



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

COMMISSION MEETING

July 26, 2011

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

9:30 a.m. – July 26, 2011

**5806 Mesa Drive
Austin, TX 78731**



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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Alan Steen
Administrator

Tuesday, July 26, 2011 – 9:30 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of May 24, 2011	José Cuevas, Jr.
3.	Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4.	82 nd Legislative Session Briefing	Carolyn Beck
5.	Approval of the FY 2012 Operating and Capital Budget	Shelby Eskew
6.	Field Operations Briefing	Joel Moreno
7.	Request for an Order by the Commission to Prohibit the Possession of an Open Container or the Public Consumption of Alcoholic Beverages in the Central Business District of the City of San Marcos Pursuant to Alcoholic Beverage Code §109.35	Emily Helm
8.	Approval to Adopt Repeal of Current Chapter 45, Subchapter A, §§45.1 – 45.7, 45.10, and 45.17 – 45.33, Standards of Identity for Distilled Spirits	Martin Wilson
9.	Approval to Adopt New Chapter 45, Subchapter A, §§45.1 – 45.19, Registration and Advertising of Distilled Spirits	Martin Wilson
10.	Approval to Adopt Repeal of Current Chapter 45, Subchapter B, §§45.41 – 45.45, 45.47 – 45.50, and 45.52 – 45.58, Standards of Identity for Wine	Martin Wilson
11.	Approval to Adopt New Chapter 45, Subchapter B, §§45.41 – 45.51, Registration and Advertising of Wine	Martin Wilson
12.	Approval to Adopt Amendment to §45.71, Definitions	Martin Wilson

13.	Approval to Adopt Amendment to §45.72, Scope	Martin Wilson
14.	Approval to Adopt Amendment to §45.85, Approval of Labels	Martin Wilson
15.	Approval to Adopt Amendment to §45.86, Exhibiting Certificates to Representatives of the Commission	Martin Wilson
16.	Approval to Adopt Amendment to §45.88, Mandatory Statement	Martin Wilson
17.	Approval to Adopt Amendment to §45.89, Legibility of Requirements	Martin Wilson
18.	Approval to Adopt Amendment to §45.90, Prohibited Statements	Martin Wilson
19.	Approval to Adopt Repeal of §45.102, Retailer Transmitting Order to Another Retailer	Martin Wilson
20.	Approval to Adopt Repeal of Chapter 32, §§32.1 – 32.43, Grant Administration	Martin Wilson
21.	Approval to Adopt Amendment to §33.1, Final Conviction or Deferred Adjudication	Martin Wilson
22.	Approval to Adopt Amendment to §33.23, Alcoholic Beverage License and Permit Surcharges	Martin Wilson
23.	Approval to Adopt Amendment to §33.25, Alcoholic Beverage License and Permit Fees and Surcharges	Martin Wilson
24.	Approval to Adopt New §35.32, Reporting a Breach of the Peace	Martin Wilson
25.	Approval to Adopt Amendment to §45.117, Gifts and Advertising Specialties	Martin Wilson
26.	Approval Pursuant to Government Code §2001.039 to Readopt, Without Changes, Chapter 45, Subchapter C, §§45.74 – 45.79, 45.81, 45.83, 45.84, 45.87, and 45.91	Martin Wilson
27.	Approval to Publish Proposed Amendment to §33.13, Process to Apply for License or Permit [HB 1953]	Martin Wilson

28.	Approval to Publish Proposed Amendment to §33.15, Use of Winery Festival Permit [SB 438]	Martin Wilson
29.	Approval to Publish Proposed Amendments to §45.121, Credit Restrictions and Delinquent List for Liquor [including HB 2012]	Martin Wilson
30.	Public Comment	José Cuevas, Jr.
31.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Discuss the Duties, Responsibilities, and Evaluation of the Administrator (Govt. Code §551.071, §551.074)	José Cuevas, Jr.
32.	Next Meeting Dates: Tuesday, August 23, 2011 Tuesday, October 25, 2011	José Cuevas, Jr.
33.	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

9:30 a.m. – July 26, 2011

**5806 Mesa Drive
Austin, TX 78731**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING MINUTES

July 26, 2011

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, July 26, 2011, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING

OFFICER:

José Cuevas, Jr.

COMMISSIONERS

PRESENT:

Melinda Fredricks

Steven M. Weinberg, MD, JD

STAFF PRESENT:

Alan Steen, Administrator

Carolyn Beck, Director of Communications and
Governmental Relations

Mindy Carroll, Assistant Director, Education and Prevention
Education

Sherry Cook, Assistant Administrator, Executive Division

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Joey Estrada, Grants Coordinator, Education and
Prevention

Shelby Eskew, Director, Business Services Division

Kathy Gersbach, Executive Assistant, Executive Division

Thomas Graham, Supervisor, Marketing Practices

Ying Yue Han, TABC Summer Intern, Executive Division

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, Legal Division

Sammy Henson, Training Specialist, Training Division

Dexter K. Jones, Assistant Chief of Field Operations

Charlie Kerr, Director, Tax Division/Education
and Prevention

Michael Lockhart, Lieutenant, Training Division

Roland Luna, Lieutenant, Office of Professional
Responsibility

Richard Maness, System Support Specialist, Information Resources Division
Earl Pearson, Chief of Staff, Executive Division
Andy Pena, Director, Office of Professional Responsibility
Gloria Darden Reed, Executive Assistant, Executive Division
Albert Rodriguez, Lieutenant, Office of Professional Responsibility
Santos Saldana, Supervisor, Ports of Entry
Loretta Smith, Assistant Director, Business Services Division
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS
PRESENT:**

Lou Bright, General Counsel, Texas Wine and Grape Growers Association (TWGGA)
Chelsea Buckholtz, State Liaison, Governor's Office
ML Calcote, Consultant, Republic National Distribution Company
Rick Donley, President, The Beer Alliance of Texas
Doug DuBois, Director of Government Affairs, Texas Petroleum Marketers and Convenience Store Association (TPCA)
Branson Fredricks
Brooklyn Fredricks
Steve Fredricks
Alan Gray, Executive Director, Licensed Beverage Distributors
Jay Howard, Consultant, Distilled Spirits Council of United States
Lance Lively, Executive Director, Texas Package Stores Association
Mignon McGarry, Consultant, Republic Beverage Distributing
Jack Martin, Attorney, Jack Martin and Associates
Matt Martin, Shareholder, Addison Law
David Repp, Analyst, Legislative Budget Board
Tyler Rudd, Lobbyist, California Wine Institute
Marcus Schwartz, Attorney, Gardere Wynne Sewell
Tom Spilman, Vice President, Wholesale Beer Distributors
Ralph Townes, Senior Vice President, Licensed Beverage Distributors/Glazers

Howard E. Williams, Chief of Police, San Marcos Police
Department
Randy Yarbrough, Consultant, Wholesale Beer Distributors
of Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 9:41 a.m. by Presiding Officer José Cuevas.

APPROVAL OF COMMISSION MEETING MINUTES OF MAY 24, 2011

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of May 24, 2011. Commissioner Steven Weinberg so moved to approve the minutes as written, and Commissioner Fredricks seconded. The motion carried.

Presiding Officer Cuevas acknowledged the attendance of members of Commissioner Melinda Fredricks' family and asked her to introduce them. Commissioner Fredricks introduced her husband, Steve Fredricks, Brooklyn, her daughter and son, Branson.

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

Presiding Officer Cuevas called upon Administrator Steen to give his Administrator's report. Administrator Steen's report focused on the issuance of original and renewal licenses and permits. He stated that the projected total in the actual number of original licenses and permits are falling short of the average number reported in the past five years. Administrator Steen cited that there could be a slight gain in numbers for the remaining two months; however the gain would not be as significant as that of fiscal year of 2006.

Administrator Steen reported that the temporary number of licenses and permits issued has shown a steady increase in growth. He attributes the increase to weekend festivals, community fairs, and events during the Super Bowl and the different areas of the state opting to voting wet.

Administrator Steen spoke of his concern for the decline in the number of renewal licenses and permits issued. He refreshed the Commissioners of an expected change that occurred when the license and permit renewals were phased to two year permit status. He stated that a significant gain in the renewals was expected in the second half of the biennium; however it has fallen below the five year average in the fiscal year of 2011. Administrator Steen stated that the number of renewals has not met the goals that were established in the fiscal year of 2006, however he is

confident that the projected revenues and surcharge targets will be met by the end of the fiscal year.

Administrator Steen concluded his report with an analysis of the positive impact of the Seller/Server Training program. He stated that the Agency has experienced an overwhelming increase of seller training trainees who have completed and received certifications. Administrator Steen stated that in the fiscal year 2010, almost two-thirds of persons completing TABC approved seller training courses took their courses on-line.

Presiding Officer Cuevas asked if there is data available of the drought stricken business areas in the state that have patrons that go to the lakes or rivers for recreational water activities, but have had a slowdown or shutdown of their business, thus causing the decline in the renewal of licenses and permits. Presiding Officer Cuevas stated that the business that caters to patrons to any type of recreational water activities would certainly have an economic impact for that business. Administrator Steen answered in the affirmative. He stated that local option elections normally result in moving around and changing of county lines.

Commissioner Fredricks asked what Administrator Steen meant in his statement of "moving around." Administrator Steen stated "moving around" means when local option elections are held and the county line that once was "dry" is changed to "wet" after the election.

Presiding Officer Cuevas commented how the community and the industry have benefitted in the use of the seller server training on-line program. Administrator Steen concurred stating that the Agency's vision in the computerized upgrade from the manual outdated system is a factor that has contributed to the growing market for the on-line programs.

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

82nd LEGISLATIVE SESSION BRIEFING

Presiding Officer Cuevas called upon Director Carolyn Beck to present the agenda item entitled, 82nd Legislative Session Briefing.

Director Beck's report began with a briefing of the alcoholic related bills signed by Governor Perry and have become new laws:

- SB351 – Legalizes wine kegs
- SB890 – Allows wholesalers to clean and maintain coil connections for wine kegs
- SB24 – Penalties for human traffickers and protections for victims
- HB11 – Reports to Comptroller

- HB1936 – Ports of Entry: equalization, \$3 administrative fee, importing personal collections of beer and spirits
- HB1952 – TABC can cancel, suspend or fine seller training schools, trainers, trainees
- HB1953 – Post sign 60 days before permit issued, not 60 days before application is filed
- HB1956 – 20 days for district court judge to hear and decide on appeal
- HB1959 – Appeal wet/dry certification
- HB2012 – Wineries abide by credit law when buying from wholesaler
- HB2014 – Human trafficking changes in AB Code
- HB2035 – Allows wholesaler and distributor to temporarily relocate during emergencies
- HB2582 – Repeals 25% excise tax exemption for Texas microbreweries
- HB2707 – Permit refusal

Commissioner Weinberg asked if HB2707 allows the Agency the authority to refuse a license or permit to a business owner. Director Beck answered affirmatively.

- HB3000 – First degree felony for continuous human trafficking
- HB3329 – Temporary permits for nonprofits in dry area
- SB799 – Clarifies first sales/excise taxes paid by wineries
- SB1331/HB3474 – 911 Lifeline Legislation

Director Beck reported SB1311/HB3474 expanded TABC's amnesty policy and provides limited immunity to a young person who calls 911 or to someone who remains with an alcohol poisoning victim and cooperates with law enforcement officials and emergency personnel, a citation for possessing or consuming alcohol would not be issued. The legislation would carry a stiffer penalty for the adult or person who issued alcohol to a teen.

Commissioner Weinberg inquired how the Agency would get the information out to young people. Director Beck stated that there is a new campaign supported by Carson Starkey's parents called, "Aware, Awake, and Alive." The Starkey family will jointly work with members of the industry and TABC communicating through face book establish a twitter account and disseminate educational materials to communities, school districts, and higher education institutions. TABC will lend its expertise in the education and law enforcement areas to offer assistance to employees in the various schools districts and working with students on the university campuses to get the information out.

Administrator Steen informed the Commissioners that the Agency is in the process of drafting a letter to College and University Presidents throughout the State asking if their campus had experienced a death of a student by alcohol poisoning. He stated the letter will be addressed to the campus police departments with a request to allow TABC's Law Enforcement Division access to train their personnel in responding to an alcoholic related incident. Presiding Officer Cuevas inquired whether the Agency

would utilize Spring Break as a time to offer an educational program. Director Beck responded affirmatively. Director Beck stated that Ms. Ying Yue Han, TABC Summer Intern, has worked exclusively on the “Aware, Awake, Alive” campaign and other alcohol related incidents involving teens and young people.

Presiding Officer Cuevas inquired on the outcome of an alcohol related death of a Waco teenage last year. Director Beck stated the outcome resulted in an administrative case against the bar for serving to minors. Commissioner Weinberg commented that the public needs to be informed of the dangers of alcohol poisoning. Director Beck assured him that the Agency will perform its part in getting the word out.

Commissioner Fredricks commented that twittering can be an effective tool of communication to young people and to the general public. Director Beck concurred stating she has received positive comments from individuals twittering.

Director Beck solicited assistance from Commissioner Fredricks from her educational contacts around the state. Commissioner Fredricks answered affirmatively.

Director Beck stated the legislature had passed a number of bills related to human trafficking. She attended a human trafficking conference in Houston and was impressed in hearing the positive acknowledgements addressed toward TABC’s involvement in human trafficking. Commissioner Fredricks inquired on the regulation of HB1930. Who will regulate the sexual oriented businesses (SOBs) and human trafficking bill? Director Beck responded that the city and county can regulate the bill. TABC made recommendations to the task force about changing the Alcoholic Beverage Code allowing them to cancel or refuse to issue licenses or permits to businesses that have involvement with human trafficking. Director Beck stated that all the bills passed and were adopted.

Legislative Session Ends – What’s Next

- **Begin Discussing 83rd Session on August 3**
- **Administrator’s Conference August 22-23**
- **Update Website**
- **Update Alcoholic Beverage Code**
- **Update Peace Officer’s Guide**
- **Update Licensing Publications**
- **Propose and Adopt Rule Changes**
- **Develop Policies and Procedures**
- **Train Employees**

Commissioner Weinberg inquired whether there had been any further discussion on having a Strategic Planning session in Midland. Director Beck responded that with the legislative session ending, strategic plans will be discussed during the upcoming months.

Presiding Officer Cuevas inquired about the Commissioners' having an opportunity to attend a conference hosted by the industry. Administrator Steen responded that a list is being compiled.

Presiding Officer Cuevas asked Director Beck to introduce Ms. Ying Yue Han, TABC's Summer Intern. Ms. Han addressing the Commission gave a brief talk about her educational background and her international travels. He asked Ms. Han what was the most exciting task or project that she worked on as a summer intern. Ms. Han responded the most exciting project was working with the "Aware, Awake, Alive" campaign.

Commissioner Weinberg asked Ms. Han if she thinks the TABC "911 legislation" is communicating to the public in the right way. Ms. Han responded affirmatively. She suggested communicating to parents, advertising to college kids through magazine articles and to provide information to young people with before and after photographs on the effects of alcohol poisoning.

Presiding Officer Cuevas thanked Ms. Han and wished her well in her future educational and travel endeavors.

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

APPROVAL OF THE FY 2012 OPERATING AND CAPITAL BUDGET

Presiding Officer Cuevas asked for Shelby Eskew, Director of Business Services to present the next agenda item for the Approval of the Fiscal Year 2012 Operating and Capital Budget.

Director Eskew began her report, piggybacking off of Director Beck's comments on the starting of the 83rd Legislative Session in January 2012, stating that she, too, will be presenting a new Legislative Appropriations Request (LAR) in the next 12 months.

Director Eskew stated that her report will focus on a budget based on the anticipated legislature appropriation budget that has been adjusted for some contingent appropriations and appropriations reductions that are outlined in Article IX. She stated that the Agency received a contingency appropriation for HB1936, Ports of Entry bill and the general revenue appropriations for over \$12,000.

Director Eskew spoke on an appropriation reduction based on the Data Center Consolidation project. She explained that all of the agencies involved in the project had reductions in their appropriations levels due a reduction to the cost that is outlined in the Data Center Consolidation contract. Director Eskew stated that in the Agency's bill pattern Rider 12, a contingency appropriation was made toward the annual transfer of \$250,000 to the Texas Department of Agriculture's budget. The

budget has been adjusted to account for the adjustment that was made to the general revenue.

Director Eskew highlighted items for the fiscal year 2012 Operating and Capital budget as reported in her PowerPoint presentation. (Attachment 3)

During Director Eskew's explanation of grants in the budget by method finance category, Presiding Officer Cuevas inquired about the grant funding, has it increased or decreased. Director Eskew stated that the EUDL grant has slightly decreased; however, the Spring Break funding has slightly increased.

Commissioner Weinberg asked about the budget totals two years ago as compared with the totals in her presentation. Director Eskew stated that the budget presented two years was slightly higher because of the funding received for the projects in the IT areas.

Commissioner Fredricks inquired about the total cars in the Agency's fleet. Director Eskew responded 260. She stated that the 18 new vehicles can be purchased under the new budget. Presiding Officer Cuevas asked what model of vehicle are purchased since the Crown Victoria is no longer available. Director Eskew responded the Chevrolet Impala which is a smaller vehicle and should get better gas mileage. Administrator Steen commented that the fleet for FY 2012 will be new and current with the required work accessories. Commissioner Weinberg asked if the Agency receives a trade-in for the vehicles that are returned. Director Eskew stated that the Agency receives about 25 percent of the value of the car.

Presiding Officer Cuevas commended Administrator Steen, Director Eskew and staff in their successful submission of a budget during difficult economic times. He stated that he, Commissioner Weinberg and Commissioner Fredricks appreciate the hard work done on the budget.

Director Eskew gave kudos to her assistant director, Loretta Smith in the preparation of the budget during the legislative session. Presiding Officer Cuevas asked Assistant Director Smith to come forward to address the Commissioners. Assistant Director Smith gave the Commissioners a brief statement of her employment in the Business Services Division and her current position responsibilities. Presiding Officer Cuevas asked Assistant Director Smith if her division has the necessary technology to perform the job responsibilities. Assistant Director Smith answered affirmatively. Commissioner Weinberg congratulated Director Eskew and her staff for a job well done.

Presiding Officer called for a motion on the agenda item. Commissioner Weinberg moved for the approval of the Texas Alcoholic Beverage Commission's FY 2012 Operating and Capital Budget as presented and further authorizes the Administrator, or his designee, to make transfers between appropriation line items and capital budget items in accordance with the

General Appropriations Act as are appropriate and necessary to implement the budget. Commissioner Fredricks seconded the motion and the motion passes.

FIELD OPERATIONS BRIEFING

Presiding Officer Cuevas called upon Joel Moreno, Chief of Field Operations, for the agenda item #6, Field Operations Update.

Chief Moreno began the report focusing on the four cornerstones theory of service, courtesy, integrity and accountability. He stated that using the basic principles behind the cornerstones' theory, a positive impact is occurring in the communities, towns, and cities statewide.

Chief Moreno stated that a statewide random selected survey of alcoholic beverage licensees and permittees was conducted. He read a few comments received from the surveys:

- *"You guys are doing a great job, a lot better than before."*
- *"Agent was very courteous and helpful. The image of TABC is changing for the better. The days of intimidation appear to have ended."*
- *"Agents are great compared to past agents who lied and treated everyone badly."*
- *"I honestly believe that in the past 2 years there has been a change for the better with the department (TABC). Mistakes are made when the high ranking agents are or let themselves be influenced by the interest of those who do not act in good faith or have their own selfish agendas."*

Presiding Officer Cuevas commented that the survey validates the hard work that Chief Moreno and the Law Enforcement Division are trying to accomplish in an effort to change the public's negative image of TABC. He stated Chief Moreno and his Division are to be commended.

Chief Moreno noted that one of the guiding principles is partnership with the industry and other law enforcement agencies in making the communities better. He stated how educational programs are developed and presented to licensed locations in the North Texas Region. He noted that through these programs some of the permittees in that area are promoting voluntary compliance.

Chief Moreno spoke on a communication strategy that is on-going in the Amarillo office with the permittees and local departments to check on their progress and to have a dialogue for workable solutions if issues should arise. He stated that in the Amarillo office after 6 months, a follow-up analysis is completed with investigations or education performed, if needed.

Chief Moreno stated the Enforcement Division has conducted investigations in other regions of the state. He cited a joint effort between TABC and the Federal Bureau of

Investigation (FBI) Task Force (Human Trafficking Rescue Alliance) in the Houston area to collect evidence of human trafficking, prostitution, sexual acts on the premises and the sale of narcotics which resulted in the cancellation of license/permit for cause.

In the Border Region, Chief Moreno stated that partnering with other law enforcement agencies are making it safer for people who live in Texas. He stated that human trafficking is becoming a serious problem in the border cities. Another joint effort between TABC in McAllen and the United States Immigration and Customs Enforcement (ICE) targeted illegal criminal activity of human trafficking and prostitution. TABC cancelled the permits for cause.

Presiding Officer Cuevas stated that with all of the human trafficking bills passed in the last legislative session; it has become a serious problem. He stated that TABC's involvement has proven to be beneficial. Commissioner Weinberg stated he is impressed with how quickly TABC can cancel permits for cause and stated more of that type of action may be needed.

