Internal Audit of the Information Resources Division
Final Report – May 22, 2012

Jansen & Gregorczyk
Certified Public Accountants

Telephone
(512) 268-0070

P. O. Box 601
Kyle, Tx. 78640

May 22, 2012

Commission Members
Texas Alcoholic Beverage Commission

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

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

Signed Copy on File

Jansen & Gregorczyk
Certified Public Accountants

EXECUTIVE SUMMARY

Audit Purpose

The primary purposes of the internal audit of the Information Resources Division (IRD) were to determine if:

- the IR Division is in compliance with all statutory and Department of Information Resources (DIR) requirements for state agencies regarding information resources management;
- there are adequate controls and effective operating procedures for managing automated information resources; and
- there are effective processes and procedures for meeting the needs of IR users.

Key Audit Observations

- TABC and the IRD are in compliance with most laws and regulations regarding information resources management. TABC is not in compliance with requirements in the Information Resources Management Act and related DIR administrative rules related to accessibility of information resources by individuals that are disabled.
- TABC has implemented adequate security measures for the security of automated information resources including physical security, access controls and network security. Some changes to procedures could be made to further strengthen access controls and to document that all individuals authorized access to automated information resources have completed the required confidentiality and non-disclosure agreements and security awareness training.

- All required information security policies have been developed, but some policies are not up-to-date and others do not reflect actual practices.
- The IR Division has implemented adequate internal controls and effective procedures over computer operations, including procedures for back-up and recovery, disaster recovery planning, database administration and other computer operations functions.
- The Information Resources Division has implemented adequate internal controls and effective procedures for managing software licenses and for ensuring that all software is used in accordance with the software license agreements.
- The Information Resources Division has developed effective processes for meeting the needs of internal users of the agency's automated information resources.
- TABC and the Information Resources Division have developed effective processes for considering, approving, prioritizing, managing and reporting on automation projects.
- The Information Resources Division has implemented adequate internal controls and effective procedures for managing software development projects and contracts with outside vendors providing software implementation.
- Overall, the informal change management process at TABC appears to work, but better documentation of user testing, consolidating all requests for changes into one system, and developing a change management policy that reflects actual practices would strengthen the change management process.

**TABC Internal Audit of the Information Resources Division
Final Report – May 22, 2012**

Significant Recommendations

- IRD should develop an accessibility policy that meets all of the requirements found in the DIR administrative rules related to accessibility. The policy should include a plan to address non-compliance with accessibility requirements, accessibility training for TABC staff, and how exceptions to accessibility requirements will be documented and approved by the Administrator.
- IRD should inventory those systems and applications that do not meet accessibility requirements and exception requests should be developed and approved by the Administrator.
- Contractors other than those working under the Data Services Center (DCS) contract should sign the Confidential Information Non-Disclosure Agreement and after contractors have been granted access to the TABC network, they should take the IT Security Awareness Course and the certificate of completion should be submitted to IRD and retained.
- A process should be established to ensure that contractor access to the TABC network or applications within the network is terminated when these individuals have completed their projects at TABC.
- The IRD security policies should be revised to reflect the actual operations of TABC, rather than the “generic” DIR security policies developed as guidelines for all state agencies. All the IRD security policies need to be reviewed and updated by IRD to reflect changes since the last revision and actual practices of the IRD.
- Once the transition to the new DCS vendors is completed, the IR Division and the DCS vendor should complete another test of the disaster recovery plan and the results of the testing should be used to update the Business Resumption Plan.

- IRD should categorize automation projects into groups that have common elements such as SharePoint projects, mobile applications, public or industry inquiry, etc. IRD should estimate the costs and time required to complete each project and depending upon the perceived benefits, executive management and IRD could jointly prioritize the projects within each category.
- The change management policy should be revised to include actual agency practices rather than the ideal model that is reflected in the current policy.
- TABC executive management and the IRD should determine the project priority of the conversion of the existing change management system (IAMS) to a SharePoint system that could be used to track all change requests (those currently tracked in IAMS, SharePoint and Help Desk) and that could provide better documentation of testing results.
- The IRD should develop a system to organize IRD policies and procedures into file folders and subfolders that are clearly labeled. Outdated procedures should be archived in one location. After all procedures have been organized and indexed, the IRD Director or his designee should work with the IRD staff to determine those procedures that need to be documented or updated.

Management's Response

Management concurs with the report conclusions and recommendations. Management indicates that 10 of the 12 recommendations have been implemented and the remaining two recommendations will be implemented by August 31, 2012.

**TABC Internal Audit of the Information Resources Division
Final Report – May 22, 2012**

AUDIT PURPOSE & SCOPE

The primary purposes of the internal audit of the Information Resources Division (IRD) were to determine if:

- the IR Division is in compliance with all statutory and Department of Information Resources (DIR) requirements for state agencies regarding information resources management;
- there are adequate controls and effective operating procedures for managing automated information resources; and
- there are effective processes and procedures for meeting the needs of IR users.

The scope of the audit included review, analysis, and testing of compliance with laws and DIR rules regarding information resources management, physical security over information resources, access controls, network security, computer operations, software management, contract management for IR development projects, and computer operating procedures.

Specific audit objectives were developed and coordinated with TABC management. These audit objectives and the results of our audit work are presented in the next section, "Audit Results and Recommendations."

**AUDIT RESULTS AND
RECOMMENDATIONS**

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

Audit Objective 1: Determine if the Information Resources Division is in compliance with all significant statutory requirements for state agencies regarding information resources management.

There are two primary sources of requirements regarding information resources management, the Information Resources Management Act (IRMA) and Department of Information Resources (DIR) administrative rules. There are also some requirements in Article IX of the FY 2012-2013 Appropriations Bill related to information resources management.

TABC and the IRD are in compliance with most laws and regulations regarding information resources management. TABC is not in compliance with requirements in the Information Resources Management Act and related DIR administrative rules related to accessibility of information resources by individuals that are disabled. TABC has not developed an accessibility policy governing development of accessible applications, documents, web pages, etc. by IRD staff as required by TAC §206.51, although an accessibility policy for external users has been developed and included on the agency website. The accessibility policy must include a plan by which all web pages, web sites and web applications that are subject to the web accessibility standards will be brought into compliance. No such plan has been developed, even though the TABC

TABC Internal Audit of the Information Resources Division
Final Report – May 22, 2012

external websites are generally in compliance with the accessibility requirements. There are a number of specific provisions that must be included in the agency accessibility policy. Since an accessibility policy and plan has not been developed these required provisions of the plan have not been addressed. There are also requirements in the administrative rules regarding accessibility training for staff. IRD staff have been to accessibility training, but most staff outside of IRD have not received accessibility training as required. TABC has self-reported these non-compliance issues to the Department of Information Resources as part of its responses to the 2011 Information Resources Deployment Review (IRDR) that was recently submitted to DIR. TABC will be working with DIR to implement a corrective action plan to address all areas of non-compliance identified in the IRDR.

The accessibility requirements in TAC §213.17 state that “Effective September 1, 2006, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the executive director of the agency, or an exemption is granted by the department (DIR). Each state agency shall include in its accessibility policy standards and processes for handling exception requests. An exception request shall be submitted to the executive director of an agency for each development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code. An approved exception shall include the following: a date of expiration; a plan for alternate means of access for persons with

disabilities; justification for the exception including relevant cost avoidance estimates; and signature of the executive director of the agency.”

Applications are being developed for use by employees on the Intranet using SharePoint 2007, which do not include adequate accessibility features. The agency will be upgrading to SharePoint 2010, which does include accessibility features that will make it easier to ensure compliance with accessibility standards. The current Neubus Label Approval System on the TABC Intranet that TABC will be implementing for the public does not meet the accessibility requirements. TABC is working to resolve the accessibility issues with the Neubus Labeling System, but Neubus must address the accessibility requirements. In addition, the Neubus Imaging System used internally does not meet the accessibility requirements. TABC should be documenting these types of exceptions and having them approved by the Administrator in order to comply with TAC §213.17.