Chief Joel Moreno's report is supported by a PowerPoint presentation.
(Attachment 4)

REQUEST FOR AN ORDER BY THE COMMISSION TO PROHIBIT THE POSSESSION OF AN OPEN CONTAINER OR THE PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE CENTRAL BUSINESS DISTRICT OF THE CITY OF SAN MARCOS PURSUANT TO ALCOHOLIC BEVERAGE CODE §109.35

Presiding Officer Cuevas called upon General Counsel Emily Helm for the next agenda item #7. General Counsel Emily Helm introduced Chief Howard Williams, Chief of Police in San Marcos, Texas. Presiding Officer Cuevas invited Chief Williams to the podium. Commissioner Weinberg welcomed Chief Williams to the meeting.

General Counsel Helm addressed the Commission on behalf of the City of San Marcos with a letter signed by Mayor Daniel Guerrero and the San Marcos City Council petitioning under Section 109.35 of the Texas Alcoholic Beverage Code for an Order prohibiting the possession of an open container or the public consumption of alcoholic beverages in the central business district of the City of San Marcos by means of this letter and the attached Resolution 2011-44R that was adopted on April 5, 2011.

General Counsel Helm stated the Commissioners have been given a copy of a map of the city's central business district; a letter dated June 17, 2011 for an Order and set out the risks to the health and safety of its citizens and provided a diagram showing the Central Business District (CBD) of San Marcos. She concluded that if the diagram properly identifies the Central Business District (CBD), the Commission shall approve and issue an Order without further consideration.

Presiding Officer Cuevas inquired of Chief Williams in the significance of a white dot on the map. Chief Williams responded that the dot is the location of the County Courthouse and it was intentionally whited out on the map. He stated that the city cannot prohibit alcoholic beverages inside the building because it is a county building. However, the city can prohibit drinking on the public grounds.

Presiding Officer Cuevas quizzed Chief Williams if the change of time from 12 midnight to 2:00 a.m., has it made a difference. Chief Williams stated the time change is one of the reasons for the petition for the Order. He stated the dynamics in the downtown public square has changed with excessive drinking, littering, no public restrooms are available and disturbing the peace. Chief Williams acknowledged a TABC agent for the suggestion to him to draft the petition for an Order before the Commission.

Commissioner Weinberg asked if college students are causing the problem. Chief Williams stated that a study was conducted on the city's DWIs and other problems that dealt with alcohol issues and the study revealed only about 25% of the problems involved college students.

Presiding Officer Cuevas asked has the City of San Marcos been "wet" or did it go "wet" recently. Chief Williams responded as far as he can remember it has been "wet."

Presiding Officer Cuevas stated that the Commission appreciates Chief Williams and the San Marcos Law Enforcement Agency. He stated that since TABC has limited manpower to enforce the liquor laws, it is imperative that the local enforcement agencies become educated and familiar with the Texas Alcoholic Beverage Code to govern their respective city and hopes that Chief Williams respects the Agency's new strategy.

Chief Williams commented that the TABC agents in the City of San Marcos and Hays County have been remarkable in helping them formulate their taskforce and to help find solutions to the issues that involve alcohol.

General Counsel Emily Helm's report is supported by a PowerPoint presentation and City of San Marcos documents. (Attachment 5)

Commissioner Weinberg moved that the Commission approve the petition by the City of San Marcos for an Order banning open containers or the Public Consumption of Alcoholic Beverages in the San Marcos Central Business District, under Section 109.35 of the Texas Alcoholic Beverage Code. Commissioner Fredricks seconded and the motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items #8 - #11.

Assistant General Counsel Wilson stated that Chapter 45, Subchapter A sets forth the procedures for registering distilled spirits by obtaining label and product approval. He explained that the subchapter also addresses restrictions on advertising distilled spirits. Assistant General Counsel Wilson stated that no comments about the proposed repeal or the proposed new subchapter were received.

APPROVAL TO ADOPT REPEAL OF CURRENT CHAPTER 45, SUBCHAPTER A, §§45.1 – 45.7, 45.10, AND 45.17 – 45.33, STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

APPROVAL TO ADOPT NEW CHAPTER 45, SUBCHAPTER A, §§45.1, – 45.19, REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

APPROVAL TO ADOPT REPEAL OF CURRENT CHAPTER 45, SUBCHAPTER B, §§45.41 – 45.45, 45.47 – 45.50, AND 45.52 – 45.58, STANDARDS OF IDENTITY FOR WINE

APPROVAL TO ADOPT NEW CHAPTER 45, SUBCHAPTER B, §§45.41 – 45.51, REGISTRATION AND ADVERTISING OF WINE

Commissioner Weinberg moved to adopt the repeals and the new subchapters identified in items #8 – #11 on today’s agenda. Commissioner Fredricks seconded and the motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items #12 - #18.

Assistant General Counsel Wilson stated that no comments about the adoption of the amendments were received.

APPROVAL TO ADOPT AMENDMENT TO §45.71, DEFINITIONS

APPROVAL TO ADOPT AMENDMENT TO §45.72, SCOPE

APPROVAL TO ADOPT AMENDMENT TO §45.85, APPROVAL OF LABELS

APPROVAL TO ADOPT AMENDMENT TO §45.86, EXHIBITING CERTIFICATES TO REPRESENTATIVES OF THE COMMISSION

APPROVAL TO ADOPT AMENDMENT TO §45.88, MANDATORY STATEMENT

APPROVAL TO ADOPT AMENDMENT TO §45.89, LEGIBILITY OF REQUIREMENTS

APPROVAL TO ADOPT AMENDMENT TO §45.90, PROHIBITED STATEMENTS

Commissioner Weinberg moved to adopt the amendments to the sections identified in items #12 - #18 on today's agenda. Commissioner Fredricks seconded and the motion passes.

APPROVAL TO ADOPT REPEAL OF §45.102, RETAILER TRANSMITTING ORDER TO ANOTHER RETAILER

Assistant General Counsel Wilson stated that the original meaning and intent of the rule has been obscured and the reasons which led to its original adoption no longer exist. He stated that no comments about the adoption of the repeal were received.

Commissioner Weinberg moved to adopt the repeal of §45.102, Retailer Transmitting Order to Another Retailer. Commissioner Fredricks seconded and the motion passes.

APPROVAL TO ADOPT REPEAL OF CHAPTER 32, §§32.1 – 32.43, GRANT ADMINISTRATION

Assistant General Counsel Wilson stated that Chapter 32 does not accurately reflect the current practice and the reasons which led to its original adoption no longer exist. He stated no comments about the adoption of the repeal were received.

Commissioner Weinberg move to adopt the repeal of Chapter 32, Grant Administration. Commissioner Fredricks seconded and the motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items # 21 – #23 & #25.

APPROVAL TO ADOPT AMENDMENT TO §33.1, FINAL CONVICTION OR DEFERRED ADJUDICATION

Assistant General Counsel Wilson stated that the amendment clarifies the factors that will be considered in determining if an applicant for a permit or license is qualified and suitable under the Alcoholic Beverage Code §109.352(b)(1). He stated no comments about the adoption of the amendment were received.

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

Assistant General Counsel Wilson stated that the Alcoholic Beverage Code §5.50 authorizes the assess of surcharge on all applicants for original or renewal certificates, permits or licenses, in addition to the application fees prescribed in the Code. He stated that the amendment to §33.23 changes the assessment from an annual to a biennial basis and also implements Rider 12 of Article V of HB1 of the 82nd Legislative Regular Session to authorize the commission to increase surcharges by an amount sufficient to raise \$7,000,000 during the 2012-2013 biennium. Assistant General Counsel Wilson stated no comments about the adoption of the amendment were received.

APPROVAL TO ADOPT AMENDMENT TO §33.25, ALCOHOLIC BEVERAGE LICENSE AND PERMIT FEES AND SURCHARGES

Assistant General Counsel Wilson stated that the Alcoholic Beverage Code §§11.09 and 61.03 authorizes the transition of the term for which permits and licenses are issued from one year to two years. He stated that the amendment §33.25 deletes those portions of the rule that implements the transition which has been completed and also reorganizes and makes editorial changes to the remaining portions of the rule. Assistant General Counsel Wilson stated no comments about the adoption of the amendment were received.

APPROVAL TO ADOPT AMENDMENT TO §45.117, GIFTS AND ADVERTISING SPECIALTIES

Assistant General Counsel Wilson stated that the Alcoholic Beverage Code §102.07 prohibits certain upper- and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. He explained that Code §108.042 was added by SB890 of the 82nd Legislative Regular Session to adopt rules relaxing the restrictions of §102.07 in order to allow certain permittees to clean and maintain coil connections used in dispensing wine. If adopted, this amendment to §45.117 implements the new Code §108.042. Assistant General Counsel Wilson stated no comments about the adoption of the amendment were received.

Presiding Officer Cuevas inquired about what is a wine keg. Director Beck responded that a wine keg is an “environmentally friendly”, stainless steel keg and a cost reducing way to provide high quality wine to customers.

Commissioner Fredricks asked if there is layman explanation on cleaning the coils. Assistant General Counsel Wilson explained that the concept used in cleaning the coils in beer kegs is the same technique used for cleaning the coils for the wine kegs.

Commissioner Weinberg inquired if there were any comments received from representatives of the industries on the increase of the surcharges. Assistant General Counsel Wilson answered affirmatively. Commissioner Weinberg asked what was the average percent of the increase. Administrator Steen responded about 21% or 22%.

Commissioner Weinberg moved to adopt the amendments to the sections identified in items #21 – #23 & #25 on today’s agenda. Commissioner Fredricks seconded and the motion passes.

APPROVAL TO ADOPT NEW §35.32, REPORTING A BREACH OF THE PEACE

Assistant General Counsel Wilson stated the Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31) require permittees and licensees to promptly report to the Agency a breach of the peace occurring on the licensed premises. He stated that the Agency seeks to minimize doubts that good actors may have about when reports are required, thereby reducing their exposure to risk of non-compliance and the Agency seeks to encourage more reporting from bad actors that may currently hide behind the uncertainty in the Code provisions. He stated that after the last Commission meeting, a scheduled meeting with the industry was held with industry representatives to discuss their concerns with the proposal. Assistant General Counsel stated that a change in the number of days to report an incident from three business days to five calendar days and includes involving bodily injury in the 24-hour reporting category. He stated that this compromise strikes the appropriate balance between accommodating business logistics and protecting public safety. He stated that a business can choose how it structures its affairs to meet its statutory obligation to report breaches of the peace that occur on licensed premises.

Assistant General Counsel Wilson sought to clarify concerns expressed by the representatives that the proposed adoption of the rule might impose an obligation to report instances where the permittee or licensee was unaware and could not reasonably be expected to know that the incident occurred. He acknowledged such might occur and modified subsections (f) and (g) to clarify that certain incidents described in subsection (f) are reportable only in circumstances described in subsection (g) where the permittee or licensee has reason to know that they occurred. He stated that a new addition, subsection (h), will afford a permittee or licensee the opportunity to avoid liability by demonstrating that the permittee or licensee neither knew nor reasonably should have known that an otherwise reportable incident occurred on the licensed premises.

Assistant General Counsel Wilson stated the Agency wants to encourage more reporting than allowing the licensee or permittee to use their own judgment when a report needs to be filed.

Presiding Officer Cuevas asked Assistant General Counsel Wilson when an incident is reported on-line, is there a category for the permittee to check that this is “not” an admission to guilt. Assistant General Counsel Wilson answered that at the present

time there is not a form available on-line, however eventually there will be a form available on the TABC website. Chief Moreno added that with no admission of guilt, the report needs to be completed because of the statute. Presiding Officer Cuevas concurred with Chief Moreno's comment.

Commissioner Fredricks questioned that when a report is made in person, faxed, emailed, or through TABC's website and the incident occurs on the weekend and must be reported in 24-hours, how it will be logged or received in offices that are normally closed. Assistant General Counsel stated that the logistics is being worked through with the Information Resources Division to develop a program.

Commissioner Weinberg questioned after the initial posting and changes were done, is it necessary to republish. Assistant General Counsel Wilson stated that there is not a need to republish.

Commissioner Weinberg moved to adopt new §35.32, Reporting a Breach of the Peace. Commissioner Fredricks seconded and the motion passes.

APPROVAL PURSUANT TO GOVERNMENT CODE §2001.039 TO READOPT, WITHOUT CHANGES, CHAPTER 45, SUBCHAPTER C. §45.74 – 45.79, 45.81, 45.83, 45.84, 45.87, AND 45.91

Assistant General Wilson stated that during the review process, there were questions whether the adoption of these sections should continue to exist. After the review, the Agency finds that the reasons for adopting these sections continue to exist and requests the readoption of the sections without changes, pursuant to the requirements of the Government Code. He stated no comments were received regarding the readoption of these sections.

Commissioner Weinberg moved to re-adopt without changes the sections identified in item #26 on today's agenda. Commissioner Fredricks seconded and the motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO §33.13, PROCESS TO APPLY FOR LICENSE OR PERMIT [HB 1953]

Assistant General Counsel Wilson stated that the Alcoholic Beverage Code §11.391(a) and 60.38(a) was amended with HB1953 during the 82nd Legislative Regular Session. He explained that the sections requires an applicant for an on-premise permit or license to prominently post an outdoor sign giving notice of the application. However, before the amendment a notice was required to be posted at least 60 days before the permit or license is issued.

Commissioner Weinberg asked Director Amy Harrison how the Licensing Division will be affected with the proposed rule change. Director Harrison responded that the rule

change will have very little effect. She stated that the Licensing Division will change their forms and procedures. She thinks the application process will move faster. Administrator Steen asked Director Harrison what percent of the total applications processed require a 60-day sign. Director Harrison responded about 12%.

Commissioner Weinberg moved to publish the proposed amendment, to §33.13, Process to Apply for License or Permit in the *Texas Register* for a 30-day comment period. Commissioner Fredricks seconded the motion and the motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO §33.15, USE OF WINERY FESTIVAL PERMIT [SB438]

Assistant General Counsel Wilson stated the proposed amendment was amended in the 82nd Legislative Regular Session to change the constraints on how often the holder of a winery festival permit may offer wine for sale under the permit. He stated that before the amendment the permit could not be used for more than three consecutive days at the same location. However, the amendment changed the consecutive day limit from three to four to conform to SB438.

Commissioner Weinberg moved to publish the proposed amendment to §33.15, Use of Winery Festival Permit in the *Texas Register* for a 30-day comment period. Commissioner Fredricks seconded and the motion carried.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR [INCLUDING HB2012]

Presiding Officer Cuevas requested for this item to be placed on the agenda for consideration at the August 23 Commission meeting. The Commissioners committed to review the proposed amendment in 1 year from August 2010.

PUBLIC COMMENT

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

EXECUTIVE SESSION

The regular open session of the Texas Alcoholic Beverage Commission was recessed at 11:30 a.m., July 26, 2011 and an executive session was held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §551.071, §551.074.

The Texas Alcoholic Beverage Commission concluded its executive session and resumed in open regular session on July 26, 2011 at 1:01 p.m. No final action, decision or vote was made in executive session.

NEXT MEETING

Presiding Officer Cuevas announced the next meeting dates are scheduled for Tuesday, August 23, 2011 and Tuesday, October 25, 2011. There will not be a meeting in September.

ADJOURNMENT

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion was made and seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned at 1:02 p.m.