There is one other area where IRD is not in compliance with DIR administrative rules. TAC §202.25 states that “information resources systems which use passwords shall be based on industry best practices on password usage and documented state agency security risk management decisions.” Passwords do not comply with this rule or the agency password policy, but TABC is in process of implementing changes that will enable this to be done. This is discussed in more detail in Audit Objective 2.

Recommendation 1: IRD should develop an accessibility policy that meets all of the requirements found in the DIR administrative rules related to accessibility. The policy should include a plan to address

**TABC Internal Audit of the Information Resources Division
Final Report – May 22, 2012**

non-compliance with accessibility requirements, accessibility training for TABC staff, and how exceptions to accessibility requirements will be documented and approved by the Administrator. This should be done in conjunction with the corrective action plan TABC and DIR agree upon.

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

**Responsible employee title: IRD Director
Target date for completion: Implemented**

***Recommendation 2:** IRD should inventory those systems and applications that do not meet accessibility requirements and exception requests should be developed and approved by the Administrator. The exception requests should include all provisions specified by the DIR administrative rule in TAC §213.17.*

TABC Management Response: Management concurs. IRD has developed a spreadsheet that lists all of the internal, external and externally hosted web applications. The document includes but is not limited to the name of the application, priority number (for example, high public use, low public use down to single internal user), state of compliance, is there an exception request in place and what are its accessibility issues. An exception request

form has also been created. Several of them have been filled out by the Accessibility Coordinator (AC) and signed by the Administrator.

**Responsible employee title: IRD Director
Target date for completion: Implemented**

***Audit Objective 2:** 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.*

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

Physical security controls include access-card entry only to the data center services area, with the servers located in a locked room within this area. Access to the data center and server room is appropriately granted and visitors to the data center are logged and escorted while in the data center. The server room has appropriate environmental controls, and an uninterruptible power supply system (UPS) in the event of a power failure.

An annual review of physical security is performed as part of the annual security review that is completed by the IRD. The

TABC Internal Audit of the Information Resources Division
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Annual Security Review Report includes the following sections:

- Information Systems Security Risk Assessment
- Physical Security Assessment
- Annual Penetration Test Assessment Report
- TABC Business Resumption Plan
- Team4Texas Security Information

The most recent review was dated July 6, 2011 and was signed by the Assistant Administrator on July 7, 2011 and by the Administrator on July 8, 2011. This document meets the requirements of the Department of Information Resources for an annual security review approved by the agency head.

For access to the network and most applications within the network a request is submitted to the Password Administrator through the IRD Activity Management System (IAMS). This system is used in conjunction with the Active User Directory to manage all user accounts. Different passwords are necessary for other systems such as Versa Regulation, Neubus, Lotus Notes and the Employee Information System. There is an automated process to instigate password changes. There is also now a self service process so an authorized user can re-set their password if they forget it. Passwords currently only have to be 8 characters and must be changed every 60 days. They are not complex passwords and do not comply with the password policy adopted by the agency or DIR administrative rules. The IRD is moving toward more complex passwords. The first phase of this was to include a password self-service feature on the sign-in page. Implementation of complex passwords that comply with the agency policy and DIR administrative rules is in process. Remote access to the network

requires a Virtual Private Network (VPN) connection. Passwords are encrypted when an employee accesses the network through a VPN connection.

Testing of the active users in the IAMS indicated some individuals that should no longer have accounts with an active status. One person that retired in October 2011 was still listed as active user in the IAMS. Two former members of the internal audit staff and eight State Auditor's Office staff members were also listed as active users in IAMS. None of these individuals should have active accounts. This information was provided to the Password Administrator so these network accounts could be disabled. While there appears to be an effective process for disabling network access for terminated employees, there is not an effective process for terminating access privileges of contractors (auditors) when they have completed their work at TABC.

Employees and contractors are required to sign an information security acknowledgement and confidentiality agreement before access to agency computer systems is allowed. This policy is enforced for employees, but not for contractors. Completion of this form should be a part of the process of providing access to the network by individuals not employed by TABC. Some individuals could be exempted from this requirement such as IBM employees working under the Data Center Services contract, but other contractors including auditors and IRD vendors should be required to sign the security acknowledgement and confidentiality agreement.

An IT Security Awareness Course has been developed and is accessible under the Training Division Intranet site. The course is mandatory for TABC employees and all

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

Intrusion prevention software and logs are in place to detect unauthorized transaction attempts by authorized and/or unauthorized users. Intrusion prevention software is part of the firewall. This software will log the attack and drop the hacker off. There is an email process in place where an email is sent to a mailbox that is monitored by the Information Security Officer and other staff in the IRD when an unauthorized attempt to access the network occurs. There are logs to monitor internet activity and website logs. Most of the systems are set up so that an email is sent when problems occur and two people monitor the mailbox account daily. The Information Security Officer prepares monthly reports on unauthorized attempts to access the network.

Enterprise antivirus software is used by the IRD. Components of this software include antivirus scans, web filtering, content blocking and there is an email appliance that will detect certain viruses or odd types of transactions. On the outbound side it will look for certain personally identifiable information (PII) and if found it will automatically encrypt the outgoing email. There are many other security features that are part of this antivirus software. For example, it has a feature to keep thumb drives from downloading PII, although this feature is not currently activated.

Other network security controls are also in place. For example, after 15 minutes of inactivity, the network disconnects inactive users. The user must re-enter their password to reconnect. For three failed logon attempts, the user is locked out. Proxy servers are used as part of network security controls. You cannot get to the Internet without going through the proxy server. Security settings for operating systems are set in accordance with accepted industry security practices and operating systems are patched to current levels. Commercial applications on user workstations are patched, but this cannot be done if a machine is turned off. In some cases for a machine that was turned off and then turned on it may be several days before the updated patches are made.

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

The IRD has adopted information resources security policies that address all of the DIR required IS security policies. It appears that most of the security policies were adopted in September 2006 by TABC and revised in February 2009. Most of the policies were adopted directly from the DIR templates and some do not reflect actual TABC practices

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(for example, TABC passwords do not comply with the password policy and the change management process does not follow the change management policy) All of the policies need to be reviewed and updated by IRD to reflect changes since the last revision and actual practices of the IRD.

Recommendation 3: *Contractors other than those working under the Data Services Center (DCS) contract should sign the Confidential Information Non-Disclosure Agreement before they are granted access to the TABC network or applications within the network. IRD should retain these documents. Once contractors have been granted access to the TABC network, they should take the IT Security Awareness Course and the certificate of completion should be submitted to IRD and retained.*

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

Responsible employee title: IRD Director
Target date for completion: Implemented

Recommendation 4: *A process should be established to ensure that contractor access to the TABC network or applications within the network is terminated when these individuals have completed their projects at TABC.*

TABC Management Response: Management concurs. IRD will begin enforcing a reasonable expiration date on every contractor access account to avoid the

issue noted by the auditor. IRD will also work with other division management to request via email, the on boarding/off boarding of contractors requiring network access.

Responsible employee title: IRD Director
Target date for completion: Implemented

Recommendation 5: *All TABC employees should take the IT Security Awareness Course and the Training Division should develop a system for tracking those employees that have not completed the course. Management should enforce the requirement for this mandatory training.*

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

Responsible employee title: IRD Director
Target date for completion: Implemented

Recommendation 6: *IRD should work with executive management and Human Resources to update the two agency-wide policies dealing with information resources security and use. The IRD security policies should be revised to reflect the actual operations of TABC, rather than the "generic" DIR security policies developed as guidelines for all state agencies. All the IRD security policies need to be reviewed and updated by IRD to reflect changes since the last revision and actual practices of the IRD.*

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

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

**Responsible employee title: IRD Director
Target date for completion: June 1, 2012**

Audit Objective 3: Determine if the Information Resources Division has implemented adequate internal controls and effective procedures over computer operations, including procedures for back-up and recovery, disaster recovery planning, database administration, and other computer operations functions.