Attachment 1

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



Administrator's Report

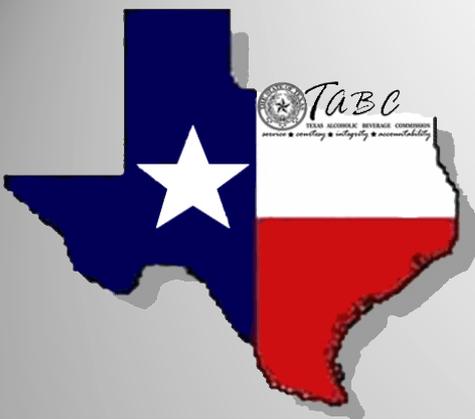
TABC Commission Meeting

July 26, 2011



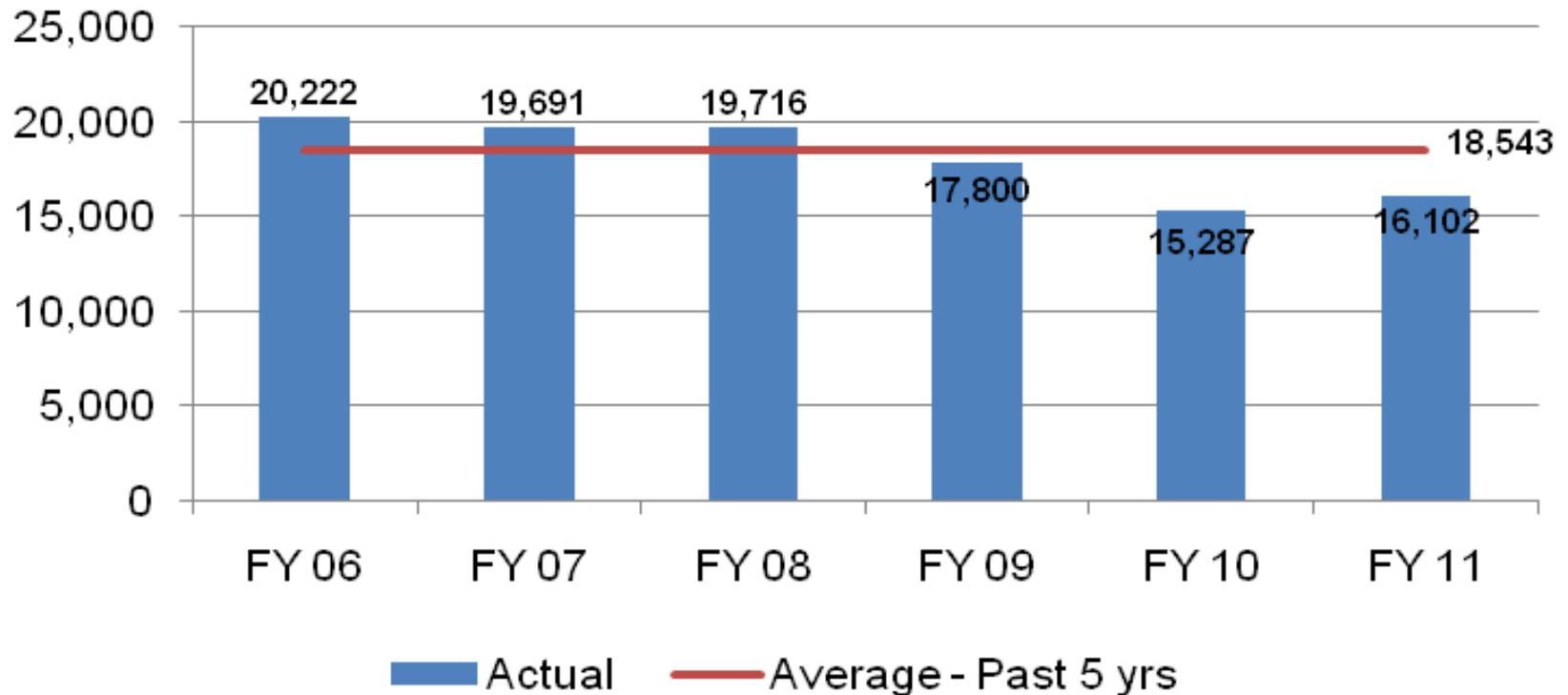
**Wish you
were
here.**

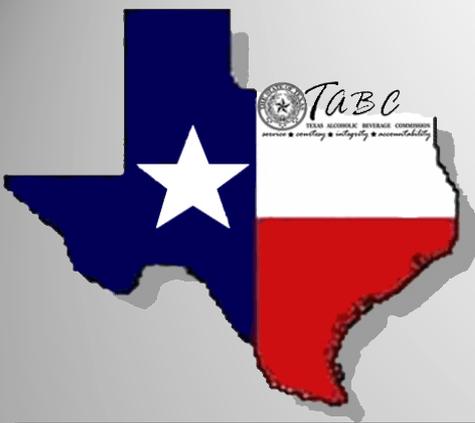




Licenses and Permits

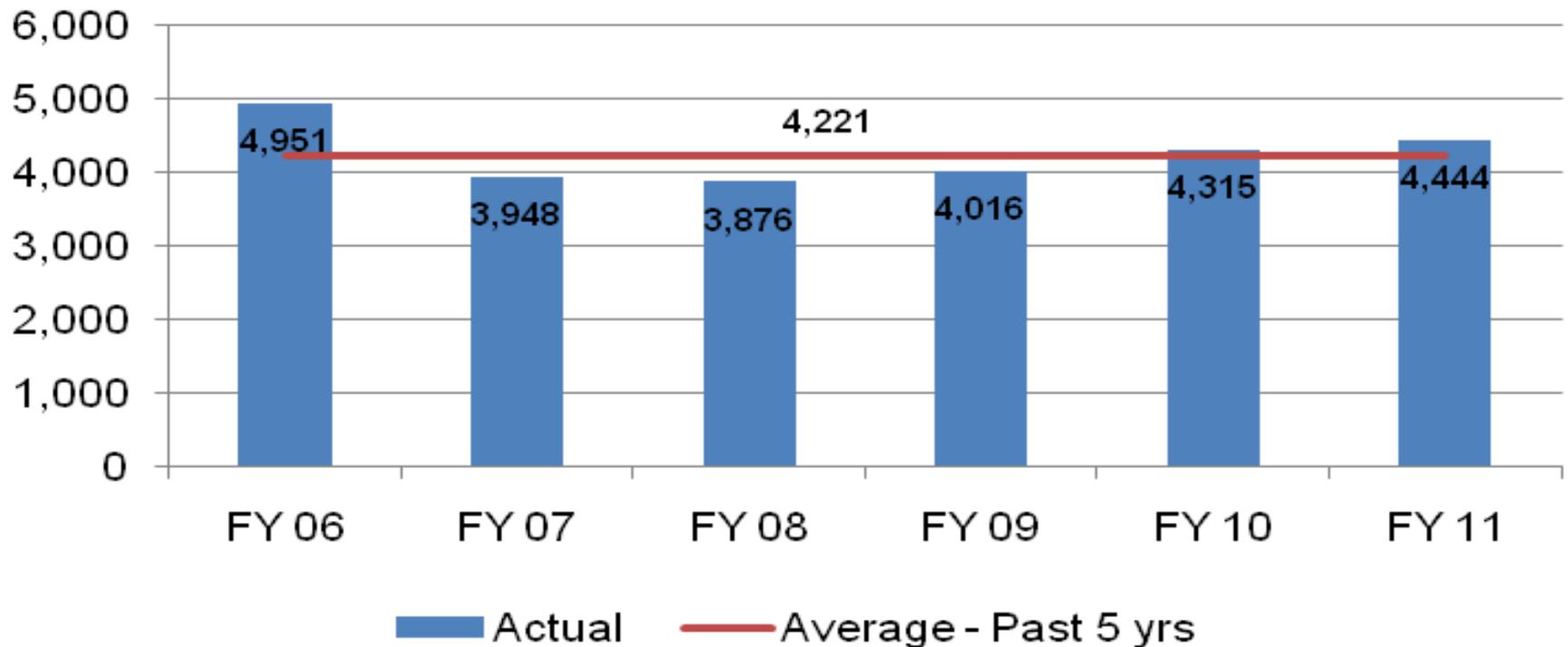
Originals Issued September - June

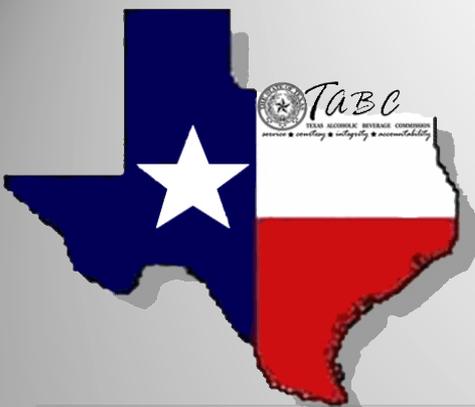




Licenses and Permits

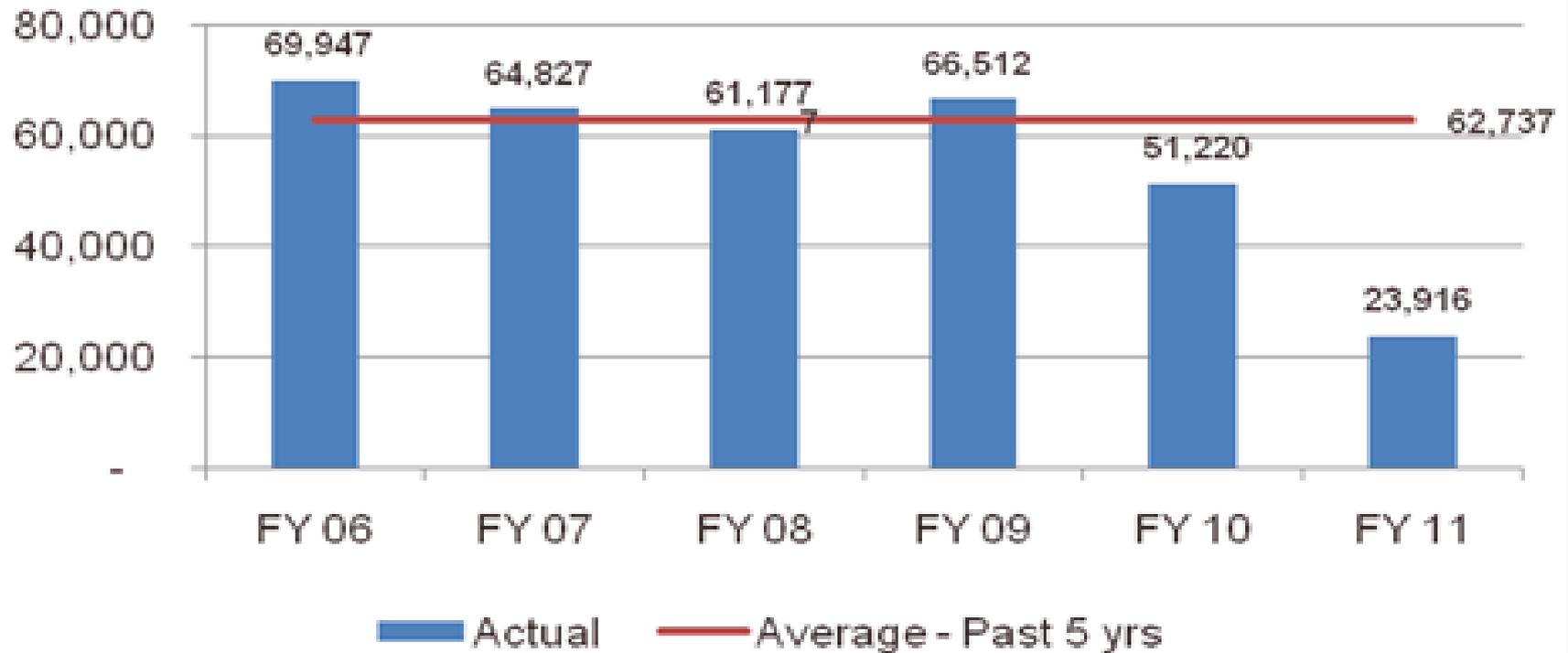
Temporaries Issued September - June

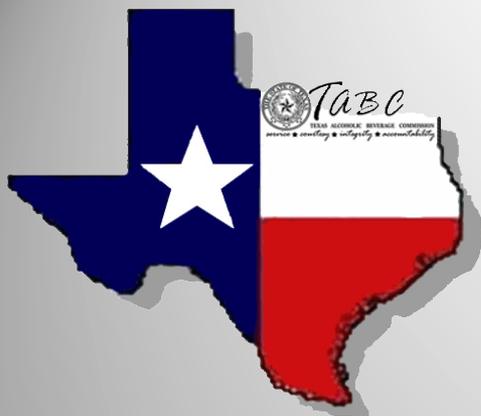




Renewals

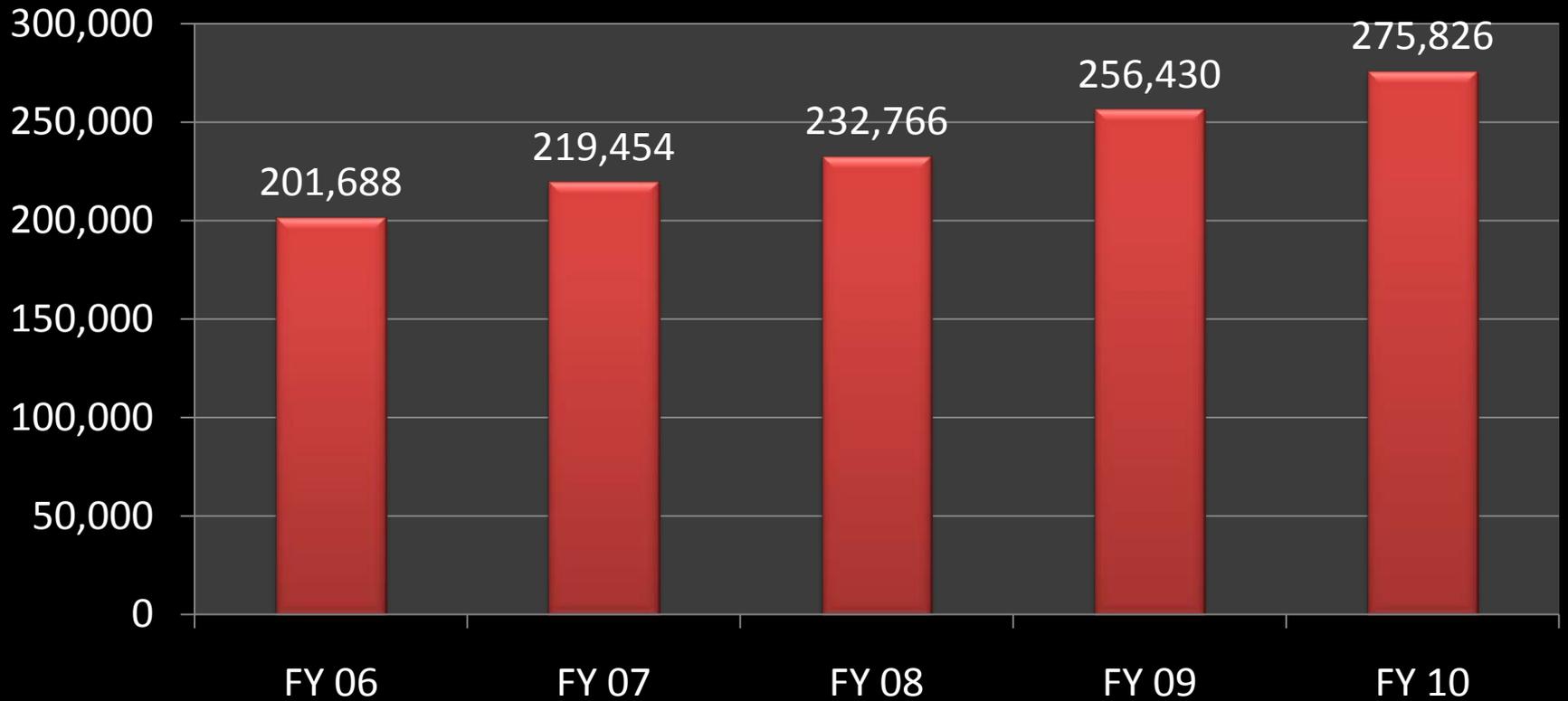
Renewals Issued September - June





Seller/Server Training

Seller Training Trainees Receiving Certification

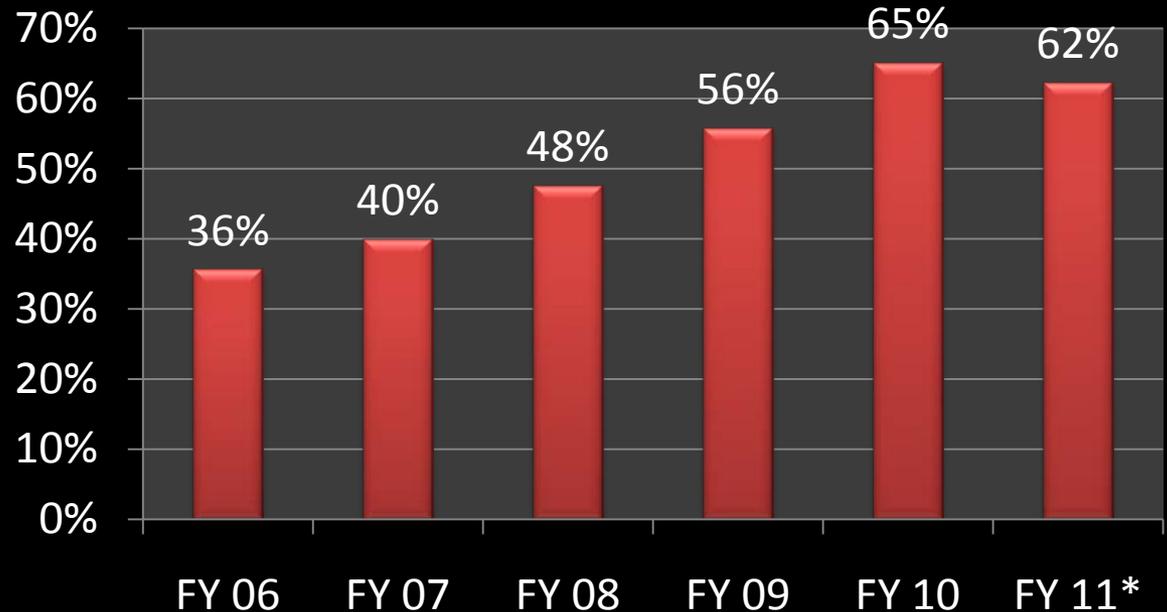




Seller/Server Training

In FY 2010, almost two-thirds of persons completing TABC approved seller training courses took their courses on-line.

Combined Market Share On-Line Programs



***FY 11 - Training Conducted thru June 30th.
Reporting Incomplete.**



Texas Alcoholic Beverage Commission

QUESTIONS

Attachment 2

82nd Legislative Session Briefing

It's The Law

6,326 bills filed

1,532 bills passed

21 bills amending
AB Code passed

82ND LEGISLATIVE SESSION UPDATE

July 26, 2011

Commission Meeting



NEW LAWS

- HB11 by Cook

- reports to Comptroller



- HB1469 by Hernandez-Luna

- exempting veteran/fraternal from conduct surety bonds

- HB1936 by Gutierrez/Lucio

- Ports of Entry: equalization, \$3 admin fee, importing personal collections of beer/spirits

- HB1952 by Kuempel

- TABC can cancel, suspend or fine seller training schools, trainers, trainees



NEW LAWS

- HB1953 by Kuempel

- post sign 60 days before permit issued, not 60 days before application is filed

- HB1956 by Thompson

- 20 days for district court judge to hear and decide on appeal

- HB1959 by Thompson

- appeal wet/dry certification

- HB2012 by Thompson

- wineries abide by credit law when buying from wholesaler to sell to consumer



NEW LAWS

- HB2035 by Hamilton
 - Allows wholesaler/distributor to temporarily relocate during emergency
- HB2582 by Murphy
 - Repeals 25% excise tax exemption for Texas microbreweries
- HB2707 by Burnam
 - Permit refusal
- HB3329 by Keffer
 - Temp permits for non profits in dry area



NEW LAWS

- ◉ SB351 by Williams
 - Legalizes wine kegs. 4/12/11
- ◉ SB438 by Nelson
 - Amends winery festival permits. 6/17/11
- ◉ SB799 by Nelson
 - Clarifies First Sales / excise taxes paid by wineries
- ◉ SB890 by Corona/Hamilton
 - Allows wholesalers to clean and maintain coil connections for wine kegs (like beer kegs).
- ◉ SB1331/HB3474 by Watson/Gallego
 - 911 Lifeline Legislation
- ◉ SB1732 by Van de Putte
 - Post exchanges on state military bases. 6/17/11



NEW HUMAN TRAFFICKING LAWS

- ◉ HB289 by Jim Jackson/Nelson - amends common nuisance statute to include human trafficking, etc.
- ◉ HB1930 by Zedler/Van de Putte - assigns HT Task Force with studying association of SOBs and human trafficking
- ◉ HB2014 by Thompson/Van de Putte - Human trafficking changes in AB Code
- ◉ HB2015 by Thompson/J. Jackson/Van de Putte - Designates prostitution by youth as CINS instead of delinquent conduct so more services are available.
- ◉ HB2329 by Zedler - protects trafficking victims
- ◉ HB3000 by Thompson/Van de Putte - 1st degree felony for continuous human trafficking
- ◉ HCR68 by Hunter/Van de Putte - creates interim committee on human trafficking
- ◉ SB24 by Van de Putte/Thompson - Penalties for human traffickers / protections for victims.



SUMMER 2011

- ◉ Begin Discussing 83rd Session on August 3
- ◉ Administrator's Conference August 22-23
- ◉ Update Website
- ◉ Update Alcoholic Beverage Code
- ◉ Update Peace Officer's Guide
- ◉ Update Licensing Publications
- ◉ Propose and Adopt Rule Changes
- ◉ Develop Policies and Procedures
- ◉ Train Employees



FISCAL YEAR 2012-2013

- September 1, 2011 - New Laws Become Effective
- October 2011 - Survey of Employee Engagement
- January 2012 - Strategic Planning Begins
- June/July 2012 - Strategic Plan Due
- November 2012 - Pre-filing of Bills for 83rd Legislative Session
- January 2012 - 83rd Session Begins

82ND LEGISLATIVE SESSION UPDATE



QUESTIONS?

Attachment 3

**Approval of the FY 2012 Operating and
Capital Budget**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

Approval of FY 2012 Operating and Capital Budget

FY 2012 Operating and Capital Budget

Budget by Strategy

	<u>FY 2012</u>
A.1.1. Enforcement	\$22,253,452
B.1.1. Licensing and Investigation	4,189,586
C.1.1. Compliance Monitoring	6,029,211
C.2.1. Ports of Entry	4,627,039
D.1.1. Central Administration	2,178,521
D.1.2. Information Resources	2,348,125
D.1.3. Other Support Services	<u>635,162</u>
Total, TABC Budget	\$42,258,995

Budget By Method of Finance

General Revenue	\$41,694,495
Federal Funds	419,500
Criminal Justice Grant Funds	140,000
Appropriated Receipts	<u>5,000</u>
Total, TABC Method of Finance	\$42,258,995

FY 2012 Operating and Capital Budget

Budget by Object of Expense	<u>FY 2012</u>
1001 Salaries and Wages	\$30,795,448
1002 Other Personnel Costs	1,429,790
2001 Professional Fees	813,422
2002 Fuels and Lubricants	882,500
2003 Consumables Supplies	321,960
2004 Utilities	441,361
2005 Travel	742,563
2006 Rent – Building	2,196,494
2007 Rent – Machine and Other	130,859
2009 Other Operating Expense	3,563,833
4000 Grants	108,000
5000 Capital Expenditures	<u>832,765</u>
Total, TABC Budget by Object of Expense	\$42,258,995

FY 2012 Operating and Capital Budget

TABC Capital Budget

Acquisition of Information Resource Technologies

Computer Equipment - Leased	\$446,890
Hardware/Software Acquisitions	370,457
Data Center Consolidation	<u>623,928</u>
<i>Total, Acquisition of Information Resource Technologies</i>	\$1,441,275
 <i>Fleet Acquisition</i>	 385,875
 <i>Public Safety Equipment - Replacement</i>	 179,419
 Total, TABC Capital Budget – General Revenue	 \$2,006,569

Questions?

Attachment 4

Field Operations Briefing

Service

Courtesy

FIELD OPERATIONS UPDATE

Joel Moreno

Chief of Field Operations

Integrity

Accountability

SURVEY OF ALCOHOLIC BEVERAGE LICENSEES AND PERMITEES



- “You guys are doing a great job, a lot better than before.”
- “Agent was very courteous and helpful. The image of TABC is changing for the better. The days of intimidation appear to have ended.”



SURVEY OF ALCOHOLIC BEVERAGE LICENSEES AND PERMITEES - Continued



- “Agents are great compared to past agents who lied and treated everyone badly.”
- “I honestly believe that in the past 2 years there has been a change for the better with the department (TABC). Mistakes are made when the high ranking agents are or let themselves be influenced by the interest of those who do not act in good faith or have their own selfish agendas

One of our guiding principles is partnering with the industry and other law enforcement agencies in making our communities better.

North Texas Region

- In January of 2011, officers with the Amarillo Police Department were involved in a shooting in downtown Amarillo that left one man dead. The area where the shooting occurred has the highest density of bars in the city of Amarillo.
- The investigation showed that no particular bar could be held accountable for the fight preceding the shooting.
- At the conclusion of the investigation and analyzing the concerns, an educational program was developed and presented to all of the licensed locations. The program was created to present some “best practices” to the permittees in order to promote voluntary compliance.
- On June 15, 2011, Sergeant Chatham and Agent Weise met with the permittees and employees to present the education program. Officers from the Amarillo Police Department and the Fire Marshal’s Office also attended the meeting to offer their perspective on the problems in the area.
- In the course of the meeting the permittees were asked for their thoughts on how to address problems. A plan was developed where the bars will communicate with each other by text and email when they expel or ban customers.
- The Amarillo office is continuing to communicate with the permittees and local departments to check on progress and possible issues that arise. The Amarillo office will conduct follow-up analyses after 6 months to see how the area is doing and if any follow-up investigations or education is needed.



Making our neighborhoods safer.

Coastal Bend Region

In a cooperative effort with the Federal Bureau of Investigation (FBI) Task Force (Human Trafficking Rescue Alliance) Houston area locations were involved in human trafficking. Concentrated efforts were made to gather evidence of criminal activity.

La Costenita (BG698155) was cancelled for cause on 3/14/2011.

- Human trafficking

- Prostitution

- Sexual acts on the premises

During the investigation process, TABC identified another location that was suspect. Utilizing the Risk Assessment tool on locations in close geographical proximity, TABC discovered the Hong Kong Lounge (BG708328) had criminal activity occurring on the licensed premise.

Hong Kong Lounge was cancelled for cause on 3/16/2011 for:

- Sale of narcotics

- Prostitution



Partnering with the other law enforcement agencies in making it safer for all people who live in Texas.