The IR Division has implemented adequate internal controls and effective procedures over computer operations, including procedures for back-up and recovery, disaster recovery planning, database administration and other computer operations functions.

Backup of TABC computer systems is the responsibility of the vendor under the Data Center Services contract. Backups are conducted by the vendor staff based upon the frequency and types of backup as outlined in the DCS agreement. Backup tapes are transported and stored by Iron

Mountain. Reports are available to TABC on the backups that are performed and whether or not they were successful. TABC frequently needs to restore files for users from backup tapes and problems are not usually encountered in obtaining the needed files. This provides testing that the backup tapes are working as intended. Adequate backup and recovery procedures have been implemented to ensure the TABC systems can be restored in a timely manner.

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

Database management protects the data from unauthorized access or changes by controlling the access to database and the capability to change the database. Database management security features are used to protect data against unauthorized access or manipulation and database management system utilities and commands are restricted to those responsible for the maintenance of the database. Changes to databases are documented by the Change Request System or the Help Desk ticketing system.

Many computer operations functions for TABC are the responsibility of the vendor under the DCS contract. The vendor maintains runbooks on each server. These runbooks are the procedures and operations which the administrator or operator of the system carries out, such as procedures to begin, stop and supervise the system.

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Various other computer operations functions performed by the vendor are specified in the contract with TABC. A number of different reports are available on the DCS portal website regarding computer operations. A monthly Dashboard Report is prepared each month by the vendor for TABC regarding various aspects of computer operations. In addition to these reports available from the DCS vendor, the IRD prepares a monthly report for TABC management concerning various aspects of computer operations.

***Recommendation 7:** Once the transition to the new DCS vendors is completed, the IR Division and the DCS vendor should complete another test of the disaster recovery plan and the results of the testing should be used to update the Business Resumption Plan.*

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

Responsible employee title: IRD Director
Target date for completion: August 31, 2012

***Audit Objective 4:** Determine if the Information Resources Division has implemented adequate internal controls and effective procedures for managing software licenses and for ensuring that all software is used in accordance with the software license agreements.*

The Information Resources Division has implemented adequate internal controls and effective procedures for managing software licenses and for ensuring that all software is

used in accordance with the software license agreements.

Software licenses are tracked through three sources. IBM tracks most software licenses as part of the Team for Texas contract with TABC. This includes software licenses for server software, Lotus Notes, Cognos and other software outlined in the agreement with IBM. IBM is responsible for renewing software licenses and billing TABC as part of their services. TABC is responsible for the annual renewal of Microsoft enterprise software that includes Windows, Microsoft Office and other Microsoft products used by TABC. Other specialized software licenses that are needed by TABC employees can be tracked through a secure system maintained by Dell, under its state contract with DIR.

The Use of IT Resources Policy states that all software installed or run within the TABC systems must be approved by IRD before installation. The Computer Security Policy states that users must not install hardware or software that provides network services without IRD approval. Another section of this policy states that users must not download, install or run security programs or utilities that reveal or exploit weaknesses in the security of a system except as part of the official systems security management process. The Information Security Policy on Software Licensing states that third party software must be approved by the IRM/ISO before installation and must be on the TABC approved software list.

Software audits are run by IRD using Desktop Authority software. The primary purpose of these software audits is to identify the versions of software loaded on individual PCs so that IRD will know what version is on a PC when there is a problem. These audits would identify any

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unauthorized software that is being used on an individual's computer; however, this is highly unlikely since users are not granted administrator rights to download or load software on their computers.

Recommendations: None.

***Audit Objective 5:** Determine if the Information Resources Division has developed effective processes for meeting the needs of internal users of the agency's automated information resources.*

The Information Resources Division has developed effective processes for meeting the needs of internal users of the agency's automated information resources. In November 2011, the IRD implemented new software called Help Desk Authority for managing requests from TABC employees regarding problems or help with information resources. The software enables IRD and users to track the status of requests until they are completed. When a request comes in either by telephone, email or through a form available on the Intranet, it is reviewed and assigned to the appropriate IRD staff. Assignments are made based on the type of expertise needed and staff availability. IRD management can track the status of Help Desk requests in a number of ways, including by staff persons within IRD. This enables management to know how quickly requests are being resolved as well as any bottlenecks that might exist. In addition to help desk requests logged into Help Desk Authority, some user requests involve the need for new reports or other changes to production systems (Versa, ARTS, etc.). There is a process for logging these requests using the IRD Activity Management System. There is an effective process for logging and assigning these requests as discussed in audit objective 8.

The IRD completed a customer satisfaction survey in August 2011. The results of the survey generally indicate a high level of satisfaction with IRD services. For example, 100% of the respondents indicated that IRD staff were courteous; 96% indicated IRD staff were helpful; 86% indicated IRD staff responded in a timely manner; and, 96% indicated IRD staff provided good technical assistance. Some negative responses were received in response to specific questions. For example, 12% of respondents did not feel IRD promptly handles installations, upgrades and repairs of equipment; 10% did not feel IRD installed or upgraded software promptly when this was requested; and 15% percent of respondents indicated that network systems operate with delays and interruptions. Overall, 81% of the respondents indicated they were extremely or moderately satisfied with their IRD experience. Only 7% of respondents expressed any degree of dissatisfaction with their IRD experience. A total of 141 respondents cited specific individuals within IRD that they indicated they would like to recognize for exceptional service.

Based on the systems that IRD has implemented to manage user requests and the results of the recent IRD customer satisfaction survey, the IRD has developed effective processes for meeting the needs of internal users of the agency's automated information resources.

Recommendations: None.

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***Audit Objective 6:** Determine if TABC and the Information Resources Division have developed effective processes for considering, approving, prioritizing, managing and reporting on automation projects.*

TABC and the Information Resources Division have developed effective processes for considering, approving, prioritizing, managing and reporting on automation projects. The IRD has developed the *TABC Technology Roadmap* to provide high level guidance regarding emerging technology and how TABC could or should use this technology in increasing the effectiveness or efficiency of its operations. As technology evolves, the IRD makes executive management aware of opportunities to increase the efficiency or effectiveness of the public or industry members doing business with TABC and opportunities in performing agency functions more effectively or efficiently through automation.

Opportunities to increase the agency effectiveness and efficiency through automation projects are developed, prioritized and tracked using the IRD Project Portfolio. The automation projects on the IRD Project Portfolio are informally prioritized by executive management and IRD. TABC does not have an IR Steering Committee or similar type of formalized process for considering and acting upon automation projects. Large automation projects that will require significant funding are prioritized and included in the agency legislative appropriations request. They only proceed if funding for the project is provided by the Legislature. Other projects that may improve efficiency are undertaken as time and resources are available. Many of these projects are listed as “pending

pipeline projects” or “horizon projects” on the IRD Project Portfolio. The priority of these projects is informally driven by their priority on the IRD Project Portfolio. The priority of these projects may change over time and depending upon personnel resource availability.

There is one change that could be made to the IRD Project Portfolio to provide more information for executive management to help establish project priorities. Placing pending pipeline and horizon projects into categories, estimating the time and resources necessary for each project and quantifying the project benefits would help executive management and IRD to establish a project priority within each category. For example, many of the horizon projects involve converting existing applications to SharePoint or developing new applications in SharePoint. By including these projects within a category called SharePoint projects, IRD could estimate the costs of each project and depending upon the perceived benefits, executive management and IRD could jointly prioritize the projects within that category. Other categories of projects might include those designed to give the public more efficient access to TABC information and projects involving mobile devices for TABC staff to more effectively and efficiently carry out their job duties.

***Recommendation 8:** IRD should categorize automation projects into groups that have common elements such as SharePoint projects, mobile applications, public or industry inquiry, etc. IRD should estimate the costs and time required to complete each project and depending upon the perceived benefits, executive management and IRD could jointly prioritize the projects within each category.*

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

Responsible employee title: IRD Director
Target date for completion: Implemented

Audit Objective 7: Determine if the Information Resources Division has implemented adequate internal controls and effective procedures for managing software development projects and contracts with outside vendors providing software implementation.

The Information Resources Division has implemented adequate internal controls and effective procedures for managing software development projects and contracts with outside vendors providing software implementation. The Enterprise Development Manager has developed a project management methodology and a system development methodology. Instructions and templates for using these methodologies have been developed and are being used in developing information resources automation projects.

The Department of Information Resources (DIR) developed the *Texas Project Delivery Framework* as a tool for agencies to use to manage projects. It generally is required for projects over \$1 million but can be used for smaller projects. It consists of five review gates beginning with the approval of the

project. Each “review gate” requires that one to proceed with answering questions provided in the required tools. There are a number of required tools for each review gate or area. The five areas are business justification, project planning, solicitation and contracting, project implementation and benefits realization. TABC uses modified versions of the *Texas Project Delivery Framework* when developing new applications even though most projects undertaken are well below the \$1 million threshold.

Each state agency and higher education institution must satisfy the statewide requirements for project management practices as identified in the Texas Administrative Code (TAC) Chapter 216. TAC Section 216.10 requires each state agency to institute, approve and publish operating procedures that communicate an agency-wide approach for project management practices and Section 216.11 indicates the requirements for that methodology. The TABC procedures that have been implemented comply with these requirements.

The State Auditor’s Office audited the Cash/Credit Law (CCL) system developed by TABC in a report issued in July 2010. The methodology used by the SAO included reviewing system design and development documents, collecting systems data and documentation, reviewing systems policies and procedures, conducting interviews with management and staff, testing the accuracy and completeness of system data, and evaluating the functionality and results of testing to ensure system usability and functionality. The audit found that TABC followed a system development methodology to help ensure proper design and implementation of the system. The system development methodology used by

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TABC included project descriptions, goals and objectives, constraints, project oversight, end user acceptance, project milestones, and testing of the completed system.

As part of the internal audit procedures, the Excise Tax Automation Project and the Versa Online Project were reviewed to determine if project management processes were used and documented. Even though the Excise Tax Automation Project has been suspended due to the unavailability of funding, it is clear from the available documentation that a sound system development methodology was followed. The project documentation for the Versa Online Project also indicates that TABC and the vendor, Iron Data, are using a documented project management methodology in developing and implementing the Versa Online Project.

Recommendations: None.

Audit Objective 8: Determine if the Information Resources Division has an effective change management process for managing all changes to agency information resources.

Change management is the process of requesting, determining attainability, planning, implementing and evaluating changes to a system. The goal of change management is to ensure a structured, documented process for making all changes to information resources systems. Although TABC has most of the elements of a change management policy, the change management process is informal and does not follow the change management policy or procedure that the agency has adopted. For example, the change management policy adopted by the agency indicates a change

control board will meet regularly to review change requests. There is no change control board for reviewing changes to production systems when the changes are made. The policy also indicates a change management log will be maintained for all changes. There is no change management log, although change requests to production systems are logged into one of three different systems (IAMS, SharePoint or the Help Desk). As part of the data consolidation services project, there is a formal configuration management process in place that TABC must adhere to as part of the contract with the DCS vendor and DIR.

Part of the change management process involves documented user testing and approval of changes before those changes are made to production systems. Testing of changes at TABC is informal in that users are not always required to test changes, results of testing are usually communicated by telephone or email and are not documented in the change request systems and user management is not required to sign off on most changes before they are put into production.

The process for establishing priorities for changes to existing systems in production is very dependent upon staff availability and the user division assessment of the need for the change. The IRD Activity Management System contains requested changes classified as “High Priority” that have been in the IAMS for several years with no activity. In one instance, a project classified as “Urgent” was submitted in June 2010, but shows no activity. Some type of review process is needed by IRD and management of the user divisions of change requests that have not been completed. By reviewing the list of incomplete change requests periodically, decisions could be made to eliminate or prioritize these requested

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changes thereby providing a more realistic status of change requests projects.

Overall, the informal change management process at TABC appears to work, but better documentation of user testing, consolidating all requests for changes into one system, and developing a change management policy that reflects actual practices would strengthen the change management process.

***Recommendations 9:** The change management policy should be revised to include actual agency practices rather than the ideal model that is reflected in the current policy. Those elements of the policy that are too time consuming and may not be necessary such as the current provision of the policy that states that “the change control board will consider all change requests” should be eliminated from the policy. Those specific elements of change management that IRD follows should be documented and where necessary the policy should include those elements that would improve the change management process such as better documentation of testing results and sign off by user management for some types of changes.*

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

Responsible employee title: IRD Director
Target date for completion: Implemented

***Recommendations 10:** TABC executive management and the IRD should determine the project priority of the conversion of the existing change management system (IAMS) to a SharePoint system that could be used to track all change requests (those currently*

tracked in IAMS, SharePoint and Help Desk) and that could provide better documentation of testing results.

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

Responsible employee title: IRD Director
Target date for completion: Implemented

***Recommendations 11:** A review process should be implemented by the IRD and management of the user divisions of change requests that have not been completed. All incomplete change requests over a certain length of time should be reviewed to determine if the changes are still needed and if the priority assigned (urgent, high, medium or low) is still valid.*

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

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Responsible employee title: **IRD Director**
Target date for completion: **Implemented**

***Audit Objective 9:** Determine if the operating policies and procedures of the Information Resources Division are documented and up-to-date.*

IRD procedures are found in many different locations on the IRD section of the Intranet. Many IRD policies and procedures are found under the IRD Documents Heading. Some are found in specific file folders within the IRD Documents folder, while others are not organized into any files but are listed in random fashion in the IRD Documents folder. Some of these policies and procedures are up-to-date and in clearly labeled file folders such as Internet Procedures. However in other folders such as Help Desk Procedures, the four documents listed all date to the 1990's. The Data Center Operations folder also contains only outdated procedures from the period when TABC ran its own data center.

Because of the significant number of procedures located on the K: Drive under IRD that are both current and outdated it is not possible to determine if the IRD procedures cover all essential functions and if they are up-to-date. There is a need to better organize the IRD policies and procedures on the K: Drive and to archive all outdated procedures. Once this is done, the IRD Director could make a determination of the adequacy of all essential IRD procedures and determine those that need to added or updated.

IRD has developed a Critical Functions List by Employee Expertise that identifies critical job functions with assignments as the expert or person with primary responsibility, the first alternate and in some cases the

second alternate. This document would be very useful in evaluating those critical functions where written procedures may need to be developed or updated.

***Recommendation 12:** The IRD should develop a system to organize IRD policies and procedures into file folders and subfolders that are clearly labeled. Outdated procedures should be archived in one location. After all procedures have been organized and indexed, the IRD Director or his designee should work with the IRD staff to determine those procedures that need to be documented or updated.*

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

Responsible employee title: **IRD Director**
Target date for completion: **Implemented**

Attachment 3

**Approval to Publish Proposed Rule §33.21,
Amount of Bond Required**

MAY 22, 2012 AGENDA, ITEM 6:

PROPOSED AMENDMENT OF §33.21, Amount of Bond Required

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.21, Amount of Bond Required, relating to when excise tax bonds are necessary.

In the August 23, 2011 Final Report of the commission's Internal Audit of Bond Processing by the Licensing Division (Audit Report), the auditors recommended that the commission review and update the rules relating to bonds. In addition, Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency.

The commission has determined that the rule should be amended to reflect current practices regarding permit bonds and to remove a regulatory burden on permittees and licensees regarding excise tax bonds. These changes also benefit the commission by greatly reducing the number of bonds that must be processed. In addition, the provisions in subsection (b) of the current rule dealing with performance bonds are being deleted from this section and simultaneously being transferred to another section of the rules. The proposed amendment retitles the section to reflect its new focus.