Border Region

Human Trafficking



- US Immigration and Customs Enforcement (ICE) and TABC McAllen worked together in two separate investigations regarding Human Trafficking at El Centenario Bar and at El Paraiso Bar, both located in Mission, Hidalgo County, Texas.
- Both permittees were forcing undocumented aliens to work as barmaids and/or prostitutes to pay off their smuggling debts. Investigations also revealed that both permittees were providing these undocumented aliens with housing and were transporting these females to and from the housing and bars. Some of the undocumented persons were teenagers.
- Both permittees were arrested by ICE and subsequently plead guilty in Federal Court (the spouse of the permittee of El Centenario Bar was arrested too and later plead guilty). El Centenario bar's property was seized and TABC will receive a share of the money.
- TABC cancelled both permits for Cause (Human Trafficking).





QUESTIONS?

Attachment 5

**Request for an Order by the Commission to
Prohibit the Possession of an Open Container or
the Public Consumption of Alcoholic Beverages
in the Central Business District of the City of San
Marcos Pursuant to Alcoholic Beverage Code
§109.35**

**Petition for Order
Alcoholic Beverage Code
§109.35**



**CITY OF SAN MARCOS,
HAYS COUNTY,
STATE OF TEXAS
JULY 26, 2011**

LEGAL AUTHORITY:



Alcoholic Beverage Code §109.35 allows the governing body of a city to petition the commission to PROHIBIT:

- i.** The possession of an open container; or
- ii.** The public consumption of alcoholic beverages;
- iii.** In the central business district (CBD) of the city.

CITY OF SAN MARCOS:



- **Passed Resolution 2011-44 R dated April 5, 2011 requesting an Order from the Commission;**
- **Petitioned the Commission in a letter dated June 17, 2011 for an Order and set out the risks to the health and safety of its citizens;**
- **Provided a diagram showing the CBD of San Marcos.**

THE COMMISSION:



- **If the diagram properly identifies the CBD, the Commission shall approve and issue an Order without further consideration.**

CITY OF SAN MARCOS

**§
§
§
§**

**BEFORE THE TEXAS
ALCOHOLIC BEVERAGE
COMMISSION**

ORDER

Came on to be heard on July 26, 2011 before the Texas Alcoholic Beverage Commission (Commission), the petition of the City of San Marcos (City), Hays County, Texas, the petition for an Order to prohibit the possession of an open container or the public consumption of alcoholic beverages in the City's central business district pursuant to Section 109.35, Texas Alcoholic Beverage Code.

The Commission takes judicial notice of the Resolution 2011-44-R (Resolution) passed by the City Council on April 5, 2011 and signed by the Mayor of the City and the letter dated June 17, 2011 signed by the Mayor of the City requesting an Order by the Commission prohibiting certain possession and consumption of alcoholic beverages in the central business district, and a certified copy of the map of the City showing the central business district covered by the requested prohibition.

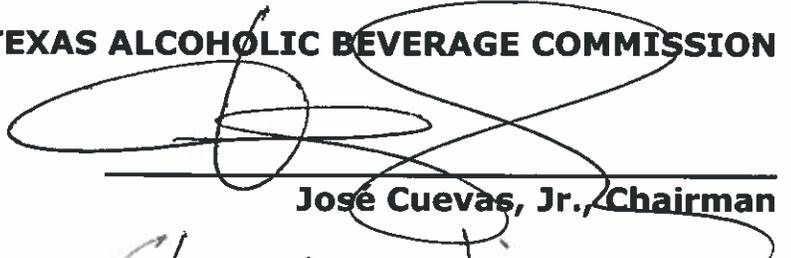
The Commission finds that the documents show the governing body of the City has determined that the possession of an open container or public consumption of alcoholic beverages in the City's Central Business District is a risk to the health and safety of the City's citizens.

IT IS THEREFORE ORDERED, without further consideration, that the possession of an open container or the public consumption of alcoholic beverages is prohibited in the central business district of the City of San Marcos, Hays County, Texas, pursuant to Section 109.35, Texas Alcoholic Beverage Code.

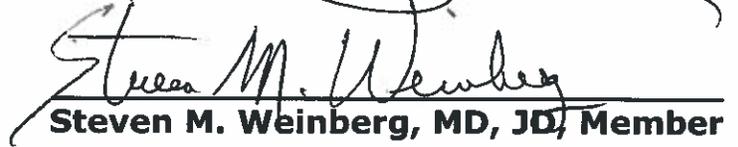
ENTERED AND EFFECTIVE on this the 26th day of July 2011.



TEXAS ALCOHOLIC BEVERAGE COMMISSION



José Cuevas, Jr., Chairman



Steven M. Weinberg, MD, JD, Member



Melinda S. Fredricks, Member



Daniel Guerrero
Office of the Mayor

June 17, 2011

Texas Alcoholic Beverage Commission
Attn: Ms. Emily E. Helm, General Counsel
P.O. Box 13127
Austin, Texas 78711-3127



Re: San Marcos City Council's Petition Under Section 109.35 of the Texas Alcoholic Beverage Code for an Order Prohibiting Possession of Open Containers and Public Consumption

To: Mr. Jose Cuevas, Jr. – Presiding Officer
Mr. Steven M. Weinberg, MD, JD - Member
Ms. Melinda S. Fredricks – Member

Dear Commissioners:

As Mayor of the City of San Marcos, Texas, I respectfully present the San Marcos City Council's petition under Section 109.35 of the Texas Alcoholic Beverage Code for an order prohibiting the possession of an open container or the public consumption of alcoholic beverages in the central business district of the City of San Marcos by means of this letter and the attached Resolution 2011-44 R which was adopted on April 5, 2011. A map of the city's central business district, which is referred to by local ordinance as the Central Business Area, is attached to the resolution.

The resolution was adopted to address specific risks to public health and safety of the citizens of San Marcos that are posed by the possession of open containers and public consumption in the central business district. These risks include unregulated drinking on public sidewalks, the assembly of large numbers of individuals at curbside engaging in drinking to excess, fights, disturbances, littering, and public urination as reported by San Marcos Police Chief Howard Williams. A DVD of Chief Williams' presentation to the San Marcos City Council on April 5, 2011 and Council's deliberation and approval of the resolution is enclosed with this letter.

I understand that this petition will be placed on the Commission's agenda for consideration at its next meeting on July 26, 2011 at 9:00 a.m. If the Executive Staff or the Commission have questions in the interim, they may be directed to City Attorney, Michael J. Cosentino by telephone: 512-393-8153 or by e-mail: mcosentino@sanmarcostx.gov.

Thank you in advance for considering this request and your assistance in helping the San Marcos City Council address a growing problem in our community.

Sincerely,

Daniel Guerrero
Mayor – City of San Marcos, Texas

xc: Mr. Jim Nuse, P.E., City Manager
Mr. Howard Williams, Jr. – Chief of Police
Mr. Michael J. Cosentino, City Attorney

COPY

CERTIFICATE OF RECORD

THE STATE OF TEXAS '

COUNTY OF HAYS '

I, the undersigned, Jaime Lee Pettijohn, City Clerk for the City of San Marcos, Texas, in the performance of the functions of my office, hereby certify that the above and foregoing is a full, true and correct copy of Resolution 2011-44, approved on April 5, 2011 by the City Council of the City of San Marcos, as the same appears of record in my office in the City Clerk 630 E. Hopkins Street, San Marcos, Texas 78666, and that I am the lawful possessor and have legal custody of said record.

WITNESS MY HAND AND SEAL of the City of San Marcos, Texas, this the 13 day of May, ~~19~~²⁰ 11.



Jamie Lee Pettijohn
City Clerk
City of San Marcos, Texas

SEAL)

RESOLUTION 2011 -44 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, PETITIONING THE TEXAS ALCOHOLIC BEVERAGE COMMISSION TO ISSUE AN ORDER PROHIBITING THE POSSESSION OF AN OPEN CONTAINER OR THE PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE CENTRAL BUSINESS AREA OF THE CITY OF SAN MARCOS, TEXAS; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. Pursuant to Section 109.35 of the Texas Alcoholic Beverage Code, the San Marcos City Council hereby petitions the Texas Alcoholic Beverage Commission to issue an order prohibiting the possession of an open container or the public consumption of alcoholic beverages in the Central Business Area depicted on the map attached to this resolution. The City Council has determined that at least 90% of the property within the Central Business Area is used or zoned for commercial purposes and that this area has historically been the primary area of the city where business is transacted.

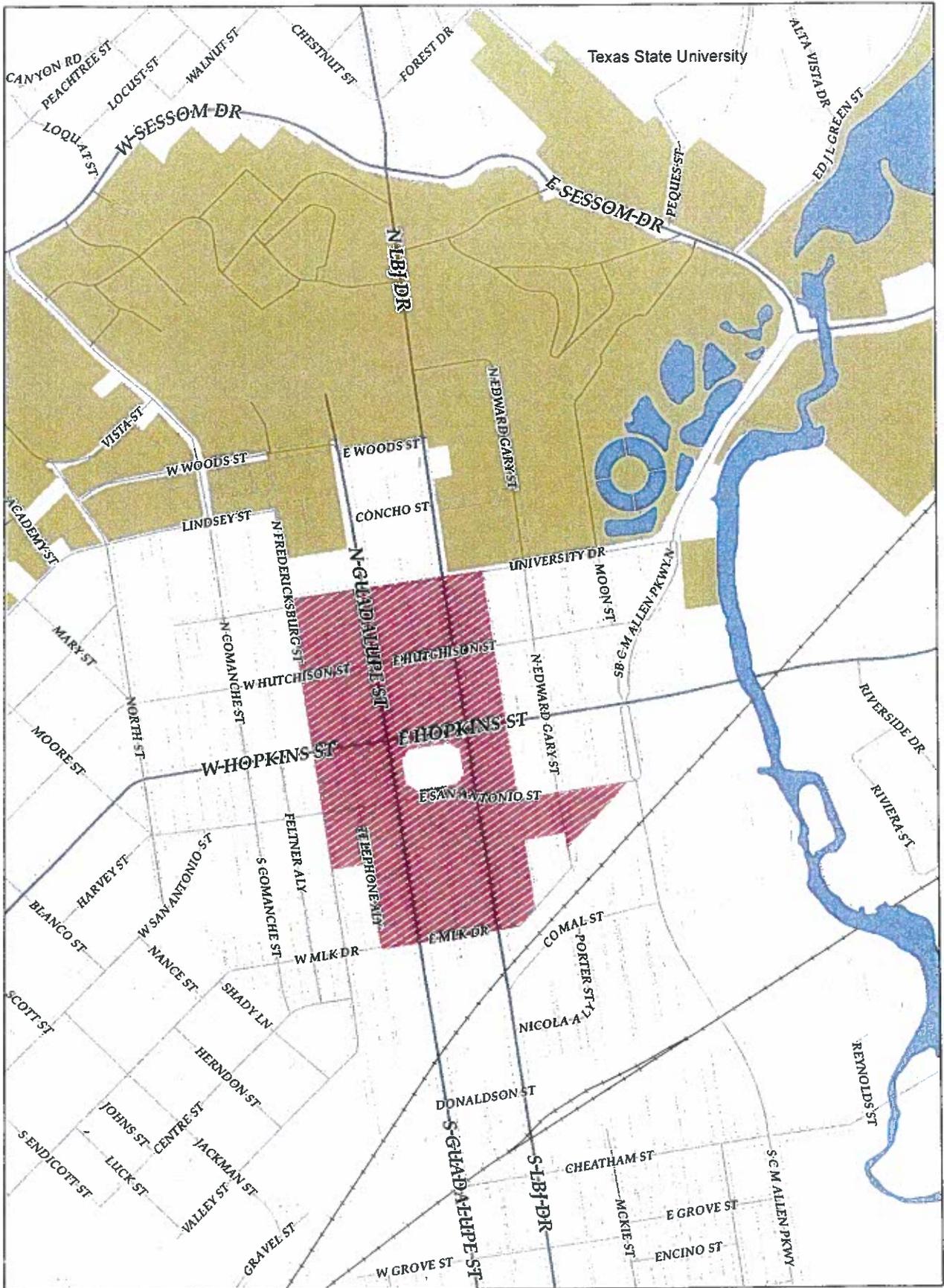
PART 2. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on April 5, 2011.

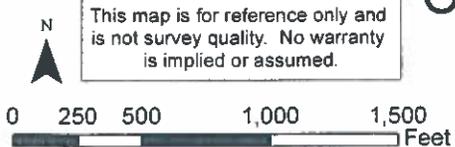

Daniel Guerrero
Mayor

Attest:


Jamie Lee Pettijohn
City Clerk



CBA Boundaries



This map is for reference only and is not survey quality. No warranty is implied or assumed.

 CBA Zoning District

Attachments

**Rules for Review and Approval of the
Commissioners**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Alan Steen
Administrator

COMMISSION MEETING

TUESDAY, JULY 26, 2011

9:30 A.M.

RULES FOR REVIEW AND APPROVAL OF THE COMMISSIONERS

PRESENTED BY:

MARTIN WILSON
ASSISTANT GENERAL COUNSEL

TEXAS ALCOHOLIC BEVERAGE COMMISSION – HEADQUARTERS

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AGENDA ITEM 8: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER A, §§45.1 – 45.7, 45.10, AND 45.17 – 45.58, STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of Chapter 45, Subchapter A, §§45.1 - 45.7, 45.10, and 45.17 – 45.33, relating to Standards of Identity for Distilled Spirits, and adopts new Chapter 45, Subchapter A, §§45.1 – 45.19, relating to Registration and Advertising of Distilled Spirits. The repeal and the new subchapter are adopted without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3154) and will not be republished.

Alcoholic Beverage Code (Code) §101.671(a) provides that distilled spirits may not be shipped into the state or sold in the state until they are registered with the state. Section 101.671(d) of the Code requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration. Chapter 45, Subchapter A sets forth the procedures for registering distilled spirits by obtaining label and product approval. The subchapter also addresses restrictions on advertising distilled spirits.

The commission received no comments about the proposed repeal or the proposed new subchapter.

The repeal and the new subchapter are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of distilled spirits.

§45.1. Scope.

- (a) This subchapter relates to the standards of identity, labeling, and advertising of distilled spirits.
- (b) This subchapter does not apply to distilled spirits for export.
- (c) This subchapter does not apply to mixtures containing wine, bottled at 48 proof or less, if the mixture contains more than 50% wine on a proof gallon basis.
- (d) This subchapter does not apply to distilled spirits for industrial use.
- (e) This subchapter does not apply to the dispensing of distilled spirits by the holder of a medicinal permit under the provisions of §39.01 *et seq.*, Alcoholic Beverage Code.

§45.2. Definitions.

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

Age-The period during which, after distillation and before bottling, distilled spirits have been stored in oak containers. "Age" for bourbon whiskey, rye whiskey, wheat whiskey, malt whiskey, or rye malt whiskey, and straight whiskies other than straight corn whiskey, means the period the whiskey has been stored in charred new oak containers.

Bottle-Any container, irrespective of the material from which made, used for the sale by the package of distilled spirits at retail.

Brand label-The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel. The principal display panel appearing on a cylindrical surface is that 40% of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

Distilled spirits-Alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

Domestic-Produced in any state of the United States of America, the District of Columbia, or the Commonwealth or Puerto Rico.

Export-Shipment, by an authorized permittee, out of this state for consumption outside this state or sold aboard ship for ship's supplies and exempt from the tax levied in §201.08, Alcoholic Beverage Code.

Gallon-U.S. gallon of 231 cubic inches of alcoholic beverage of 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

Imported-Produced at any place not included in the meaning of "domestic."

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In bulk-In containers having a capacity in excess of one gallon.

Industrial use-

- (A) Use of products not intended for human consumption.
- (B) Use in the manufacture of products not intended for human consumption.
- (C) Use in the manufacture of products for human consumption as authorized under §38.01 *et seq.*,

Alcoholic Beverage Code.

Produced at-As used in §45.4 of this title (relating to the Standards of Identity) in conjunction with specific degrees of proof to describe the standards of identity, means the composite proof of the spirits after completion of distillation and before reduction in proof.

Proof-The measure of alcohol content in which one degree of proof represents one-half of one percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60° F. referred to water at 60° F. as unity, or the alcoholic equivalent thereof.

Proof gallon-A gallon of liquid at 60° F. which contains 50% by volume of ethyl alcohol having a specific gravity of 0.7939 at 60° F. referred to water at 60° F. as unity, or the alcoholic equivalent thereof.

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

§45.3. Application of Standards.

Standards of identity for the several classes and types of distilled spirits set forth in this subchapter shall be applicable only to distilled spirits for beverage or other nonindustrial purposes.

§45.4. The Standards of Identity.

Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows.

(1) Class 1--neutral spirits or alcohol. "Neutral spirits" or "alcohol" are distilled spirits produced from any material at or above 190 proof, and, if bottled, bottled at not less than 80 proof.

(A) "Vodka" is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color.

(B) "Grain spirits" are neutral spirits distilled from a fermented mash of grain and stored in oak containers.

(2) Class 2--whiskey. "Whiskey" is an alcoholic distillate from a fermented mash of grain produced at less than 190 proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whiskey, stored in oak containers (except that corn whiskey need not be so stored), and bottled at not less than 80 proof, and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(A) "Bourbon whiskey," "rye whiskey," "wheat whiskey," "malt whiskey" or "rye malt whiskey" is whiskey produced at not exceeding 160 proof from a fermented mash of not less than 51% corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125 proof in charred new oak containers; and also includes mixtures of such whiskeys of the same type.

(B) "Corn whiskey" is whiskey produced at not exceeding 160 proof from a fermented mash of not less than 80% corn grain, and if stored in oak containers stored at not more than 125 proof in used or uncharred new oak containers and not subjected in any manner to treatment with charred wood; and also includes mixtures of such whiskey.

(C) "Straight whiskey": Whiskeys conforming to the standards prescribed in subparagraphs (A) and (B) of this paragraph, which have been stored in the type of oak containers prescribed, for a period of two years or more shall be further designated as "straight"; for example, "straight bourbon whiskey," "straight corn whiskey" and whiskey conforming to the standards prescribed in subparagraph (A) of this paragraph, except that it was produced from a fermented mash of less than 51% of any one type of grain, and stored for a period of two years or more in charred new oak containers shall be designated merely as "straight whiskey." No other whiskeys may be designated "straight." "Straight whiskey" includes mixtures of straight whiskeys which, by reason of being homogeneous, are not subject to rectification tax under the Internal Revenue Code of the United States, and also mixtures of straight whiskeys of the same type produced by the same proprietor at the same distillery all of which are not less than four years old.

(D) "Whiskey" distilled from bourbon (rye, wheat, malt, or rye malt) mash is whiskey produced in the United States at not exceeding 160 proof from a fermented mash of not less than 51% corn, rye, wheat, malted barley,

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or malted rye grain, respectively, and stored in used oak containers; and also includes mixtures of such whiskies of the same type. Whiskey conforming to the standard of identity for corn whiskey must be designated corn whiskey.

(E) "Light whiskey" is whiskey produced in the United States at more than 160 proof, on or after January 26, 1968, and stored in used or uncharred new oak containers; and also includes mixtures of such whiskies. If "light whiskey" is mixed with less than 20% of straight whiskey on a proof gallon basis, the mixture shall be designated "blended light whiskey" (light whiskey--a blend).

(F) "Blended whiskey" (whiskey--a blend) is a mixture which contains at least 20% of straight whiskey on a proof gallon basis and, separately or in combination, whiskey or neutral spirits. A blended whiskey containing not less than 51% on a proof gallon basis of one of the type of straight whiskey shall be further designated by that specific type of straight whiskey; for example, "blended rye whiskey" (rye whiskey--a blend).

(G) "A blend of straight whiskies" (blended straight whiskies) is a mixture of straight whiskies. A blend of straight whiskies consisting entirely of one of the types of straight whiskey, and not conforming to the standard for "straight whiskey," shall be further designated by that specific type of straight whiskey; for example, "a blend of straight rye whiskies" (blended straight rye whiskies).

(H) "Spirit whiskey" is a mixture of neutral spirits and not less than 5.0% on a proof gallon basis of whiskey, or straight whiskey, or straight whiskey and whiskey, if the straight whiskey component is less than 20% on a proof gallon basis.

(I) "Scotch whiskey" is whiskey which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whiskey for consumption in the United Kingdom; provided, that if such product is a mixture of whiskey, such mixture is "blended Scotch whiskey" (Scotch whiskey--a blend).

(J) "Irish whiskey" is whiskey which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whiskey for home consumption; provided, that if such product is a mixture of whiskies, such mixture is "blended Irish whiskey" (Irish whiskey--a blend).

(K) "Canadian whiskey" is whiskey which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whiskey for consumption in Canada; provided, that if such product is a mixture of whiskies, such mixture is "blended Canadian whiskey" (Canadian whiskey--a blend).

(3) Class 3--gin. "Gin" is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80 proof. Gin produced exclusively by original distillation or by redistillation may be further designated as "distilled." "Dry gin" (London dry gin), "Geneva gin" (Hollands gin), and "Old Tom gin" (Tom gin) are types of gin known under such designations.

(4) Class 4--brandy. "Brandy" is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190 proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80 proof. Brandy, or mixtures thereof, not conforming to any of the standards in subparagraphs (A)-(H) of this paragraph shall be designated as "brandy," and such designation shall be immediately followed by a truthful and adequate statement of composition.