The proposed amendment deletes the provision in current subsection (a) relating to "permit bonds". The Audit Report notes that the commission does not currently require permit bonds from applicants. Deleting the permit bond provisions in current subsection (a) removes any ambiguity regarding such bonds by deleting the reference to them.

In subsections (c) and (d) the commission determines, under Alcoholic Beverage Code §204.07, that: it is no longer necessary to require permit bonds of all applicants; and it is no longer necessary to require excise tax bonds of all permittees and licensees subject to such taxes. However, the commission determines that excise tax bonds are still necessary to protect the state's revenue where a permittee or licensee fails to make a timely excise tax payment, if the required payment was in the amount of \$500 or more. The commission determines that pursuing a bond where the missed payment was less than \$500 is not administratively efficient. If a licensee or permittee has a pattern of missing payments less than \$500 each, it faces the possibility that its license or permit could be suspended or cancelled. The presence of that enforcement mechanism is a deterrent to developing such a pattern.

In subsection (e) the commission addresses the issue of requiring an excise tax bond from certain nonresident manufacturers, who are not responsible for payment of the excise tax itself. The commission is charged by Alcoholic Beverage Code §63.03 with determining the appropriate amount of bond required to protect the revenue of the state. Based on its determination that excise tax bonds are not generally necessary, but are necessary only upon a demonstrated history of non-compliance with the requirement to pay, the commission determines that it is not necessary to impose any bond on these nonresident manufacturers. Therefore, tracking the language of the Alcoholic Beverage Code, the

amount of bond from these nonresident manufacturers that is necessary to protect the state's revenue is zero. The state's revenue is protected by imposing the bond requirement on those actually responsible for payment of the tax, when they have demonstrated a history of noncompliance.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the agency will achieve efficiencies by not having to process bonds that experience has shown are apparently no longer necessary to assure compliance with the law. There will be no further impact on state or local government.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because an unnecessary regulatory burden has been removed, potentially allowing more entrants into business.

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

The staff of the commission will hold a public hearing to receive oral comments on **[DATE TO BE DETERMINED BEFORE AGENDA]** in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

§204.07, which authorizes the commission to promulgate a rule determining that certain bonds are no longer necessary.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 63.03 and 204.07, and Government Code §2001.039.

§33.21. When Excise Tax Bonds Are Necessary [~~Amount of Bond Required~~].

(a) This section is promulgated pursuant to Alcoholic Beverage Code §5.31, relating to General Powers and Duties, §204.01(g), relating to Bond Required, and §204.07, relating to Waiver of Bond Requirement. [~~No permit shall be issued to any person until all bonds required by the Alcoholic Beverage Code or by rule of the commission as a prerequisite to issuance of such permit have been filed with and accepted by the administrator. Bonds shall be in the following amounts:]~~

Airline beverage —	\$1000
Bonded warehouse —	\$5000
Brewers —	\$15000
Class A winery —	\$2500
Class B winery —	\$1000
Distillers —	\$25000
General class B wholesaler —	\$2500
Industrial —	\$1000
Local class B wholesaler —	\$2500
Medicinal pharmacy —	\$1000
Mixed beverage —	\$7500
—or 200% of maximum calendar month tax liability	
—whichever is greater (\$25000 maximum)	
Private carrier —	\$1000

Private club —	\$4500
—or 200% of maximum calendar month tax liability	
—whichever is greater (\$25000 maximum)	
Private club exemption —	\$3000
—or 200% of maximum calendar month tax liability	
—whichever is greater (\$25000 maximum)	
Private storage	\$1000
Public storage	\$1000
Rectifiers —	\$10000
Wholesaler —	\$5000
Wine bottler —	\$2500

(b) This section applies only to bonds required by §63.03 and Chapter 204 of the Alcoholic Beverage Code. [Performance Bonds

(1) — ~~This section relates to §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage~~

Code.

(2) — ~~The first bond filed by a licensee or permittee with the commission as prescribed under §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage Code shall be in the amount of \$2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of \$4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of \$6,000 before a license or permit may be reinstated.~~

(3) The provisions of rule 33.24(a), (b), (d), (e), (f), (h), and (k) apply to performance bonds.]

(c) The commission determines that it is no longer necessary or appropriate to require that every applicant who is subject to Chapter 204 of the Alcoholic Beverage Code furnish with its application the bond that is otherwise required by that chapter.

(d) The commission determines that it is necessary and appropriate to require that a bond under Chapter 204 of the Alcoholic Beverage Code be furnished upon renewal of its permit or license by a permittee or licensee who:

- _____ (1) is subject to Chapter 204 of the Alcoholic Beverage Code; and
- _____ (2) has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code.

(e) It is the commission's judgment, under Alcoholic Beverage Code §63.03, that the appropriate amount of bond that is required from the holder of a nonresident manufacturer's license to protect the revenue of the state from the tax due on beer over any six-week period is zero. Therefore no bond is required of a nonresident manufacturer, because the revenue of the state is protected for these reasons:

- _____ (1) a holder of a nonresident manufacturer's license is not liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and
- _____ (2) even when the nonresident manufacturer transports beer into the state in a motor vehicle owned or leased by him, the beer must be delivered to the holder of a distributor's license, who:

- _____ (A) also holds an importer's license;
- _____ (B) is liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and
- _____ (C) is subject to the requirement of a bond to protect the revenue of the state when necessary and appropriate as determined in §33.22 of these rules.

Attachment 4

**Approval to Publish Proposed Amendment to
Rule §33.22, Tax Bonds**

MAY 22, 2012 AGENDA, ITEM 7:

PROPOSED AMENDMENT OF §33.22, Tax Bonds

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.22, Tax Bonds, relating to excise tax bond requirements.

In the August 23, 2011 Final Report of the commission's Internal Audit of Bond Processing by the Licensing Division (Audit Report), the auditors recommended that the commission review and update the rules relating to bonds. In addition, Government Code §2001.039 requires that each state agency review and consider for re adoption each rule adopted by that agency.

The commission has determined that §33.22 should be amended to address bonds required in connection with all excise taxes, and to implement its determination in a proposed amendment to §33.21 that excise tax bonds are only necessary when a permittee or licensee has failed to make, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code. The proposed amendment also updates references to financial instruments and institutions. The proposed amendment also clarifies that bonds in place on the effective date of the amendment shall remain in place for the length of time specified on the bond. The section is retitled to clarify its applicability.

The proposed amendment also removes the requirement in subsection (a) that brewpubs furnish an excise tax bond, for two reasons: (1) unlike every other bond required by the commission, the obligation to furnish such a bond is not imposed by the Alcoholic Beverage Code on brewpubs, and it is doubtful the commission can impose such a requirement absent statutory authority; and (2) the Alcoholic Beverage Code does not impose an obligation on brewpubs to pay the excise taxes which such a bond is designed to protect.

At one point, excise taxes were paid at the manufacturing tier. However, they are now paid at the wholesale/distribution tier. Alcoholic Beverage Code §74.06 provides that manufacturing or brewing equipment used by a brewpub licensee, and processing, labeling, and packaging conducted by such a licensee "shall conform to standards and tax requirements" imposed by the code and the commission's rules "for the manufacture of beer and the brewing of ale and malt liquor". However, even if the language of §74.06 covered sales, brewpubs will still only be liable to the extent manufacturers or brewers are, and manufacturers and brewers no longer pay the excise tax on beer (see Alcoholic Beverage Code §§203.01 – 203.03) or the excise tax on ale and malt liquor (see Alcoholic Beverage Code §§ 201.41 – 201.43).

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the agency will benefit because fewer bonds will need to be processed and the standards for processing them will be clearer. There will be no further impact on state or local government.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because an unnecessary regulatory burden will have been removed, potentially allowing more entrants into business, and the standards related to excise tax bonds will be clearer.