(A) "Fruit brandy" is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, with or without the addition of not more than 20% by weight of the pomace of such juice or wine, or 30% by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy shall include mixtures of such brandy with not more than 30% (calculated on a proof gallon basis) of lees brandy. Fruit brandy, derived from grapes, shall be designated as "grape brandy" or "brandy," except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers for less than two years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word "immature." Fruit brandy, other than grape brandy, derived from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (for example, "peach brandy"), except that "apple

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brandy" may be designated "applejack." Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy" qualified by truthful and adequate statement of composition.

(B) "Cognac," or "Cognac grape brandy," is grape brandy distilled in the Cognac Region of France, which is entitled to be so designated by the laws and regulations of the French government.

(C) "Dried fruit brandy" is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins or from raisin wine shall be designated as "raisin brandy." Other brandies shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried." All forms of dried fruit brandy are prohibited. Reference should be made to §45.29 of this title (relating to Certain Products Prohibited).

(D) "Lees brandy" is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as "lees brandy," qualified by the name of the fruit from which such lees are derived.

(E) "Pomace brandy," or "marc brandy," is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as "pomace brandy," or "marc brandy," qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as "grappa" or "grappa brandy."

(F) "Residue brandy" is brandy distilled wholly or in part from the fermented residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in subparagraphs (A) and (C)-(E) of this paragraph may, regardless of such fact, be designated "residue brandy," but the use of such designation shall be conclusive, precluding any later change of designation.

(G) "Neutral brandy" is brandy produced at more than 170 proof and shall be designated in accordance with the standards in this paragraph, except that the designation shall be qualified by the word "neutral"; for example, "neutral citrus residue brandy."

(H) "Substandard brandy" shall bear as a part of its designation the word "substandard," and shall include the following:

(i) any brandy distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 degrees Celsius); measurements of volatile acidity shall be calculated exclusive of water added to facilitate distillation;

(ii) any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material; and

(iii) all forms of substandard brandy are prohibited. (Reference should be made to §45.29 of this title (relating to Certain Products Prohibited)).

(5) Class 5--blended applejack. "Blended applejack" (applejack--a blend) is a mixture which contains at least 20% of apple brandy (applejack) on a proof-gallon basis, stored in oak containers for not less than two years, and not more than 80% of neutral spirits on a proof-gallon basis if such mixture at the time of bottling is not less than 80 proof, and also included mixtures solely from such distillates.

(6) Class 6--rum. "Rum" is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190 proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80 proof; and also includes mixtures solely of such distillates.

(7) Class 7--tequila. "Tequila" is an alcoholic distillate produced in the State of Jalisco, Republic of Mexico, from a fermented mash derived principally from the agave tequilana weber ("blue" variety) grown in the same region, with or without additional fermentable substances, distilled in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to tequila and bottled at not less than 80 proof, and also includes mixtures solely of such distillates.

(8) Class 8--mescal. "Mescal" or "mescal tequila" is an alcoholic distillate not produced in the State of Jalisco, Republic of Mexico, produced from a fermented mash derived principally from the agave tequilana weber ("blue" variety), with or without additional fermentable substances, distilled in such manner that the distillate possesses the taste,

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aroma, and characteristics generally attributed to mescal and bottled at not less than 80 proof, also includes mixtures solely of such distillates.

(9) Class 9--cordials and liqueurs. Cordials and liqueurs are products obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and containing sugar, dextrose, or levulose, or a combination thereof, in an amount not less than 2-1/2% by weight of the finished product.

(A) "Sloe gin" is a cordial or liqueur with the main characteristic flavor derived from sloe berries.

(B) "Rye liqueur" and "bourbon liqueur" (rye, bourbon cordial) are liqueurs, bottled at not less than 60 proof, in which not less than 51%, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whiskey, straight rye or straight bourbon whiskey, or whiskey distilled from a rye or bourbon mash, and which possess a predominate characteristic rye or bourbon flavor derived from such whiskey. Wine, if used, must be within the 2-1/2% limitation provided in §45.5 of this title (relating to Alteration of Class and Type) for coloring, flavoring, and blending materials.

(C) "Rock and rye," "rock and bourbon," "rock and brandy," and "rock and rum" are liqueurs, bottled at not less than 48 proof, in which, in the case of rock and rye and rock and bourbon, not less than 51%, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whiskey, straight rye or straight bourbon whiskey, or whiskey distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup; with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominate characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2-1/2% limitation provided in §45.5 of this title (relating to Alteration of Class and Type) for harmless coloring, flavoring, and blending materials.

(D) The designation of a cordial or liqueur may include the word "dry" if the sugar, dextrose, or levulose, or a combination thereof, are less than 10% by weight of the finished product.

(E) Cordials and liqueurs shall not be designated as "distilled or compound."

(10) Class 10--flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whiskey. "Flavored brandy," "flavored gin," "flavored rum," "flavored vodka," and "flavored whiskey" are brandy, gin, rum, vodka, and whiskey, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60 proof. The name of the predominate flavor shall appear as a part of the designation. If the finished product contains more than 2-1/2% by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12- 1/2% by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(11) Class 11--imitations. Imitations shall bear, as a part of the designation thereof, the word "imitation" and shall include the following. Nothing herein shall be construed as modifying the restrictions of §45.29 of this title (relating to Certain Products Prohibited):

(A) any class or type of distilled spirits to which have been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(B) any class or type of distilled spirits (other than distilled spirits required under §45.11 of this title (relating to Labels: Class and Type)) to bear a distinctive or fanciful name and a truthful and adequate statement of composition to which has been added flavors considered to be artificial or imitation. In determining whether a flavor is artificial or imitation, recognition will be given to which is considered to be "good commercial practice" in the flavor manufacturing industry;

(C) any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whiskey essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(D) any type of whiskey to which beading oil has been added;

(E) any rum, tequila or mescal to which neutral spirits or distilled spirits other than rum, tequila, or mescal, respectively, have been added;

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(F) any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine;

(G) any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(12) Class 12--geographical designations.

(A) Geographical names for distinctive types of distilled spirits (other than names found by the administrator under subparagraph (B) of this paragraph to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name unless:

(i) in direct conjunction with the name there appears the word "type" or the word "American" or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name; and

(ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region.

(B) The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Bau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(C) Only such geographical names for distilled spirits as the administrator finds have by usage and common knowledge lost their geographical significance to such extent, that they have become generic shall be deemed to have become generic. Examples are London dry gin, Geneva (Hollands) gin.

(D) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Puerto Rico rum, Demerara rum.

(E) The words "Scotch," "Scots," "Highland," or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not be used to designate any product not wholly produced in Scotland.

(13) Class 13--products without geographical designations but distinctive of a particular place.

(A) The whiskies of the types specified in paragraph (2)(C) and (F)-(H) of this section are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraphs, together with the words "American type" or the words "produced (distilled, blended) in _____," the blank to be filled in with the name of the foreign country; provided, that the word "bourbon" shall not be used to describe any whiskey or whiskey-based distilled spirits not produced in the United States. If whiskey of any of these types is composed in part of whiskey or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whiskey and the country or origin thereof.

(B) The name for other distilled spirits which are distinctive products of a particular place or country, an example is Habanero, shall not be given to the product of any other place or country unless the designation for such product includes the word "type" or an adjective such as "American, or the like, clearly indicating the true place of production. The provisions for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the administrator finds they have become generic. Examples are Slivovitz, Zubrovka, Arrack, and Kirschwasser.

(14) Class 14--other. Notwithstanding and in addition to the other provisions of §45.4 and the provisions of §45.11, distilled spirits products which are obtained by distillation and/or mixing and/or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and/or containing sugar, dextrose, or levulose, or a combination thereof, in an amount less than 2-1/2% by weight of the finished product.

Note: Amendment Adopted: October 25, 1999; Effective November 21, 1999

§45.5 Alteration of Class and Type.

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(a) *Additions.*

(1) The addition of any coloring, flavoring, or blending materials to any class and type of distilled spirits, except as otherwise provided in this section, alters the class and type thereof and the product shall be appropriately redesignated.

(2) There may be added to any class or type of distilled spirits, without changing the class or type thereof:

(A) such harmless coloring, flavoring, or blending materials as are an essential component part of the particular class or type of distilled spirits to which added; and

(B) harmless coloring, flavoring, or blending materials such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2 1/2 % by volume of the finished product.

(3) "Harmless coloring, flavoring, and blending materials" shall not include:

(A) any material which would render the product to which it is added an imitation; or

(B) any material whatsoever in the case of neutral spirits or straight whiskey; or

(C) any material, other than caramel and sugar, in the case of Cognac brandy.

(b) *Extractions.* The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits alters the class and type thereof, and the product shall be appropriately redesignated. In addition, in the case of straight whiskey the removal of more than 15% of the fixed acids, or volatile acids, or esters, or soluble solids, or higher alcohols, or more than 25% of the soluble color, shall be deemed to alter the class or type thereof.

(c) *Exceptions.* This section shall not be construed as in any manner modifying the standards of identity for cordials and liqueurs, flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whiskey or as authorizing any product which is defined in §45.4(11) of this title (relating to The Standards of Identity), Class 11, as an imitation to be otherwise designated. Nothing herein shall be construed as modifying the restrictions of §45.29 of this title (relating to Certain Products Prohibited).

§45.6 Label Required.

No permittee, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce into the commerce of this state, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such bottles are marked, branded, labeled, or packaged, in conformity with sections 45.8-45.18 of this title (relating to Mandatory Label Information; Labels: Additional Requirements; Labels: Brand Names; Labels: Class and Type; Labels: Name and Address; Labels: Alcoholic Content; Labels: Net Content; Labels: Presence of Neutral Spirits and Coloring, Flavoring, and Blending Materials; Labels: Statements of Age and Percentage; Bottle Cartons, Booklets, and Leaflets; and Labels: Prohibited Practices).

§45.7. Alteration of Labels.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in this state except:

(1) as authorized by Texas law;

(2) that the administrator may, on written application, permit additional labeling or relabeling of bottled distilled spirits with labels covered by certificates of label approval which comply with the requirements of this subchapter and with state law; and

(3) application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling, the quantity and location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

§45.10. Labels: Brand Names.

(a) *Misleading brand names.* No label shall contain any brand name which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the administrator finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

AGENDA ITEM 8: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER A, §§45.1 – 45.7, 45.10, AND 45.17 – 45.58, STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

(b) *Trade name of foreign origin.* Subsection (a) of this section does not prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the U.S. Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935; provided, that if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§45.17. Bottle Cartons, Booklets, and Leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by sections 45.6-45.18 of this title (relating to Label Required; Alteration of Labels; Mandatory Label Information; Labels: Additional Requirements; Labels: Brand Names; Labels: Class and Type; Labels: Name and Address; Labels: Alcoholic Content; Labels: Net Content; Labels: Presence of Neutral Spirits and Coloring, Flavoring, and Blending Materials; Labels: Statements of Age and Percentage; Bottle Cartons, Booklets, and Leaflets; and Labels: Prohibited Practices), on labels.

(b) *Sealed opaque cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping coverings, cartons, or other containers) must bear all mandatory label information.

(c) *Other cartons.* If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable and the covering carton or container is not sufficiently transparent to permit visibility of the mandatory label information on the bottle, and if it displays any written or printed material, other than the brand name and the name and address of the manufacturer, bottler, or importer (omitting any reference to the function performed by the permittee), such covering, carton, or other container must bear all mandatory label information.

(d) *Shipping container.* Each shipping container shall have imprinted on the outside the number and size of containers packed therein, and the brand name of the product.

§45.18. Labels: Prohibited Practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain the following:

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this subparagraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

AGENDA ITEM 8: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER A, §§45.1 – 45.7, 45.10, AND 45.17 – 45.58, STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

(b) *Miscellaneous.*

(1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. government or any state or foreign government. Labels other than stamps authorized or required by any such government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, or sold under, or in accordance with any municipal, state, federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by federal, state, municipal, or foreign law or regulations. The statements authorized by this regulation to appear on labels for domestic distilled spirits are "distilled (produced, barreled, warehoused, blended or bottled, or any combination thereof, as the case may be) under United States (U.S.) government supervision," or in the case of distilled spirits bottled in bond under the provisions of the United States Internal Revenue Code, "bottled in bond under the United States (U.S.) government supervision." If the municipal, state, or federal government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate of certification shall, in the case of cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the _____ government (name of government) indicating that the product is _____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless such distilled spirits were in fact bottled in bond under the provisions of the United States Internal Revenue Code.

(4) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless such distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption in bond under the provisions of the United States Internal Revenue Code and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "bonded," "bottled in bond," or "aged in bond" pursuant to the provisions of this subparagraph shall bear in direct conjunction with such statement and in script, type or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word "pure" shall not be stated in any manner on any label unless as part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled.

(6) Distilled spirits shall not be labeled as "double distilled" or "triple distilled," or any similar term.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flags or armed forces; nor shall any label contain any statement, design, device or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(8) Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

§45.19. Container and Fill Standards Required.

No permittee, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce into the commerce of this state, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with Sections 45.20-45.22 of this title (relating to Standard Liquor Bottles; Standards of Fill; and Design and Fill Exceptions).

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§45.20. Standard Liquor Bottles.

(a) *General.* A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) *Headspace.* A liquor bottle of a capacity of 1/2 pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8.0% of the total capacity of the bottle after closure.

(c) *Design.* A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

§45.21. Standards of Fill.

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits, whether domestically manufactured, domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows:

1 gallon	4/5 pint
1/2 gallon	1/2 pint
1 quart	1/8 pint
4/5 quart	1/10 pint
1 pint	1/16 pint (brandy only)

(Caution: Possession and sale of sizes less than 1/2 pint are subject to special restrictions in the Alcoholic Beverage Code.)

In addition to the above stated container sizes and standards of fill authorized for the importation and sale of distilled spirits in this state, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Bureau of Alcohol, Tobacco and Firearms are hereby authorized, however, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

(b) *Tolerances.* The following tolerances shall be allowed:

(1) discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice;

(2) discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity; provided, that no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity; and

(3) discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidable result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

§45.22. Design and Fill Exceptions.

(a) The provisions of the "headspace" and "design" requirements in §45.20 of this title (relating to Standard Liquor Bottles) shall not apply to liquor bottles of unusual design as may, from time to time, be specifically excepted from these requirements by the administrator pursuant to application filed with the administrator by the bottler or importer, as the case may be.

(b) §45.21(a) of this title (relating to Standards of Fill) shall not apply to cordials and liqueurs, and cocktails, highballs, and such other specialties as are specified by the administrator.

§45.23. Withdrawal from Customs Custody.

No person shall withdraw distilled spirits from U.S. Customs custody in this state except in full compliance with federal and state law and the regulations of the commission.

§45.24. Advertising: Standards Required.

No person, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in, or is calculated to induce sales in, this state, or is disseminated by mail, unless such advertisement is in conformity with Sections 45.25-45.28 of this title (relating to Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements), provided, that such sections shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is a permittee.

§45.25. Advertisement Defined.

As used in Sections 45.24-45.28 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements), the term "advertisement" includes any advertisement of distilled spirits through the medium of radio broadcast; or of television broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement, or of any other printed or graphic matter, including trade booklets, menus, and wine cards, if such advertisement is in, or is calculated to induce sales in, this state, or disseminated by mail; except that such term shall not include the following:

(1) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under Sections 45.6-45.18 of this title (relating to Label Required; Alteration of Labels; Mandatory Label Information; Labels: Additional Requirements; Labels: Brand Names; Labels: Class and Type; Labels: Name and Address; Labels: Alcoholic Content; Labels: Net Content; Labels: Presence of Neutral Spirits and Coloring, Flavoring, and Blending Materials; Labels: Statements of Age and Percentage; Bottle Cartons, Booklets, and Leaflets; and Labels: Prohibited Practices).

(2) Any editorial or other reading matter in any periodical newspaper, or other publication for which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

§45.26. Advertising: Mandatory Statements.

(a) *Responsible advertiser.* The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class and type.* The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcoholic content.* The alcoholic content shall be stated by proof for distilled spirits except that it may be stated in percentage by volume of cordials and liqueurs, cocktails, highballs, and such other specialties as may be specified by the administrator.

(d) *Percentage of neutral spirits and name of commodity.*

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "____% neutral spirits distilled from ____ (insert grain, cane products, or fruit, as appropriate)"; or "____% neutral spirits (vodka) distilled from ____ (insert grain, cane products, or fruit, as appropriate)"; or "____% grain (cane products), (fruit) neutral spirits"; or "____% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "distilled from grain," or "distilled from cane products," or "distilled from fruit."

(3) Retailers shall be exempt from the provisions of this subsection.

§45.27. Advertising: Lettering.

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Statements required under Sections 45.24-45.26 and 45.28 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; and Advertising: Prohibited Statements), inclusive, to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

§45.28. Advertising: Prohibited Statements.

- (a) *Restrictions.* An advertisement of distilled spirits shall not contain:
- (1) Any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;
 - (2) any statement that is disparaging of a competitor's product;
 - (3) any statement, design, device, or representation which is obscene or indecent;
 - (4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited;
 - (6) any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by §18 for labels of distilled spirits. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto;
 - (7) the words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to §45.18 of this title (relating to Labels: Prohibited Practices), on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label;
 - (8) the word "pure" unless as part of the bona fide name of a permittee for whom the distilled spirits are bottled; or
 - (9) the words "double distilled," "triple distilled," or any similar words.
- (b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of distilled spirits which is prohibited from appearing on the label or which is inconsistent with any statement on the label thereof.
- (c) *Statement of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of Sections 45.6-45.18 of this title (relating to Label Required; Alteration of Labels; Mandatory Label Information; Labels: Additional Requirements; Labels: Brand Names; Labels: Class and Type; Labels: Name and Address; Labels: Alcoholic Content; Labels: Net Content; Labels: Presence of Neutral Spirits and Coloring, Flavoring, and Blending Materials; Labels: Statements of Age and Percentage; Bottle Cartons, Booklets, and Leaflets; and Labels: Prohibited Practices). An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum, tequila or mescal, which has been aged for not less than four years may, however, contain inconspicuous, general representation as to age, maturity or other similar representation even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.
- (d) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.
- (e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

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(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this regulation or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* An advertisement shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Cooperative advertising by retailers.* It shall be unlawful for any person holding a package store permit to share the same advertisement of distilled spirits with any other person or persons holding a package store permit or permits, provided, however, that members of a partnership or corporation may share the same distilled spirits advertisement when said distilled spirits are offered for sale under the permit or permits held by the said partnership or corporation.

(i) *Price advertising.* All distilled spirits advertised with prices by package store permittees shall state the brand name of the distilled spirits offered for sale.

§45.29. Certain Products Prohibited.

It shall be unlawful for any person to manufacture, import, sell or possess for the purpose of sale any alcoholic beverages made from dried grapes, dried fruits, or dried berries, or any compounds made from synthetic materials, substandard wines, imitation wines, or from must concentrated at any time to more than 80° balling.

§45.30. Damaged Stock.

No distilled spirits may be sold or possessed for the purpose of sale in this state which have had fire, smoke, or water damage to the label, container, or contents, unless so authorized by the administrator.

§45.31. Intrastate Bottling.

It shall be unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from his premises unless he has first procured a certificate of label approval, or clearance of export procedure, from the administrator.

§45.32. Exhibiting Authority.

It shall be unlawful for any person holding an original or duplicate original of a certificate or label approval, or clearance of export procedure, to fail or refuse to exhibit the same upon request to any duly authorized representative of the commission.

§45.33. Certificate of Registration.

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Distiller's & Rectifier's Permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Distilled Spirit (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau;

(2) product brand name; and

(3) product class and type.

AGENDA ITEM 8: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER A, §§45.1 – 45.7, 45.10, AND 45.17 – 45.58, STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

- (d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.
- (e) The application fee for a Certificate is \$25.00.
- (f) No additional approval or testing of the distilled spirit by the commission is required for issuance of a Certificate.

Note: New Rule Adopted: January 25, 2008; Effective Date: March 30, 2008

AGENDA ITEM 9: APPROVAL TO ADOPT NEW CH. 45, SUBCHAPTER A, §§45.1 – 45.19, REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

The proposed new sections are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

§45.1. Authority and Scope.

- (a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of distilled spirits with the state.
- (b) This subchapter does not apply to distilled spirits for export or for industrial use.

§45.2. Definition.

When used in this subchapter, "distilled spirits" means alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

§45.3. Alteration of Labels.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in this state except:

- (1) as authorized by Texas law;
- (2) that the administrator may, on written application, permit additional labeling or relabeling of bottled distilled spirits with labels covered by certificates of label approval which comply with the requirements of this subchapter and with state law; and
- (3) application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling, the quantity and location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

§45.4. Bottle Cartons, Booklets, and Leaflets.

- (a) General. An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by this subchapter.
- (b) Sealed opaque cartons. If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping coverings, cartons, or other containers) must bear all mandatory label information.
- (c) Other cartons. If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable and the covering carton or container is not sufficiently transparent to permit visibility of the mandatory label information on the bottle, and if it displays any written or printed material, other than the brand name and the name and address of the manufacturer, bottler, or importer (omitting any reference to the function performed by the permittee), such covering, carton, or other container must bear all mandatory label information.
- (d) Shipping container. Each shipping container shall have imprinted on the outside the number and size of containers packed therein, and the brand name of the product.

§45.5. Labels: Prohibited Practices.

AGENDA ITEM 9: APPROVAL TO ADOPT NEW CH. 45, SUBCHAPTER A, §§45.1 – 45.19, REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

(a) Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain the following:

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) No label shall contain any brand name which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the administrator finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) Labels shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flags or armed forces; nor shall any label contain any statement, design, device or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(c) Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

§45.6. Container and Fill Standards Required.

No permittee, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce into the commerce of this state, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with §§45.7 - 45.9 of this title (relating to Standard Liquor Bottles; Standards of Fill; and Design and Fill Exceptions).

§45.7. Standard Liquor Bottles.

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(a) General. A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) Headspace. A liquor bottle of a capacity of 1/2 pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8.0% of the total capacity of the bottle after closure.

(c) Design. A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions or purchase or use.

§45.8. Standards of Fill.

(a) Authorized standards of fill. The standards of fill for all distilled spirits, whether domestically manufactured, domestically bottled, or imported, subject to the tolerances allowed in this section. In addition to these stated container sizes and standards of fill authorized for the importation and sale of distilled spirits in this state, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

1/2 gallon	4/5 pint
1 quart	1/2 pint
4/5 quart	1/8 pint
1 pint	1/10 pint
1 gallon	1/16 pint (brandy only)

(b) Tolerances. The following tolerances are allowed:

(1) discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice;

(2) discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity; provided, that no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity; and

(3) discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages. Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

§45.9. Design and Fill Exceptions.

The provisions of the "headspace" and "design" requirements in §45.7 of this title (relating to Standard Liquor Bottles) shall not apply to liquor bottles of unusual design as may, from time to time, be specifically excepted from these requirements by the administrator pursuant to application filed with the administrator by the bottler or importer, as the case may be.

§45.10. Withdrawal from Customs Custody.

No person shall withdraw distilled spirits from U.S. Customs custody in this state except in full compliance with federal and state law and the regulations of the commission.

§45.11. Advertising: Standards Required.

No person, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with §§45.12 - 45.15 of this title (relating to Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements). However, §§45.12 - 45.15 of this title shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is a permittee.

§45.12. Advertisement Defined.

(a) Except as provided in subsection (b) of this section, as used in §§45.11 - 45.15 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements), the term "advertisement" includes any statement provided by or at the behest of a permittee promoting the purchase of a brand of distilled spirits through the medium of radio broadcast; or of television broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement, or of any other printed or graphic matter, including trade booklets, menus, and cards, if such advertisement is in, or is calculated to induce sales in, this state, or is disseminated by mail.

(b) Notwithstanding subsection (a) of this section, the term "advertisement" does not include:

(1) any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under this subchapter; or

(2) any editorial or other reading matter in any periodical newspaper, or other publication for which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

§45.13. Advertising: Mandatory Statements.

(a) Responsible advertiser. An advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) Class and type. The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) Alcoholic content. The alcoholic content shall be stated by proof for distilled spirits except that it may be stated in percentage by volume of cordials and liqueurs, cocktails, highballs, and such other specialties as may be specified by the administrator.

(d) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form:

" _____% neutral spirits distilled from _____ (insert grain, cane products, or fruit, as appropriate)"; or " _____% neutral spirits (vodka) distilled from _____ (insert grain, cane products, or fruit, as appropriate)"; or " _____% grain (cane products), (fruit) neutral spirits"; or " _____% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "distilled from grain," or "distilled from cane products," or "distilled from fruit."

(3) Retailers shall be exempt from the provisions of this subsection.

§45.14. Advertising: Lettering.

Statements required under §§45.11 - 45.13 and 45.15 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; and Advertising: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

§45.15. Advertising: Prohibited Statements.

- (a) Restrictions. An advertisement of distilled spirits shall not contain:
- (1) Any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;
 - (2) any statement that is disparaging of a competitor's product;
 - (3) any statement, design, device, or representation which is obscene or indecent;
 - (4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited;
 - (6) any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by §45.5 of this title (relating to Labels: Prohibited Practices) for labels of distilled spirits. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto.
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of distilled spirits which is prohibited from appearing on the label or which is inconsistent with any statement on the label thereof.
- (c) Statement of age. The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required by the United States Department of the Treasury to be made on the label. An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum, tequila or mescal, which has been aged for not less than four years may, however, contain inconspicuous, general representation as to age, maturity or other similar representation even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.
- (d) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.
- (e) Place of origin. The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.
- (f) Confusion of brands. Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that

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representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this regulation or are in any respect untrue.

(g) Flags, seals, coats of arms, crests, and other insignia. An advertisement shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) Cooperative advertising by retailers. It shall be unlawful for any person holding a package store permit to share the same advertisement of distilled spirits with any other person or persons holding a package store permit or permits, provided, however, that members of a partnership or corporation may share the same distilled spirits advertisement when said distilled spirits are offered for sale under the permit or permits held by the said partnership or corporation.

(i) Price advertising. All distilled spirits advertised with prices by package store permittees shall state the brand name of the distilled spirits offered for sale.

§45.16. Damaged Stock.

No distilled spirits may be sold or possessed for the purpose of sale in this state which have had fire, smoke, or water damage to the label, container, or contents, unless so authorized by the administrator.

§45.17. Intrastate Bottling.

It shall be unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from his premises unless he has first procured a certificate of label approval, or clearance of export procedure, from the administrator.

§45.18. Exhibiting Authority.

It shall be unlawful for any person holding an original or duplicate original of a certificate or label approval, or clearance of export procedure, to fail or refuse to exhibit the same upon request to any duly authorized representative of the commission.

§45.19. Certificate of Registration.

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Distiller's and Rectifier's Permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Distilled Spirit (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

- (1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;
- (2) product brand name; and
- (3) product class and type.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate is \$25.

AGENDA ITEM 10: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER B, §§45.41 – 45.45, 45.47 – 45.50, AND 45.52 – 45.58, STANDARDS OF IDENTITY FOR WINE

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of Chapter 45, Subchapter B, §§45.41 – 45.45, 45.47 – 45.50, and 45.52 – 45.58, relating to Standards of Identity for Wine, and adopts new Chapter 45, Subchapter B, §§45.41 – 45.51, relating to Registration and Advertising of Wine. The repeal and the new subchapter are adopted without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3158) and will not be republished.

Alcoholic Beverage Code (Code) §101.671(a) provides that wine may not be shipped into the state or sold in the state until it is registered with the state. Section 101.671(d) of the Code requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration. Chapter 45, Subchapter B sets forth the procedures for registering wine by obtaining label and product approval. The subchapter also addresses restrictions on advertising wine.

The commission received no comments about the proposed repeal or the proposed new subchapter.

The repeal and the new subchapter are adopted under the authority of Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of wine.

§45.41. Definitions.

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

Added brandy or other spirits - Spirits distilled exclusively from grapes, citrus fruit, or fruit, or their products or residues; or grape wine, citrus wine or fruit wine; or the fruit pomace residuum of such wines.

Bottler - Any person who places wine in containers.

Brand label - The label carrying, in the usual distinctive design, the brand name of the wine.

Container - Any bottle, barrel, cask, tank car, or other closed receptacle irrespective of size or of the material from which made, for use for the sale of wine.

Gallon - United States gallon of 231 cubic inches of alcoholic beverages at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

Pure condensed must - The dehydrated juice or must of sound, ripe grapes, or other fruit, concentrated to not more than 80° (balling), the composition thereof remaining unaltered except for removal of water; "restored pure condensed must" means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process.

Sugar - Pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95% actual sugar calculated on a dry basis.

Vintage wine - A wine made wholly from grapes gathered in the same calendar year and grown and fermented in the same viticultural area, and conforming to the standards prescribed in Classes 1 and 2 of §45.43 of this title (relating to Standards of Identity).

Wine -

(A) Wine as defined in §1.04(7) of the Alcoholic Beverage Code, whether or not containing added brandy or other spirits.

(B) Other alcoholic beverages not so defined but made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, and perry; in each instance only if containing not less than four percent of alcohol by weight and if for nonindustrial use.

§45.42. Application of Standards.

The standards of identify for the several classes and types of wine set forth herein shall be applicable to all wine produced, imported, bottled, offered for sale, or sold within this state for any purpose, except as provided herein.

§45.43. Standards of Identity.

AGENDA ITEM 10: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER B, §§45.41 – 45.45, 45.47 – 45.50, AND 45.52 – 45.58, STANDARDS OF IDENTITY FOR WINE

The standards of identity for the several classes and types of wine set forth herein shall be as follows:

(1) *Class 1 - Wine (or grape wine).*

(A) "Wine" is the product of the normal alcoholic fermentation of the juice of sound, ripe grapes (including pure condensed grape must), with or without added grape brandy or other spirits derived from grapes or grape products, and containing not to exceed 21% alcohol by volume, but without any other addition or extraction whatsoever except such as may occur in normal cellar treatment:

(i) Provided, that except as hereinafter provided, the product may be ameliorated before, during, or after fermentation by either of the following methods:

(I) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35%; but in no event shall any product so ameliorated have an alcoholic content derived by fermentation of more than 14% by volume, or a natural acid content, if water has been added, of less than five parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(II) By adding pure condensed grape must in any quantity; or separately or in combination, not more than 20% by weight of dry sugar, or not more than 10% by weight of water.

(ii) Provided further, that wine used solely for blending, medicinal or industrial purposes may contain not to exceed 24% alcohol by volume, and wine used solely for sacramental purposes may possess such alcoholic content as required by ecclesiastical codes.

(iii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for red table wine, more than 0.14 gram, and for all other wine, more than 0.12 gram, in both cases per 100 cubic centimeters.

(iv) The maximum sulphur dioxide content of any wine shall not be greater than 350 parts per million of total sulphur dioxide or sulphites expressed as sulphur dioxide.

(B) "Table wine" (including "light wine," "light grape wine," "light red wine," "light white wine," and "natural wine") is wine containing not more than 14% alcohol by volume.

(C) "Red wine" is wine which contains the red coloring matter of the skins, juice, or pulp of grapes. "White wine" is wine which does not contain the red coloring matter of the skins, juice, or pulp of grapes. "Pink" or "rose" wine is wine which contains partial red coloring of the skins, juice or pulp of grapes.

(D) "Dessert wine" (including "appetizer wine") is wine containing more than 14% alcohol by volume, but not over 21% alcohol by volume. "Angelica," "Madeira," "Malaga," "Marsala," "Muscatel," "Port," "White Port," "Sherry," and "Tokay" are types of dessert wine containing added grape brandy or other spirits derived from grapes or grape products possessing the taste, aroma, and other characteristics generally attributed to these products, and having an alcoholic content of not less than 17% by volume in the case of sherry, not less than 18% in the case of all other types named in this paragraph.

(E) *Aperitif wine.*

(i) "Aperitif wine" is grape wine, containing added grape brandy or other spirits derived from grapes or grape products and having an alcoholic content of not less than 15% by volume, flavored with herbs and other natural aromatic flavoring materials and possessing the taste, aroma and other characteristics generally attributed to wines of this class.

(ii) "Vermouth" is a type of aperitif wine and made from white grape wine and possessing the taste, aroma, and other characteristics generally attributed to vermouth.

(2) *Class 2 - Sparkling wine.* "Sparkling wine" (including "sparkling grape wine," "sparkling red wine," "sparkling pink (or rose) wine," and "sparkling white wine") is wine made effervescent with carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle.

(A) "Champagne" is a type of sparkling wine which derives its effervescence solely from the secondary fermentation of the wine within closed containers, and which possesses the taste, aroma, and other characteristics attributed to champagne. In the event such containers are greater than one gallon in capacity, the product shall be further designated by the words, "bulk process" or "natural fermentation in bulk" in direct conjunction with the word "champagne" and in lettering at least one-half the size of type and of substantially conspicuous color.

(B) ("Pink or rose) champagne" and "red (or rouge) champagne" are types of sparkling pink or red wine otherwise conforming to the definition of "champagne" and shall be labeled in the same manner as champagne

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except that the designation "pink (or rose) champagne" or "red (or rouge) champagne" shall be used in lieu of the designation "champagne."

(C) "Sparkling burgundy" and sparkling moselle" are types of sparkling wine possessing the taste, aroma and characteristics attributed to these products.

(D) "Crackling wine" (or "petillant wine" or frizzante wine") is a sparkling light wine less effervescent than champagne, made by limited fermentation within the bottle, and may be designated either as "sparkling wine" or "crackling wine" ("petillant wine" or "frizzante wine").

(3) *Class 3 - Carbonated wine.* "Carbonated wine" (including "carbonated grape wine," "carbonated red wine," "carbonated pink (or rose) wine," and "carbonated white wine") is wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(4) *Class 4 - Fruit wine.* "Fruit wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit, (other than grapes) including pure condensed fruit must, with or without added fruit brandy or fruit spirits distilled from the same kind of fruit as the wine to which such fruit brandy or fruit spirits is added, and containing not more than 21% of alcohol by volume, but without any other addition or extraction whatsoever except such as may occur in normal cellar treatment; provided, that the product may be ameliorated before, during, or after fermentation by adding pure condensed fruit must made of the same kind of fruit as the wine to which it is added, or separately, or in combination, dry sugar or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35%; but in no event shall any product ameliorated with sugar, water, or both, have an alcoholic content derived by fermentation of more than 14% by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters. The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural fruit wine, more than 0.14 gram and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters. Fruit wine used solely for blending or industrial purposes may contain not to exceed 24% alcohol by volume, and fruit wine used solely for sacramental purposes may possess such alcoholic content as required by ecclesiastical codes. The class or type of fruit wine shall not be deemed to be altered: where such wine is derived from fruit having a high normal acidity, if the unfermented residual sugar content, derived from added sugar, is not less than 7.5 parts per thousand; or where such wine is derived exclusively from loganberries, currants, or gooseberries, respectively, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60% by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity.

(A) "Light fruit wine" (including "natural fruit wine") is a fruit wine containing not to exceed 14% alcohol by volume.

(B) Fruit wine derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from one kind of fruit shall be designated by the word "wine," qualified by the name of such fruit; *e.g.*, "peach wine," "orange wine," "blackberry wine," *etc.* Fruit wine not derived wholly from one kind of fruit shall be designated as "fruit wine," or "berry wine," or "citrus wine," qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from apples or pears may if desired be designated "cider," or "perry" respectively, and shall be designated if lacking in vinous taste, aroma, and other characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling" and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be designated as "carbonated."

(C) "Berry wine" is fruit wine produced from berries.

(D) "Citrus wine" or "citrus fruit wine" is fruit wine produced from citrus fruit.

(5) *Class 5 - Wine from other agricultural products.*

(A) "Sake" is wine produced from rice in accordance with the commonly accepted method of producing such product.

(B) Other agricultural wines (such as "honey wine"), the production or sale of which is not prohibited by these regulations, shall be made in accordance with the commonly accepted standards for such product.

(6) *Class 6 - Specialty wine.* "Specialty wine" is wine not otherwise herein defined, produced in accordance with commercial standards for such wines. Such wines may bear a fanciful proprietary designation and shall be labeled with a truthful and adequate statement of composition or with any commonly accepted trade designation indicative of such composition.

(A) "Specialty sweetened wine" is wine which has a total solids content of more than 17 grams per 100 cubic centimeters but not more than 22 grams per 100 cubic centimeters. Such wine shall contain as a part of the class and type designation the words "extra sweet," "specially sweetened," "specially sweet," or "with excess sugar."

(B) On wines sweetened with sugar in excess of the maximum quantities specified in *The Standard of Identity for the Product*, "wine sweetened with excess sugar" shall be stated as part of the class and type designation.

(7) *Class 7 - Retsina wine*. "Retsina wine" is grape wine fermented or flavored with resin.

§45.44. Grape Type Designation.

A name indicative of a variety of grape may be employed as the type designation of wine if the wine derives its predominant taste, aroma, and other characteristics, and at least 51% of its volume, from that variety of grape. If such type designation is not known to the consumer as the name of grape variety, there shall appear directly adjacent to such designation an explanatory statement as to the significance thereof.

§45.45. Appellation of Origin.

(a) A wine shall be entitled to an appellation of origin if:

(1) at least 75% of its volume is derived from both fruit or other agricultural products both grown and fermented in the place or region indicated by such appellation;

(2) it has been fully produced and finished within such place or region; and

(3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of production and designation of wines for consumption within such place or region of origin.

(b) Wines of any defined class or type which are labeled or advertised under an appellation of origin such as "Spanish," "New York," "Ohio," "Finger Lakes," "California," *etc.* shall meet the requirements of the standards herein prescribed applicable to such wines and shall, in addition, contain the minimum percentage of alcohol and conform as to composition in all other respects with all standards of identity, quality and purity applicable to wines of such classes of types marketed for consumption in the place or region of origin.

(c) For example, all grape wine bearing labels showing "California" as the origin of such wine, shall be derived 100% from grapes grown and wine from such grapes fermented within the State of California, shall contain no sugar or material containing sugar, other than pure condensed grape must; and in the case of "Angelica," "Madeira," "Malaga," "Marsala," "Muscatel," "Port," "White Port," "Sherry" and "Tokay" shall contain not less than 19.5% of alcohol by volume, except as hereinbefore provided.

(d) Wines subjected to cellar treatment outside the place or region of origin, and blends of wines of the same origin blended together outside the place or region of origin (if all the wines in the blend have a common class, type, or other designation which is employed as the designation of the blend), shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment or blending took place within the place or region of origin.

§45.47. Imitation and Substandard Wine.

(a) "Imitation wine" shall include the following:

(1) Any wine containing synthetic materials.

(2) Any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit, or other agricultural products.

(3) Any class or type of wine, the taste, aroma, color or other characteristics of which have been acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(4) Any wine made from must concentrated at any time to more than 80° (balling).

(b) "Substandard wine" shall include:

(1) Any wine having volatile acidity in excess of the maximum prescribed for it in these rules.

(2) Any wine for which no maximum volatile acidity is prescribed in this subchapter having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters.

(3) Any wine for which a standard of identity is prescribed in this subchapter which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

AGENDA ITEM 10: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER B, §§45.41 – 45.45, 45.47 – 45.50, AND 45.52 – 45.58, STANDARDS OF IDENTITY FOR WINE

(4) Wine in any class or type containing added water, or sugar and water solution, in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed in §45.43 of this title (relating to Standards of Identity).

§45.48. Coined Names.

(a) The sale in this state of wines, identified on the labels or in advertisements by a type or brand designation which implies mixtures of wines for which standards of identity are established in this subchapter, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Port," "White Port," "Sherry," "Tokay," "Sauterne," "Claret," "Burgundy," *etc.*, is hereby prohibited.

(b) The sale in this state of wines or combinations of wine and other alcoholic beverages which contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine," *etc.*, or simulations of such combinations is hereby prohibited.

§45.49. Containers.

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is hereby prohibited.

(b) The sale of wine in containers which have blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler, or bottler, or any other person, different from the person whose name is required to appear on the brand label, is hereby prohibited.

(c) The capacity of containers for wine bottled in the United States and offered for sale in Texas shall be limited to the following sizes: 4.9 gallons, three gallons, one gallon, 1/2 gallon, one quart, 4/5 quart, one pint, 4/5 pint, 2/5 pint, six ounces, for all wines; 4/5 gallon and 2/5 gallon for wines bottled in traditional bordeaux or burgundy shapes (including still, sparkling, and carbonated wines); 15/16 quart for aperitif wines only; and 1/2 pint for wines bottled in traditional chianti or round shapes.

(d) In addition to the above stated container sizes and standards of fill authorized for the importation and sale of wine in this state, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Bureau of Alcohol, Tobacco and Firearms are hereby authorized, however, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

§45.50. Certificate of Registration.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Wine (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

- (1) A certificate of label approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB);
- (2) product brand name; and
- (3) product class and type;
- (4) fanciful name;
- (5) appellation and vintage;
- (6) alcohol content;
- (7) size of container.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the wine as shipped, sold, or marketed, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate of Registration is \$25.00.

(f) No additional approval or testing of the wine by the commission is required for issuance of a Certificate of Registration.

Note: New Rule Adopted: January 25, 2008; Effective Date: April 1, 2008

§45.52. Label: Prohibited Statements.