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

The staff of the commission will hold a public hearing to receive oral comments on [DATE TO BE DETERMINED BEFORE AGENDA] in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects §5.31 and Chapter 204 of the Alcoholic Beverage Code, and Government Code §2001.039.

§33.22. Excise Tax Bonds.

(a) Each holder of a general distributor's license, local distributor's license, or branch distributor's license, and each holder of a manufacturer's license acting under the

authority of Texas Alcoholic Beverage Code §62.12, who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on beer imposed by the Texas Alcoholic Beverage Code, §203.01. Each holder of a wholesaler's or Class B wholesaler's license who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42 and the payment of the taxes on liquor other than ale or malt liquor imposed by Texas Alcoholic Beverage Code §§201.03 and 201.04. Each holder of a brewer's permit acting under the authority of Texas Alcoholic Beverage Code §12.05, who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42. Each holder of a winery or wine bottler's permit who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on vinous liquor imposed by Texas Alcoholic Beverage Code §201.04. The requirement under this section to furnish a bond shall be imposed at the next renewal of the permit or license after the failure to make a timely payment of the amount specified in this subsection. [Each holder of a brew pub license shall furnish a bond to insure the payment of the tax on beer and/or ale or malt liquor imposed by the Alcoholic Beverage Code, §203.01 and §201.42, respectively.]

(b) Each bond required under this section shall be set by the administrator at an amount determined pursuant to §41.42 of these rules that will protect the state against the anticipated tax liability of the principal for any six-week period based on previous average alcoholic beverage [~~beer~~] sales or estimates of the future average volume of sales.

(c) Form and contents.

(1) A bond required under this section must be executed with the licensee or permittee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All such bonds must be payable in Travis county.

(2) The bond must be conditioned as required by the administrator and must include that the licensee or permittee will account for and pay all fees and taxes levied by the Texas Alcoholic Beverage Code.

(3) The form of all bonds must be approved by the administrator [~~Attorney General of Texas~~].

(d) Bond alternatives.

(1) A licensee or permittee required to furnish a bond under this section may furnish, in lieu of all or part of the amount of the bond required:

(A) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or credit unions [~~savings institutions~~] authorized to do business in this state; or

(B) one or more letters of credit by one or more banks or credit unions [~~savings institutions~~] authorized to do business in this state.

(2) If an assignment of a certificate[s] of deposit or savings or a letter[s] of credit is [~~are~~] furnished under subsection (d)(1) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

~~[(e)] [A licensee is not required to furnish a bond under this section if for the preceding 36 months the licensee has filed all reports and has paid all taxes and fees required by the Texas Alcoholic Beverage Code and the commission under all licenses held by him on or before the due date.]~~

~~[(f)] An exemption under subsection (e) or subsection (h) of this section terminates and the licensee must furnish a bond if the licensee fails to pay a tax or fee imposed by the Texas Alcoholic Beverage Code on or before the due date.]~~

(e) [(g)] A finding of deficiency as a result of an audit does not constitute a failure to pay a tax when due, if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.

(f) [(h)] A licensee or permittee required to furnish a bond under subsection (a) [(f)] of this section, is again entitled to exemption from the surety requirement if the licensee or permittee:

- (1) pays all delinquent taxes and fees and any applicable penalties; and
- (2) pays all taxes and fees required by the Texas Alcoholic Beverage Code on or before the due date for [of] 18 consecutive months after the month in which the delinquent taxes and fees and penalties are paid.

(g) [(i)] ~~A licensee who qualifies for an exemption under subsection (e) or subsection (h) of this section or the Texas Alcoholic Beverage Code, §204.01(f), is also exempt from the bonding requirement for any other license currently held by or subsequently issued to the same licensee for use at licensed premises different from and additional to those covered by the license under which the licensee qualified for exemption. However, If [(f)] a licensee or permittee fails to pay a tax or fee imposed by the Texas Alcoholic Beverage Code on or before the due date and the licensee or permittee holds multiple licenses or permits, the requirements for a bond shall be imposed [or reimposed] under subsection (a) [(f)] of this section only on the license or permit covering the licensed or permitted premises for which the tax or fee and any applicable penalty were not timely paid.~~

(h) [(j)] A certificate of deposit or savings furnished by a licensee or permittee under this section must be assigned to the state in a manner approved by the administrator to secure the payment of the tax.

(i) [(k)] A letter of credit furnished by a licensee or permittee under this rule must be in a form and contain any conditions required by the administrator to secure the payment of the tax.

(j) [(h)] If another license or permit is required, incidental to the operation of a business for which a basic license or permit is procured, the administrator may accept one bond to support all of the licenses and permits. The administrator shall determine the amount of the bond.

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

(l) [(n)] All bonds or other forms of security under this section that are in place on the effective date of this section, as amended, shall remain in place for the length of time specified on the bond or other form of security when it was furnished to the commission.
[For the purposes of subsection (e) of this section, the 36 months preceding the effective date of this rule shall be taken into account.]

Attachment 5

**Approval to Publish Proposed Amendment to
Rule §33.24, Conduct Surety Bond**

MAY 22, 2012 AGENDA, ITEM 8:

PROPOSED AMENDMENT OF §33.24, Conduct Surety Bond

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.24, Conduct Surety Bond, relating to conduct surety bonds and performance bonds.

In the August 23, 2011 Final Report of the commission's Internal Audit of Bond Processing by the Licensing Division (Audit Report), the auditors recommended that the commission review and update the rules relating to bonds. In addition, Government Code §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by that agency.

The Audit Report recommended that the rules be clarified to distinguish "conduct surety bonds" under Alcoholic Beverage Code §§11.11 and 61.13 from "performance bonds" under Alcoholic Beverage Code §§11.61(b-1) and 61.71(l) and to link each bond to the Code provisions requiring it. Since conduct surety bonds and performance bonds are both applicable to certain members of the retail tier, the proposed amendment combines the provisions relating to them and clarifies which requirements and procedures apply to each type of bond. The provisions relating to performance bonds are currently found in §33.21(b) of the commission's rules. The proposed amendment retitles the section to indicate its applicability.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the rules regarding surety bonds at the retail level will be clearer.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127,

Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register. Comments should reference the number of the rule being commented upon.

The staff of the commission will hold a public hearing to receive oral comments on **[DATE TO BE DETERMINED BEFORE AGENDA]** in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§5.31, 11.11, 11.61(b-1), 61.13 and 61.71(l), and Government Code §2001.039.

§33.24. Conduct Surety Bonds and Performance Bonds.

(a) This section applies to conduct surety bonds, which are the bonds required by Alcoholic Beverage Code §§11.11 and 61.13, and to performance bonds, which are the bonds required by Alcoholic Beverage Code §§11.61(b-1) and 61.71(l). Subsections (b) – (h), (j) (k) and (m) of this section apply to both conduct surety bonds and performance bonds. Subsections (i) and (l) of this section apply only to conduct surety bonds. Subsection (n) of this section applies only to performance bonds.

(b) When either a conduct surety [A] bond or a performance bond is required under the Alcoholic Beverage Code, it [Texas Civil Statutes, §11.11 and §61.13] must be executed only on forms prescribed by this agency with the licensee or permittee as principal, a qualified surety company doing business in this state as surety and the state as payee.

(c) ~~[(b)]~~ All conduct surety bonds and performance bonds of permittees and licensees shall be payable in Travis county.

(d) ~~[(e)]~~ A separate conduct surety [,- in the amount of \$5,000 or \$10,000,] bond and a separate performance bond, when required, shall be obtained, submitted and maintained for each license or permit [as set out in the Alcoholic Beverage Code, §11.11 and §61.13].

(e) A permittee or licensee who is required to file a conduct surety bond or performance bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(f) ~~(d)~~ If an assignment of a certificate[s] of deposit, savings account[s] or letter[s] of credit are furnished in lieu of either a conduct surety bond or a performance bond, the administrator or his designee shall keep them in his possession. Interest earned on a certificate of deposit or savings account is not subject to the assignment and remains the property of the owner of the certificate of deposit or savings account.