Labels shall not contain the following:

- (1) Any statement, design, device, or representation which is false or misleading in any material particular.
- (2) Any statement which is disparaging of a competitor's products.
- (3) Any statement, design, device, or representation which is obscene or indecent.
- (4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.
- (5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, other than a bona fide guarantee to refund the purchase price if the consumer is dissatisfied.
- (6) Any statement that the wine is produced, blended, bottled, or sold under, or in accordance with, any municipal, state or federal authorization, law, or regulation; and if a municipal, state or federal license, registry or permit number is stated, the number shall not be accompanied by any statement relating thereto except the kind or character of the license, registration or permit to which the number pertains, in relatively inconspicuous type size.
- (7) Any statement, design, or pictorial representation relating to the armed forces of the United States or the American flag.
- (8) Any statement, design, or representation (other than a statement of alcoholic content) which tends to create the impression that the wine has been fortified or contains distilled spirits, or has intoxicating qualities.
- (9) Any statement of age or representation relative to age (including words or devices in any brand name or mark), except that, in the case of vintage wine, the label may state the year of vintage, but no other age representation in respect thereto. The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears. Truthful reference of a general and informative nature relating to methods of wine production involving storage or aging, such as "this wine has been mellowed in oak casks," "stored in small barrels," or "matured at regulated temperatures in our cellars," may appear, but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.
- (10) Statement of miscellaneous dates. No date, except as provided in the foregoing paragraph, shall be stated unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date; provided, that if any date refers to the date of establishment of any business, such date shall be stated without due emphasis and in direct conjunction with the name of the person to whom it refers; and provided further, that the date of bottling appears in lettering not greater than eight-point gothic caps and the word "bottled" or its equivalent appears in direct conjunction therewith.

§45.53. Customs Custody.

- (a) It shall be unlawful for any person to withdraw from customs custody any imported wine in this state unless the same conforms in every way with all provisions set forth in this subchapter relative to labeling.
- (b) Imported wine in customs custody, which is not labeled in conformity herewith must be relabeled prior to release in accordance with the terms of this subchapter.

§45.54. Advertising.

- (a) *General.* No person shall publish or disseminate, or cause to be published or disseminated, by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other graphic or printed matter, in this state, any advertisement of wine unless such advertisement is in conformity with the provisions of this subchapter.
- (b) *Responsible advertiser.* The advertisement shall state the name and address of the person responsible for its publication or broadcast. Street number and name may be omitted in the address.
- (c) *Class and type designation.* If the advertisement contains any reference to a particular class or type of wine, there shall appear a conspicuous statement of the class and type to which the product belongs, corresponding with the statement of class and type which is required to appear on the label of the product.

AGENDA ITEM 10: APPROVAL TO ADOPT REPEAL OF CURRENT CH. 45, SUBCHAPTER B, §§45.41 – 45.45, 45.47 – 45.50, AND 45.52 – 45.58, STANDARDS OF IDENTIY FOR WINE

(d) *Price advertising.* All wines advertised with prices by package store permittees and wine only package store permittees shall state the brand name, class, and type of the wine offered for sale.

(e) *Institutional advertising.* The provisions of this section shall not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal; provided, such advertising has been submitted to and approved by the administrator.

§45.55. Advertising: Prohibited Statements.

(a) *General.* The advertisement shall not contain the following:

(1) Any statement, design, device or representation which is prohibited from appearing on the label of the advertised product.

(2) Any statement of, or any statement likely to be regarded as a statement of, alcoholic content.

(b) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement, or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter, if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and such impression is in any respect untrue.

(c) *Cooperative advertising.* It shall be unlawful for any person holding a package store permit or a wine only package store permit to share the same advertisement of wines with any other person holding a package store permit or a wine only package store permit. A person holding permits for more than one location may advertise wines for sale at any or all such locations in the same advertisement.

(d) *Fire sale prohibited.* No wine possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

§45.56. Examination.

(a) This subchapter shall not apply to wine which is to be exported in bond.

(b) Samples of wine and vinous liquor shall be taken for examination by representatives of the commission whenever deemed necessary by the administrator. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the code and the rules of the commission.

(c) It shall be unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.

(d) The alcoholic content requirements set forth in this section shall not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume. Provided, however, that such wines shall be labeled "Sacramental" or "Altar" wines.

(e) It shall be unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine which are not protected from tampering or contamination by being sealed with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

§45.57. Illicit Beverage.

Any wine or container of which does not meet all the requirements of this subchapter shall be an illicit beverage and subject to seizure without warrant. The administrator may authorize such disposition as facts and circumstances may warrant of any wine which has been seized as the result of an accidental shipment or other reasonable mistake. All wine which cannot be restored to meet the standards of purity shall be destroyed.

§45.58. Exemption.

This subchapter shall not apply to wine produced pursuant to §109.21, Alcoholic Beverage Code.

The proposed new sections are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

§45.41. Authority and Scope.

(a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of wine with the state.

(b) This subchapter does not apply to wine produced pursuant to §109.21, Alcoholic Beverage Code, or to wine which is to be exported in bond.

§45.42. Definitions.

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

(1) *Brand label*--The label carrying, in the usual distinctive design, the brand name of the wine.

(2) *Container*--Any bottle, barrel, cask, tank car, or other closed receptacle irrespective of size or of the material from which made, for use for the sale of wine.

(3) *Wine*--A product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers and other alcoholic beverages made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, sake, and perry.

§45.43. Coined Names.

The sale in this state of wines or combinations of wine and other alcoholic beverages which contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine," or simulations of such combinations, is prohibited.

§45.44. Containers.

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is hereby prohibited.

(b) The sale of wine in containers which have blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler, or bottler, or any other person, different from the person whose name is required to appear on the brand label, is hereby prohibited.

(c) The capacity of containers authorized for the importation and sale of wine in this state and other container sizes and standards of fill based on international metric units of measure which are authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

§45.45. Certificate of Registration.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

AGENDA ITEM 11: APPROVAL TO ADOPT NEW CH. 45, SUBCHAPTER B, §§45.41 – 45.51, REGISTRATION AND ADVERTISING FOR WINE

(c) An applicant must submit to the commission an Application to Register a Wine (application) on the form prescribed by the commission along with the application fee. The application must contain the following information:

- (1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;
- (2) product brand name;
- (3) product class and type;
- (4) fanciful name;
- (5) appellation and vintage;
- (6) alcohol content; and
- (7) size of container.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the wine as shipped, sold, or marketed, or an exact color copy of a label must be included with the application. A sample of the wine, along with a set of labels, is required if the alcohol content is below 7% by volume and a federal COLA is not required.

(e) The application fee for a Certificate of Registration is \$25.

§45.46. Label: Prohibited Statements.

(a) No label for wine shall contain:

(1) Any statement, design, device, or representation which is false or misleading in any material particular.

(2) Any statement which is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, other than a bona fide guarantee to refund the purchase price if the consumer is dissatisfied.

(b) No label for wine without a COLA from the United States Department of the Treasury shall contain:

(1) Any statement that the wine is produced, blended, bottled, or sold under, or in accordance with, any municipal, state or federal authorization, law, or regulation; and if a municipal, state or federal license, registry or permit number is stated, the number shall not be accompanied by any statement relating thereto except the kind or character of the license, registration or permit to which the number pertains, in relatively inconspicuous type size.

(2) Any statement, design, or pictorial representation relating to the armed forces of the United States or the American flag.

(3) Any statement, design, or representation (other than a statement of alcoholic content) which tends to create the impression that the wine has been fortified or contains distilled spirits, or has intoxicating qualities.

(4) Any statement of age or representation relative to age (including words or devices in any brand name or mark), except that, in the case of vintage wine, the label may state the year of vintage, but no other age representation in respect thereto. The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears. Truthful reference of a general and informative nature relating to methods of wine production involving storage or aging, such as "this wine has been mellowed in oak casks," "stored in small barrels," or "matured at regulated temperatures in our cellars," may appear, but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

(5) Any statement of a date, except as provided in the foregoing paragraph, unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date; provided, that if any date refers to the date of establishment of any business, such date shall be stated without due emphasis and in direct conjunction with the name of the person to whom it refers; and provided further, that the date of bottling appears in lettering not greater than eight-point gothic caps and the word "bottled" or its equivalent appears in direct conjunction therewith.

§45.47. Customs Custody.

- (a) It shall be unlawful for any person to withdraw from customs custody any imported wine in this state unless the same conforms in every way with all provisions set forth in this subchapter relative to labeling.
- (b) Imported wine in customs custody, which is not labeled in conformity herewith must be relabeled prior to release in accordance with the terms of this subchapter.

§45.48. Advertising.

- (a) *General.* No person shall publish or disseminate, or cause to be published or disseminated, by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other graphic or printed matter, in this state, any advertisement of wine unless such advertisement is in conformity with the provisions of this subchapter.
- (b) *Responsible advertiser.* The advertisement shall state the name and address of the person responsible for its publication or broadcast. Street number and name may be omitted in the address.
- (c) *Class and type designation.* If the advertisement contains any reference to a particular class or type of wine, there shall appear a conspicuous statement of the class and type to which the product belongs, corresponding with the statement of class and type which is required to appear on the label of the product.
- (d) *Price advertising.* All wines advertised with prices by package store permittees and wine only package store permittees shall state the brand name, class, and type of the wine offered for sale.
- (e) *Institutional advertising.* The provisions of this section shall not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal; provided, such advertising has been submitted to and approved by the administrator.

§45.49. Advertising: Prohibited Statements.

- (a) *General.* An advertisement shall not contain the following:
 - (1) Any statement, design, device or representation which is prohibited from appearing on the label of the advertised product.
 - (2) Any statement of, or any statement likely to be regarded as a statement of, alcoholic content.
- (b) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement, or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter, if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and such impression is in any respect untrue.
- (c) *Cooperative advertising.* It shall be unlawful for any person holding a package store permit or a wine only package store permit to share the same advertisement of wines with any other person holding a package store permit or a wine only package store permit. A person holding permits for more than one location may advertise wines for sale at any or all such locations in the same advertisement.
- (d) *Fire sale prohibited.* No wine possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

§45.50. Examination.

AGENDA ITEM 11: APPROVAL TO ADOPT NEW CH. 45, SUBCHAPTER B, §§45.41 – 45.51, REGISTRATION AND ADVERTISING FOR WINE

(a) Samples of wine and vinous liquor shall be taken for examination by representatives of the commission whenever deemed necessary by the administrator. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the code and the rules of the commission.

(b) It shall be unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.

(c) The alcoholic content requirements set forth in this section shall not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume. Provided, however, that such wines shall be labeled "Sacramental" or "Altar" wines.

(d) It shall be unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine which are not protected from tampering or contamination by being sealed with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

§45.51. Illicit Beverage.

Any wine or container of which does not meet all the requirements of this subchapter shall be an illicit beverage and subject to seizure without warrant. The administrator may authorize such disposition as facts and circumstances may warrant of any wine which has been seized as the result of an accidental shipment or other reasonable mistake. All wine which cannot be restored to meet the standards of purity shall be destroyed.

AGENDA ITEM 12: APPROVAL TO ADOPT AMENDMENT TO §45.71, DEFINITIONS

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.71, relating to Definitions, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3161) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. Section 45.71 of the commission's rules defines terms used in Chapter 45, Subchapter C, related to Standards of Identity for Malt Beverages. The amendment deletes unnecessary definitions.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

§45.71. Definitions.

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

- (1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.
- (2) Bottler--Any person who places malt beverages in containers.
- (3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.
- (4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.
- (5) Domestic malt beverages--A malt beverage manufactured in the United States.
- (6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.
- (7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.
- (8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.
- (9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight.

AGENDA ITEM 13: APPROVAL TO ADOPT AMENDMENT TO §45.72. AUTHORITY AND SCOPE

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.72, relating to Authority and Scope, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3162) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. Section 45.72 of the commission's rules describes the applicability of various sections in Chapter 45, Subchapter C, related to Standards of Identity for Malt Beverages. The amendment changes the name of the section, adds the statutory authority for the subchapter, and makes editorial changes to the text.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

§45.72. Authority and Scope.

(a) This subchapter implements Alcoholic Beverage Code §101.67, which provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage.

(b) Sections 45.73 - 45.82 of this title (relating to Label: General; Misbranding; Mandatory Label Information for Malt Beverages; Brand Names; Class and Types; Name and Address; Alcoholic Content; Net Contents; General Requirements for Malt Beverages; and Prohibited Practices) shall apply to all malt beverages manufactured, sold, or possessed for the purpose of sale in this state.

(c) Section 45.83 and §45.84 of this title (relating to Label Approval and Release and Relabeling), shall apply to withdrawals of malt beverages from customs custody.

(d) Section 45.85 and §45.86 of this title (relating to Approvals of Labels and Exhibiting Certificates to Representatives of the Commission) shall apply to any person who manufactures, imports into, transports, sells or offers for sale any malt beverages in this state.

(e) It shall be unlawful for any person to publish or disseminate, or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with this subsection and §§45.87 - 45.90 of this title (relating to Advertisement Defined; Advertisement: Mandatory Statement; Advertisement: Legibility of Requirements; and Advertisement: Prohibited Statements).

(f) This subchapter shall not apply to outdoor advertising in place as of June 1, 1937, but shall apply upon replacement, restoration, or renovation of any such advertising.

(g) This subchapter shall not apply to the publisher of any newspaper, periodical or other publication, or radio or television broadcaster, unless such publisher or broadcaster is engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, importer, or retailer of malt beverages, directly or indirectly, or through an affiliate.

AGENDA ITEM 14: APPROVAL TO ADOPT AMENDMENT TO §45.85, APPROVAL OF LABELS

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.85, relating to Approval of Labels, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3163) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. The amendment to §45.85 clarifies procedures for approval of labels and samples for malt liquors and beer.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

§45.85.Approval of Labels.

- (a) No beer, ale or malt liquor may be shipped into the state, imported into the state, manufactured and offered for sale in the state, or distributed, sold or stored in the state until a sample of the beverage has been analyzed and the label approved by the commission.
- (b) An applicant for label approval under this section must hold a brewer's or non-resident brewer's permit, or a manufacturer's or non-resident manufacturer's license issued by the commission.
- (c) An applicant must submit to the commission an application on the form prescribed by the commission and the application fee. The application must be accompanied by:
 - (1) a legible copy of the certificate of label approval issued by the United States Department of the Treasury; and
 - (2) an actual label that is affixed to the product as shipped, sold, or marketed, or an exact color copy of the label.
- (d) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual sample.
- (e) The application fee for label approval of beer, ale, or malt liquor is \$25 for each size requested on the application.
- (f) This section implements Alcoholic Beverage Code §101.67(e).

AGENDA ITEM 15: APPROVAL TO AMENDMENT TO §45.86. EXHIBITING CERTIFICATES TO REPRESENTATIVES OF THE COMMISSION

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.86, relating to Exhibiting Certificates to Representatives of the Commission, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3164) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. The amendment to §45.86 updates a reference to the authority issuing certificates of label approval at the federal level.

The commission received no comments about the proposed amendment.

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

§45.86. Exhibiting Certificates to Representatives of the Commission.

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of approval as issued by the United States Department of the Treasury or the administrator.

AGENDA ITEM 16: APPROVAL TO ADOPT AMENDMENT TO §45.88. ADVERTISEMENT: MANDATORY STATEMENT

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.88, relating to Advertisement: Mandatory Statement, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3165) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.88 of the commission's rules requires the statement of class of a malt beverage in an advertisement to match the class designated on the label. The amendment changes the title of the section to indicate the topic covered and makes an editorial change.

The commission received no comments about the proposed amendment.

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

§45.88. Advertisement: Mandatory Statement.

Any advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

AGENDA ITEM 17: APPROVAL TO ADOPT AMNDEMENT TO §45.89. ADVERTISEMENT: LEGALITY OF REQUIREMENTS

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.89, relating to Advertisement: Legibility of Requirements, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3166) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.89 of the commission's rules requires that the statements required by Chapter 45, Subchapter C in advertisements of malt beverages be conspicuous and legible. The amendment changes the title of the section to indicate the topic covered and makes editorial changes.

The commission received no comments about the proposed amendment.

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

§45.89. Advertisement: Legibility of Requirements.

Statements required under §§45.72, 45.87, 45.88 and 45.90 of this title (relating to Authority and Scope; Advertisement Defined; Advertisement: Mandatory Statement; and Advertisement: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

AGENDA ITEM 18: APPROVAL TO ADOPT AMENDMENT TO §45.90. ADVERTISEMENT: PROHIBITED STATEMENTS

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to 45.90, relating to Advertisement: Prohibited Statements, without changes to the proposed text as published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3166) and will not be republished.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.90 of the commission's rules sets forth requirements for advertisements of malt beverages. The amendment changes the title of the section to clarify that the section refers to advertisements.

The commission received no comments about the proposed amendment.

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

§45.90. Advertisement: Prohibited Statements.

- (a) General. An advertisement of malt beverages shall not contain the following:
 - (1) any statement that is false or misleading in any material particular;
 - (2) any statement that is disparaging of a competitor or his products;
 - (3) any statement, design, device or representation which is obscene or indecent;
 - (4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
 - (6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;
 - (7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.
- (c) Class.
 - (1) No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.
 - (2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor."
- (d) Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.
- (e) Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are in any respect untrue.
- (f) Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

AGENDA ITEM 19: APPROVAL TO ADOPT REPEAL §45.102. RETAILER TRANSMITTING ORDER TO ANOTHER RETAILER

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §45.102, relating to Retailer Transmitting Order to Another Retailer, without changes to the proposal published in the May 20, 2011 issue of the *Texas Register* (36 TexReg 3167) and will not be republished.

The commission finds that the original meaning and intent of the rule have been obscured and the reasons which led to its original adoption no longer exist.

The commission received no comments about the proposed repeal.

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

§45.102. Retailer Transmitting Order to Another Retailer.

(a) In this section the term "retailer" shall mean any person engaged in the business of selling any alcoholic beverages to consumers in any state.

(b) A retailer shall not enter into any agreement, or join any association or organization, which imposes a duty on such retailer to take an order for any alcoholic beverages and collect the price of such alcoholic beverage and cause such order for an alcoholic beverage to be transmitted to another retailer for delivery by such other retailer, or which imposes a duty on such retailer to deliver an alcoholic beverage on an order that was taken by another retailer.

(c) A retailer shall not take an order for an alcoholic beverage and collect the price of such alcoholic beverage with an agreement that such order for an alcoholic beverage will be transmitted to another retailer for delivery by such other retailer.

(d) A retailer shall not deliver an alcoholic beverage when the order for and payment for such alcoholic beverage was received by another retailer.

(e) The act of a retailer of paying to any person a portion or percent of the amount of money collected by such retailer on an order for an alcoholic beverage that is to be transmitted to another retailer for delivery by such other retailer shall be deemed to be an act of allowing the permit or license of such retailer to be used by a person other than the person to whom the permit or license was issued.

AGENDA ITEM 20: APPROVAL TO ADOPT REPEAL CH. 32, §§32.1 – 32.43, GRANT ADMINISTRATION

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of Chapter 32, §§32.1-32.43, relating to Grant Administration. The repeal is adopted without changes to the proposal published in the June 17, 2011 issue of the *Texas Register* (36 TexReg 3689) and will not be republished.

The commission finds that Chapter 32 does not accurately reflect current practice and the reasons which led to its original adoption no longer exist.

The commission received no comments about the proposed repeal.

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

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

16 TAC §§32.1 - 32.9

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

§32.1.Applicability.

§32.2.Eligible Applicants.

§32.3.Definitions.

§32.4.Grant Submission Process.

§32.5.Selection Process.

§32.6.Grant Funding Decisions.

§32.7.Grant Acceptance.

§32.8.Federal Funding and Adoptions by Reference.

§32.9.Grantee Forms.

SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

16 TAC §§32.10 - 32.20

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

§32.10.Grant Budgets.

§32.11.Matching Funds Policy.

§32.12.Salaries.

§32.13.Professional and Contractual Services.

§32.14.Travel and Training.

§32.15.Equipment.

§32.16.Consumables.

§32.17.Rental Equipment and Other.

§32.18.Purchase of Evidence.

§32.19.Indirect Costs.

§32.20.Program Income.

SUBCHAPTER C. CONDITIONS OF GRANT FUNDING

16 TAC §§32.21 - 32.28

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

- §32.21. Grant Conditions.*
- §32.22. Civil Rights Liaison Certification.*
- §32.23. Certification of Drug Testing.*
- §32.24. Confidential Funds Certification.*
- §32.25. Cooperative Working Agreement.*
- §32.26. Interagency Agreements and Subcontracts.*
- §32.27. Resolutions.*
- §32.28. Tax Exempt and Nonprofit Information.*

SUBCHAPTER D. ADMINISTERING GRANTS

16 TAC §§32.29 - 32.41

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

- §32.29. Grant Officials.*
- §32.30. Obligating Funds.*
- §32.31. Retention of Records.*
- §32.32. Expenditure Reports/Request for Reimbursement.*
- §32.33. Grant Adjustments.*
- §32.34. Bonding and Insurance.*
- §32.35. Remedies for Noncompliance.*
- §32.36. Grant Termination.*
- §32.37. Payment of Outstanding Liabilities.*
- §32.38. Violations of Laws.*
- §32.39. Evaluating Project Effectiveness.*
- §32.40. Grantee Reports.*
- §32.41. Grant Management.*

SUBCHAPTER E. PROGRAM MONITORING AND AUDITS

16 TAC §32.42, §32.43

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

- §32.42. Monitoring.*
- §32.43. Audits Not Performed by TABC.*

AGENDA ITEM 21: APPROVAL TO ADOPT AMENDMENT TO §33.1, FINAL CONVICTION OR DEFERRED ADJUDICATION

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.1, Deferred Adjudication, without changes to the proposed text as published in the June 17, 2011 issue of the Texas Register (36 TexReg 3691) and will not be republished.

The amendment clarifies the factors that will be considered by the commission in determining if an applicant for a permit or license is qualified and suitable under Alcoholic Beverage Code §109.532(b)(1).