(g) ~~(e)~~ A certificate of deposit or savings account furnished in lieu of either a conduct surety bond or a performance bond by a licensee or permittee must be assigned to the state, in a manner approved by the administrator or his designee, to secure payment to the state.

(h) ~~(f)~~ A letter of credit furnished in lieu of either a conduct surety bond or a performance bond by a licensee or permittee, under this section [rule], must be on a form approved by the administrator or his designee and contain any conditions required by the administrator to secure payment to the state.

(i) ~~(g)~~ A ~~[The]~~ conduct surety bond, assignment of certificate of deposit, savings account, or letter of credit ~~[may be continuous in nature and]~~ must cover the minimum time required of the applicant to qualify for exemption from the surety requirement imposed by ~~[the]~~ Alcoholic Beverage Code~~[,]~~ §11.11 and §61.13.

(j) ~~(h)~~ Qualifications of Surety.

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

(2) A bank~~[, savings institution]~~ or credit union, in addition to the requirements of ~~[the]~~ Alcoholic Beverage Code~~[,]~~ §11.11 and §61.13, must have a physical facility in this state to accept cash deposits, make cash advances to customers and carry out day-to-day operations within this state.

(k) [(†)] Submission of Conduct Surety Bond or Performance Bond [Security].

(1) If required by Alcoholic Beverage Code §11.11 or 61.13, a[A]n applicant for an original or renewal license or permit must submit, at the time of its [~~their~~] application, the bond, or alternative form of surety allowed in subsection (e) of this section. [security] as prescribed by those sections [~~the Alcoholic Beverage Code[,]~~ §11.11 and §61.13], and must meet the requirements of this section [~~rule~~].

(2) If required by Alcoholic Beverage Code §11.61(b-1) or §61.71(l), an applicant for an original license or permit must submit, at the time of its application, the bond, or alternative form of surety allowed in subsection (e) of this section, as prescribed by those sections, and must meet the requirements of this section.

_____ (3) Failure to submit the necessary bond or alternative form of surety allowed in subsection (e) of this section in proper form will result in the denial of the application.

(l) [(‡)] Forfeiture of a Conduct Surety [~~the~~] Bond

(1) When a license or permit is cancelled, or upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond or alternative form of surety allowed in subsection (e). For purposes of this section, an order issued pursuant to an agreement of the parties in which the permittee or licensee waives its right to a hearing is a final adjudication of the violation that is the subject of the agreement and order.

(2) The licensee or permittee may, within thirty days of the notice specified in paragraph [~~subsection-(j)~~] (1) of this subsection, request hearing on the question of whether the criteria established by Alcoholic Beverage Code §§11.11 and 61.13 and by this section for forfeiture of the bond, or alternative form of surety allowed in subsection (e) of this section, [~~as established by the Alcoholic Beverage Code, §11.11 and §61.13 and this rule~~] have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code [~~the Administrative Procedures Act~~].

(3) Evidence that an agent or servant of the licensee or permittee has been adjudicated guilty of, or granted deferred adjudication for, an offense under the Alcoholic

Beverage Code, because of conduct occurring during the performance of his/her duties for the licensee or permittee, shall constitute evidence of an adjudication that the licensee or permittee has violated a provision of the Alcoholic Beverage Code. This paragraph only applies to violations which were not attributable to the licensee or permittee because of the operations of [the] Alcoholic Beverage Code[;] §106.14.

(4) Upon entry of final order against the licensee or permittee in the hearing described in paragraph [subsection (j)] (2) of this subsection, or upon waiver of said hearing by the licensee or permittee, the commission shall notify the surety company, bank, [~~savings institution~~] or credit union to remit to the state the amount of surety required within ten days after notification.

(5) The commission may institute action to recover the amount of the surety in its own name, for the benefit of the state, [~~on the surety supporting the bond, and against the bank, savings institution or credit union,~~] as set forth in [the] Alcoholic Beverage Code[;] §11.70 [~~to recover the surety~~].

(m) [(k)] Release of Surety.

(1) [~~A surety company may terminate liability by giving the proper 30 day written notice, as provided in [the] Alcoholic Beverage Code[,] §11.71.~~

~~—— (2) — Grounds for termination of a permit/license upon termination of liability by surety is the same as provided in the Alcoholic Beverage Code, §11.71.~~

~~(3)~~ Upon expiration of the license or permit, its voluntary cancellation, or upon the applicant's subsequent approval for exemption from the surety requirement, the licensee or permittee may request the release and return of the security supporting their license or permit.

(2) [(4)] The release of this surety [~~security~~] will not be unreasonably withheld; however, the surety company, bank, [~~savings institution~~] or credit union is not released from its obligation until it [~~they~~] receives written notice of the release from the commission [~~this agency~~].

(n) Performance Bonds.

The first bond filed by a licensee or permittee with the commission as prescribed under §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage Code shall be in the amount of \$2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of \$4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of \$6,000 before a license or permit may be reinstated. If a permit or license that is secured by a performance bond is cancelled, the performance bond in place at the time of cancellation is forfeited to the commission.

Attachment 6

**Approval to Publish Proposed Amendment to
Rule §41.42, Bonds**

MAY 22, 2012 AGENDA, ITEM 9:

PROPOSED AMENDMENT OF §41.42, Bonds

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.42, Bonds, relating to the amount of excise tax bonds.

In the August 23, 2011 Final Report of the commission's Internal Audit of Bond Processing by the Licensing Division (Audit Report), the auditors recommended that the commission review and update the rules relating to bonds. In addition, Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency.

Currently, §41.42 applies to the excise taxes on liquor (i.e. the tax on ale and malt liquor, the tax on distilled spirits and the tax on vinous liquors), while §41.46(g) applies to the excise tax on beer. The proposed amendment combines all excise taxes into this section and sets a uniform minimum bond requirement of \$1000. The current minimum for a beer excise tax bond, in §41.46(g)(1), is \$500. Proposed changes to other sections of the commission's rules will reduce the number of bonds required and have the effect of using the bond requirement as a deterrent to avoid late tax payments. Increasing the minimum amount of the beer excise tax to the same amount required for all other alcoholic beverages strengthens the deterrent effect, in addition to allowing some efficiencies in administering the bonds. The proposed amendment clarifies language and retitles the section to reflect its applicability.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government. It is unlikely that the increase in the minimum amount of a beer excise tax bond will generate any meaningful revenue for the state, since experience has shown that these bonds are not likely to be forfeited to the state.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the rules regarding the amount of excise tax bonds will be clearer.

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

The staff of the commission will hold a public hearing to receive oral comments on **[DATE TO BE DETERMINED BEFORE AGENDA]** in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin,

Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects §5.31 and Chapter 204 of the Alcoholic Beverage Code, and Government Code §2001.039.

§41.42. Amount of Excise Tax Bonds.

(a) Excise tax bonds [~~Bonds~~] required by Chapter 204 of the Alcoholic Beverage Code and by §33.22 of these rules of license or permit holders authorized to import beer or liquor into this state [~~shall be executed by the permit holder as principal and a surety company duly qualified and doing business in this state as a surety as required in §204.01 et seq., of the Alcoholic Beverage Code.~~ Bonds] shall be in a minimum amount of \$1,000 and the maximum amounts of the bonds shall be determined by the administrator. [~~In determining the maximum amounts of the bonds, the administrator shall calculate the estimated tax liability on the maximum sales of liquor for any one month.~~] The maximum bond fixed by the administrator shall be an amount that will adequately protect the State of Texas against the anticipated tax liability of the principal during any six weeks' period.

(b) The administrator as he deems necessary~~[, or on an original or renewal application of said permittees,]~~ shall cause an investigation to be made of the adequacy of any bond and shall make adjustments as he deems justified.

~~[(c) — Such bonds shall be executed on forms furnished by the commission and approved by the Attorney General of Texas.]~~

Attachment 7

**Approval to Publish Proposed Amendment
to Rule §41.46, Beer – In General**

MAY 22, 2012 AGENDA, ITEM 10:

PROPOSED AMENDMENT OF §41.46, Beer – In General

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.46, Beer – In General, relating to the amount of excise tax bonds for beer.

In the August 23, 2011 Final Report of the commission's Internal Audit of Bond Processing by the Licensing Division (Audit Report), the auditors recommended that the commission review and update the rules relating to bonds. In addition, Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency.

Currently, §41.42 of the commission's rules applies to the excise taxes on liquor (i.e. the tax on ale and malt liquor, the tax on distilled spirits and the tax on vinous liquors), while §41.46(g) applies to the excise tax on beer. A proposed amendment to §41.42 combines all excise taxes into that section. The proposed amendment to §41.46 deletes subsection (g).

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the rules regarding the amount of excise tax bonds will be clearer.

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

The staff of the commission will hold a public hearing to receive oral comments on **[DATE TO BE DETERMINED BEFORE AGENDA]** in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects §5.31 and Chapter 204 of the Alcoholic Beverage Code, and Government Code §2001.039.

§41.46. Beer--In General.

(a) *Tax.* Holders of distributor's and importer's licenses must pay the tax on beer imported by them not later than the 15th day of the month following the month in which the importation of beer was made. Holders of manufacturer's licenses must pay the tax assessed on beer sold by them not later than the 15th day of the month following the month in which sales are made. Remittance of the tax due on beer, less 2% of the amount due when submitted within the required time, shall accompany the manufacturer's and distributor's reports hereinafter provided for and shall be made by cashier's check, certified check or United States postal money order payable to the state treasurer of Texas.

(b) *Distributor's monthly report.*

(1) Each holder of a general distributor's license, branch distributor's license, or local distributor's license shall make a monthly report (Distributor's Monthly Report) to the commission on forms prescribed by the administrator.

(2) The holder of more than one license, or the holder of a general distributor's license and a branch license, shall make a separate report of the business conducted under each license so held.

(3) The report shall be made and filed by the licensee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

(A) the number of the license under which the business is conducted, the class of license and the county for which issued, and importer's license number, if any;

(B) the name of the distributor and his address;

(C) the brands of beer sold and the counties in which sales are made;

(D) the amount of beer purchased from Texas manufacturers or distributors during the month, showing invoice dates and names and addresses of sellers and the quantity by units, such as barrels, half-barrels, cases and cartons;

(E) the amount of beer purchased from out of state during the month, showing invoice dates and names and addresses of sellers, and the quantity by units;

(F) total sales into military installations during the month, showing invoice dates and names and addresses of purchasers;

(G) total sales outside Texas during the month, showing invoice dates and names and addresses of purchasers;

(H) total beer destroyed by railroads and common carrier truck lines when allowance for tax is claimed;

(I) computation showing total taxable beer and amount of tax due; and

(J) inventories at the end of the month.

(c) *Manufacturer's report.*

(1) Each holder of a manufacturer's license, shall make a monthly report (Manufacturer's Report) to the commission on forms prescribed by the administrator.

(2) The report shall be made and filed by licensee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

(A) the month for which the report is made, the license number and the name and address of the manufacturer;

(B) the brands of beer sold;

(C) total sales during month direct to military establishments;

- (D) total sales to purchasers located outside of Texas;
- (E) total sales of taxable beer; and
- (F) computation of total taxes due on taxable sales.

(d) *Monthly report of nonresident manufacturer.*

(1) Each holder of a nonresident manufacturer's license shall make a monthly report (Monthly Report of Nonresident Manufacturer) to the commission on forms prescribed by the administrator.

(2) The report shall be made and filed by each nonresident manufacturer with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (A) the month for which the report is made;
- (B) name and address of the licensee;
- (C) license number;
- (D) total barrels of beer shipped into Texas for the month; and
- (E) names and addresses of consignees along with the invoice dates,

brands of beer shipped, and quantity by units of beer shipped such as barrels, half-barrels, cases and cartons.

(e) *Carrier's report.*

(1) Each holder of an importer's carrier's license shall make a monthly report (Carrier's Report) to the commission on forms prescribed by the administrator.

(2) The report shall be filed with the commission at its offices at Austin, Texas, on or before the 15th of the month following the calendar month for which the report is made, of all beer transported by them from origins outside this state to authorized license holders within this state. The report shall show:

- (A) date of shipment;
- (B) consignor;
- (C) point of origin;
- (D) consignee;
- (E) destination;
- (F) freight bill number;
- (G) number of packages;

(H) car number and initials; and

(I) date of delivery.

(3) If no interstate shipments are transported into this state, a blank report shall be filed stating such fact.

(f) *Refund claims.*

(1) If any manufacturer or distributor shipped out of this state for consumption outside this state, or sold aboard ships for ships' supplies or shipped into any installation of the national military establishment, wherein the State of Texas has ceded police jurisdiction, for consumption by military personnel within such installation, any beer on which the state tax has been paid, such manufacturer or distributor may file claim for refund of the tax.

(2) Claim forms shall be furnished by the commission and claims must be executed under oath and be supported by copies of invoices on each shipment for which tax refund is claimed, together with a signed copy of the bill of lading from the carrier handling such shipment, if any.

(3) All such claims shall be filed by the shipper not later than 90 days after the date of shipment and no claim will be recognized by the commission if not filed within the 90-day period.

~~(g) — Bonds.~~

~~—— (1) — Bonds required of manufacturers and importers under §204.01 et seq., of the Alcoholic Beverage Code shall be a minimum of \$500, and bonds required of nonresident manufacturers under §63.03 of the Alcoholic Beverage Code shall be a minimum of \$10,000. The administrator shall determine the maximum amounts of such bonds by calculating the estimated tax liability of each licensee requiring a bond, such calculation based on previous average beer sales or estimates of future average volume of sales. In each case, the bond fixed by the administrator shall be in such an amount as will adequately protect the state in the anticipated tax revenues due the state from each licensee over any six weeks' period.~~

~~—— (2) — The administrator as he deems necessary, or on an original or renewal application of said licensees, shall cause an investigation to be made on the adequacy of any bond and shall make adjustments as he deems justified.~~

~~(3)~~ Such bonds shall be secured on forms furnished by the commission and approved by the Attorney General of Texas.

~~(g)~~ ~~(H)~~ *Importer's report.* In view of the provision of law requiring that the applicant be the holder of a distributor's or a manufacturer's license before he is eligible to obtain an importer's license, the tax liability fixed by law upon the importer shall be reported in such importer's report as a licensed distributor or manufacturer, and remittance of amounts due shall accompany the report.

~~(h)~~ ~~(I)~~ *Oaths.* Each report required by this section shall be signed and sworn to by the permittee or licensee or his duly authorized representative before a notary public, or other officer authorized to administer oaths.

~~(i)~~ ~~(J)~~ *Copies.* An exact copy of each report required by this section shall be retained in the files of the permittee or licensee and shall be kept by said permittee or licensee for a period of at least two years, subject to inspection of the commission or its authorized representative at all reasonable office hours.

~~(j)~~ ~~(K)~~ *Violations.* It shall be a violation of this section to fail or refuse to make any record or report herein required, or for any person to make or cause to be made any false or incorrect entry or entries on any record or report herein provided for. It shall further be in violation of this section to fail to make any entry or entries on any record or report provided by this section at the time or in the place or manner herein required.

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – May 22, 2012

**Holiday Inn Austin Midtown
6000 Middle Fiskville Road
Austin, Texas 78752**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on May 22, 2012.

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

Alan Steen
Administrator

Sworn and subscribed before me this the 1st day of June 2012.



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

Gloria Darden Reed
Notary in and for Travis County, Texas