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §109.532(b)(1), which allows the commission to consider a deferred adjudication in determining whether an applicant is qualified and suitable.

§33.1. Deferred Adjudication.

(a) This section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532 .

(b) In determining whether an applicant is not qualified or is unsuitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1), or whether an application should be cancelled or denied the commission may consider whether the person is currently serving deferred adjudication for:

- (1) any felony offense;
- (2) any controlled substance offense in the Health and Safety Code Chapter 481;
- (3) any firearm or deadly weapon offense in Penal Code Chapter 46;
- (4) any prostitution offense in Penal Code Chapter 43;
- (5) any gambling offense in Penal Code Chapter 47 ;
- (6) any human trafficking offense in Penal Code Chapter 20A;
- (7) any fraud offense in Penal Code Chapters 32 or 35;
- (8) any money laundering offense in Penal Code Chapter 34; or
- (9) any violation of the Alcoholic Beverage Code.

(c) An applicant currently serving deferred adjudication for one of the offenses listed in subsection (b) of this section shall provide information requested by the commission to allow the commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1).

AGENDA ITEM 22: APPROVAL TO ADOPT AMENDMENT TO §33.23. ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.23, Alcoholic Beverage License and Permit Surcharges. The amendment is adopted without changes to the proposed text as published in the June 17, 2011 issue of the *Texas Register* (36 TexReg 3692) and will not be republished.

Alcoholic Beverage Code §5.50 authorizes the commission to have a rule assessing surcharges on all applicants for original or renewal certificates, permits or licenses, in addition to the application fees prescribed in the Code. The amendment to §33.23 changes the assessment from an annual to a biennial basis. It also implements Rider 12 of Article V of H.B. 1, 82nd Legislature, Regular Session, which authorizes the commission to increase surcharges by an amount sufficient to raise \$7,000,000 during the 2012-2013 biennium.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §5.50, which authorizes the commission to have a rule assessing surcharges.

§33.23. Alcoholic Beverage Permit, License and Certificate Surcharges.

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

Liquor Permits and Certificates	
Agent’s Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer’s Permit (B)	\$576.00
Carrier’s Permit (C)	\$252.00
Caterer’s Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller’s & Rectifier’s Permit (D)	\$350.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler’s Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00

AGENDA ITEM 22: APPROVAL TO ADOPT AMENDMENT TO §33.23. ALCOHOLIC BEVERAGE LICSE AND PERMIT SURCHARGES

Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00
Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00
Non Resident Brewer's Permit (U)	\$376.00
Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00
Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00

AGENDA ITEM 22: APPROVAL TO ADOPT AMENDMENT TO §33.23. ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES

Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Warehouse License (MW)	\$553.00
Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00
Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

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

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

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

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

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

AGENDA ITEM 22: APPROVAL TO ADOPT AMENDMENT TO §33.23. ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES

- (g) Failure or refusal to timely pay the permit, license, or certificate surcharge is considered the same as failure to timely pay the original or renewal permit, license or certificate fee, and the same penalties apply.
- (h) The fees and surcharges for a permit or license may not be prorated or refunded.

AGENDA ITEM 23: APPROVAL TO ADOPT AMENDMENT TO §33.25. ALCOHOLIC BEVERAGE LICENSE AND PERMIT FEES AND SURCHARGES

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.25, Alcoholic Beverage License and Permit Fees and Surcharges. The amendment is adopted without changes to the proposed text as published in the June 17, 2011 issue of the *Texas Register* (36 TexReg 3694) and will not be republished.

Alcoholic Beverage Code §§11.09 and 61.03 authorize the commission to transition the term for which permits and licenses are issued from one year to two years. The amendment to §33.25 deletes those portions of the rule that implemented that transition, which has been completed. The amendment also reorganizes and makes editorial changes to the remaining portions of the rule.

The commission received no comments about the proposed amendment.

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

§33.25. Temporary and Secondary Permits and Licenses .

- (a) This section relates to Alcoholic Beverage Code §11.09 and §61.03.
- (b) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date the primary permit expires.
- (c) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.
- (d) The fees and surcharges for a secondary or temporary permit or license may not be prorated or refunded.

The Texas Alcoholic Beverage Commission (commission), adopts new §35.32, relating to Reporting a Breach of the Peace, with changes to the proposed text as published in the June 17, 2011 issue of the *Texas Register* (36 TexReg 3695). The section establishes criteria for reportable incidents and procedures for reporting them.

Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31) require permittees and licensees to promptly report to the commission a breach of the peace occurring on the licensed premises. The commission seeks to minimize doubts that good actors may have about when reports are required, thereby reducing their exposure to risk of noncompliance. The commission also seeks to encourage more reporting from bad actors who may currently hide behind the uncertainty in the Code provisions. It appears that failure to report breaches of the peace can be an indicator that an establishment may have other serious problems.

After the commissioners voted to authorize publication of the proposed rule, staff met with industry representatives (“representatives”) to discuss their concerns with the proposal. The representatives attending the meeting were: Dewey Brackin, representing Texas Retailer’s Association; Lou Bright, representing H.E.B.; Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; and Glen Garey, Texas Restaurant Association.

As published, subsection (b) called for reports to be made within three business days of the incident, unless the incident was a shooting, stabbing or murder (in which case the report was due within 24 hours). The representatives asked for the general reporting requirement to be extended from three to five business days. They argued that the agency is not a first responder, and that their clients have internal processing and quality assurance demands that may require a longer period.

Matt Martin submitted a comment asking to change the 24-hour reporting requirement to “the later of 24 hours or noon on the next business day”. He stated that many of his larger corporate clients look to him as an attorney for guidance and assistance with completing breach of peace filings. He is concerned that if an incident requiring notification in 24 hours was to happen over a weekend, his clients might not be able to reach him prior to having to file the report.

The commission seeks to balance these concerns with the agency’s need to be able to begin investigations promptly, while there is a greater chance that witnesses will still be available and that memories will still be fresh. The commission recognizes that modern technological capabilities make it possible to communicate quite rapidly. A business can choose how it structures its affairs to meet its statutory obligation to report breaches of the peace that occur on licensed premises.

The commission notes that the report of a breach under the Code and under this rule is not an admission of guilt to a breach of the peace violation. The purpose of adopting this rule is to clarify which incidents must be reported. Just because an incident is reportable does not necessarily mean that it constitutes a breach of the peace violation. The purpose of the report is to allow the commission to conduct an investigation to make that determination. By drawing this distinction between what constitutes a breach for reporting purposes and what constitutes a breach for purposes of finding a violation, the commission seeks to minimize self-censorship by permittees and licensees in regards to filing reports.

The commission changes the general reporting requirement in subsection (b) from three business days to five calendar days, and includes incidents involving serious bodily injury in the 24-hour reporting category. The commission believes this strikes the appropriate balance between accommodating business logistics and protecting public safety.

AGENDA ITEM 24: APPROVAL TO ADOPT NEW §35.32, REPORTING A BREACH OF THE PEACE

In subsection (e), the representatives were concerned that the words “at a minimum” in the proposal implied that some other, unstated information might be required. To clarify this, the commission amends proposed subsection (e) to affirm that the stated requirements are all that must be met, but that reporters can include additional information if they wish to do so.

In regards to subsection (f), the representatives asserted that there was unnecessary duplication in the listing of reportable incidents. They also contended that some of the proposed language was too vague and invited uncertain application of the rule. The commission concurs that some change is appropriate and modifies the subsection to cover explicit actions that require fewer judgment calls by the permittee or licensee. In that vein, the commission also imposes a requirement to report when law enforcement or emergency medical services personnel respond to the licensed premises.

The representatives voiced a concern that the proposed rule might impose an obligation to report in instances where the permittee or licensee was unaware and could not reasonably be expected to know that the incident occurred. In response, the commission modifies subsections (f) and (g) to clarify that certain of the incidents described in subsection (f) are reportable only in circumstances described in subsection (g), where the permittee or licensee has reason to know that they occurred.

In addition, the commission adds new subsection (h), which affords a permittee or licensee the opportunity to avoid liability by demonstrating that the permittee or licensee neither knew nor reasonably should have known that an otherwise reportable incident occurred on the licensed premises.

§35.32. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident. (c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) by facsimile transmission to the appropriate commission office;
- (3) through the commission’s website; or
- (4) by e-mail to “breachofpeace@tabc.state.tx.us”.

(d) The administrator or administrator’s designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §§11.61(b)(21) or 61.71(a)(31).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) – (9) of this subsection, but may include other information the person making the report wishes to include:

- (1) the date and time of the report;
- (2) the date and time of the incident being reported;
- (3) the trade name of the licensed premises where the incident occurred;
- (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
- (5) the name of the person filing the report, that person’s relationship to the holder of the permit or license, and contact information for that person;
- (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person’s relationship to the permit or license holder, and contact information for that person;
- (7) a brief description of the incident;
- (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

AGENDA ITEM 24: APPROVAL TO ADOPT NEW §35.32, REPORTING A BREACH OF THE PEACE

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable “breach of the peace” occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person with a weapon;

(4) discharging a firearm on the licensed premises; or

(5) destroying the permittee’s or licensee’s property, if the incident is reported by the permittee or licensee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a “disturbance”, and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a “disturbance”, and therefore is always a reportable breach of the peace;

(3) a “licensed premises” is as defined in Alco. Bev. Code §11.49;

(4) a “permittee” is as defined in Alco. Bev. Code §1.04(11); and

(5) a “licensee” is as defined in Alco. Bev. Code §1.04(16).

(h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

AGENDA ITEM 25: APPROVAL TO ADOPT AMENDMENT TO §45.117. GIFTS AND ADVERTISING SPECIALTIES

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.117, Gifts and Advertising Specialties. The amendment is adopted without changes to the proposed text as published in the June 17, 2011 issue of the *Texas Register* (36 TexReg 3696) and will not be republished.

Alcoholic Beverage Code (“Code”) §102.07 prohibits certain upper- and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. Code §108.042, added by S.B. 890 (82nd Leg., Regular Session), requires the commission to adopt rules relaxing the restrictions of §102.07 in order to allow certain permittees to clean and maintain coil connections used in dispensing wine. This amendment to §45.117 implements new Code §108.042.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §108.042, which requires the commission to adopt rules addressing maintenance of coil connections for the dispensing of wine.

§45.117. Gifts and Advertising Specialties.

(a) General.

(1) This section is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58 .

(2) This section applies to buyers, sellers and consumers of liquor.

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d) .

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) Manufacturers and wholesalers may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Manufacturers and wholesalers may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer.

(1) Manufactures and wholesalers may service and repair items furnished to retailers under the provisions of this rule.

(2) Manufactures and wholesalers may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Manufacturers and wholesalers may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

AGENDA ITEM 25: APPROVAL TO ADOPT AMENDMENT TO §45.117. GIFTS AND ADVERTISING SPECIALTIES

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

AGENDA ITEM 26: APPROVAL PURSUANT TO GOV'T CODE §2001.039 TO READOPT, WITHOUT CHANGES, CHAPTER 45, SUBCHAPTER C, §§45.74 – 45.79, 45.81, 45.83, 45.84, 45.87 AND 45.91

Pursuant to the notice of proposed rule review published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3199), the Texas Alcoholic Beverage Commission (commission) has reviewed and considered for re-adoption, revision, or repeal these sections of Chapter 45, Subchapter C, in accordance with Government Code §2001.039: §§45.74, relating to Misbranding; 45.75, relating to Mandatory Label Information for Malt Beverages; 45.76, relating to Brand Names; 45.77, relating to Class and Type; 45.78, relating to Name and Address; 45.79, relating to Alcoholic Content; 45.81, relating to General Requirements for Malt Beverages; 45.83, relating to Label Approval and Release; 45.84, relating to Relabeling; 45.87, relating to Advertisement Defined; and 45.91, relating to Exports.

The commission considered, among other things, whether the reasons for adoption of these sections continue to exist. After its review, the commission finds that the reasons for adopting these sections continue to exist and readopts these sections, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the re-adoption of these sections.

This concludes the review of 16 TAC §§45.74, relating to Misbranding; 45.75, relating to Mandatory Label Information for Malt Beverages; 45.76, relating to Brand Names; 45.77, relating to Class and Type; 45.78, relating to Name and Address; 45.79, relating to Alcoholic Content; 45.81, relating to General Requirements for Malt Beverages; 45.83, relating to Label Approval and Release; 45.84, relating to Relabeling; 45.87, relating to Advertisement Defined; and 45.91, relating to Exports.

§45.74. Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

- (1) if the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this rule and the Alcoholic Beverage Code, and conforming to the general requirements specified by this subchapter;
- (2) if the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by this subchapter or the Alcoholic Beverage Code; or
- (3) if the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§45.75. Mandatory Label Information for Malt Beverages.

There shall be stated the following:

- (1) On the brand label:
 - (A) Brand name, in accordance with §45.76 of this title (Relating to Brand Names).
 - (B) Class in accordance with §45.77 of this title (relating to Class and Types).
 - (C) Name and address (except when branded or burned in the container) in accordance with §45.80 of this title (relating to Net Contents).
- (2) On the brand label or on a separate label (back and front):
 - (A) In the case of imported malt beverages, name and address of importer, in accordance with §45.78 of this title (relating to Name and Address).
 - (B) In the case of malt beverages bottled for a licensee or permittee, the name and address of the bottler in accordance with §45.78 of this title (relating to Name and Address).

§45.76. Brand Names.

- (a) *General.* Malt beverages shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this subchapter.
- (b) *Brand names of geographical significance.* Where a geographical name or adjective is used as the brand name, or a part of the brand name, and the administrator finds that the use of such a geographical name or adjective, or any

AGENDA ITEM 26: APPROVAL PURSUANT TO GOV'T CODE §2001.039 TO READOPT, WITHOUT CHANGES, CHAPTER 45, SUBCHAPTER C, §§45.74 – 45.79, 45.81, 45.83, 45.84, 45.87 AND 45.91

statement, design or device appearing upon the label in conjunction therewith, tends to create the impression that the product was produced in a place or region other than that of actual production, the administrator may require the word "brand" to be stated in direct conjunction with such geographical name or adjective, in lettering at least one-half the size of the lettering in which such name or adjective appears on the label. If the administrator finds that the addition of the word "brand" does not remove the misleading impressions conveyed by the use of such geographical name or adjective, he may require, in addition to the word "brand," other appropriate language which will disclose the true place of production.

§45.77. Class and Type.

(a) Every malt beverage label shall bear, in legible and easily viewed writing, its correct classification as "beer" or "malt liquor." The word "ale" may be substituted for the words "malt liquor."

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) No beer shall bear the class designation of ale or malt liquor, and no malt liquor shall bear the class designation of beer. Nothing shall prevent a beer or malt liquor from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (3) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

Note: Amendment Adopted: September 27, 2004; Effective: October 24, 2004

§45.78. Name and Address.

(a) *Domestic malt beverages.* On labels of containers of domestic malt beverages there shall be stated, the name of the bottler and the place where bottled. The bottler's principle place of business may be shown in lieu of the actual place where bottled if the address shown is a location where bottling actually takes place. If such malt beverages are bottled for a person other than the actual bottler there may be stated in addition to the name and address of the bottler (but not in lieu thereof), the name and address of such person immediately preceded by the words "bottled for," "distributed by," or some other similar appropriate phrase.

(b) *Imported malt beverages.* On labels of containers of imported malt beverages there shall be stated the words "imported by," or a similar appropriate phrase, and immediately thereafter the name of the licensee or permittee who is the importer, together with the principal place of business of such licensee or permittee. In addition there may, but need not, be stated the name and principal place of business of the foreign manufacturer, bottler, or shipper.

(c) *Post office address.* The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless:

(1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address; and

AGENDA ITEM 26: APPROVAL PURSUANT TO GOV'T CODE §2001.039 TO READOPT, WITHOUT CHANGES, CHAPTER 45, SUBCHAPTER C, §§45.74 – 45.79, 45.81, 45.83, 45.84, 45.87 AND 45.91

(2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

(d) Notwithstanding the above, the commission may refuse an application for label approval if they believe there is any information, included or excluded, on the label that causes consumers to be confused or misled.

Note: Amendments Adopted: April 25, 2005; Effective Date: June 9, 2005

§ 45.79. Alcoholic Content.

(a) The alcoholic content and the percentage and quantity of the original extract may be stated.

(b) *Form of statement.*

(1) If the alcoholic content is stated, it shall be stated in percentage of alcohol by volume, and shall not be stated by percent by weight, proof, or by maximums or minimums.

(2) The statement of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by subsection (c) of this section.

(c) *Tolerances.*

(1) For malt beverages containing 0.5% or more of alcohol by volume, a tolerance of 0.3% will be permitted, either above or below the stated percentage of alcohol.

(2) Any malt beverage labeled as having more than 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume, regardless of any tolerance.

(3) Any malt beverage labeled as "beer" may not contain more than 4.0% alcohol by weight regardless of any tolerance permitted in subsection (c)(1) of this section.

(4) Any malt beverage labeled as "malt liquor," "ale," or other such similar designation may not contain 4.0% or less alcohol by weight regardless of any tolerance permitted in subsection (c)(1) of this section.

(5) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under subsection (d) of this section, the actual alcoholic content may not equal or exceed 2.5% alcohol by volume, regardless of any tolerance permitted in subsection (c)(1) of this section.

(d) *Low alcohol or reduced alcohol.* The terms "low alcohol" or "reduced alcohol" may only be used on malt beverages containing less than 2.5% alcohol by volume.

(e) *Alcoholic Content Statement.* All portions of any alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color.

(f) *Advertising of alcoholic content.* The alcoholic content shall not be used in any form of advertisement by means of comparison with other products, nor shall the terms, "strong," "full strength," "high proof," or any other reference to alcoholic content, or any statement of the percentage and quantity or the original extract, or any numerals, letters, characters, figures, or similar words or statements likely to be considered as statements of alcoholic content be used in any advertisements. This does not preclude the use of terms "low alcohol" or "reduced alcohol" as used on labels in accordance with subsection (d) of this section.

§45.81. General Requirements for Malt Beverages.

(a) *Contrasting background.* All labels shall be so designed that all statements thereon required by this subchapter are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* All statements required on labels by this subchapter shall be in readily legible script, type, or printing. If contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be substantially more conspicuous than such other descriptive or explanatory reading matter.

(c) *English language.* All information, other than the brand name, required by this subchapter to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if such statements do not in any way conflict with, or are not contradictory to, the requirements of this subchapter.

(d) *Labels firmly affixed.* All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) *Additional information.* Labels may contain information other than the mandatory label information required by this subchapter and the Alcoholic Beverage Code, provided such information complies with the requirements of this section and does not conflict with, nor in any manner qualify statements required by any of the terms of the Alcoholic Beverage Code or rules promulgated by the commission.

§45.83. Label Approval and Release.

On or after the effective date of this subchapter, it shall be unlawful for any person to withdraw from customs custody in this state any malt beverages unless contained in lawful containers as required by the Alcoholic Beverage Code and rules of the commission and labeled in accordance with the provisions of such code and the rules of the commission.

§45.84. Relabeling.

Imported malt beverages in customs custody which are not labeled in conformity with certificate of label approval, issued by the administrator must be relabeled in accordance with requirements of this rule and the Alcoholic Beverage Code prior to withdrawal.

§45.87. Advertisement Defined.

The term "advertisement" as used in this subchapter includes any advertisement of a malt beverage through the medium of radio or television broadcast; or of newspaper, periodicals, or other publications; or of any other printed or graphic matter, including trade booklets, menus and wine cards, if such advertisement is in, or is calculated to induce sales in, this state; or is disseminated by mail; except that such term shall not include the following:

(1) Any label affixed to any container of malt beverage; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail, or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under this subchapter.

(2) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person engaged in business as a manufacturer, wholesaler, importer or retailer of a malt beverage.

§45.91. Exports.

These regulations shall not apply to malt beverages in bond, nor to malt beverages manufactured for sale exclusively outside this state.

AGENDA ITEM 27: APPROVAL PURSUANT TO PROPOSE AMENDMENT TO §33.13. PROCESS TO APPLY FOR LICENSE OR PERMIT (HB 1953)

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.13, Process to Apply for License or Permit.

H.B. 1953, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §§11.391(a) and 61.381(a). These sections require an applicant for an on-premises permit or license to prominently post an outdoor sign giving notice of the application. Before the amendment, the notice was required to be posted at least 60 days before the application was filed. After the amendment, the notice is required to be posted at least 60 days before the permit or license is issued. Because 16 T.A.C. §33.13 as currently written complies with the prior version of the Alcoholic Beverage Code, it must be amended to conform to the requirements of H.B. 1953.

The proposed amendment changes the 60-day notification requirement in subsection (e) to conform to H.B. 1953. The amendment also adds language to subsection (f) to clarify when the notification requirement is triggered.

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.

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

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the procedures applicants must follow will be clarified and the discrepancy between the rule and the Code, as amended, will be eliminated.

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) 206-3480. 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 September 7, 2011 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. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. 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. 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.

The proposed amendment is authorized by Texas 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, 11.391, and 61.381.

§33.13. Process to Apply for License or Permit.

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license

AGENDA ITEM 27: APPROVAL PURSUANT TO PROPOSE AMENDMENT TO §33.13. PROCESS TO APPLY FOR LICENSE OR PERMIT (HB 1953)

or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

- (1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;
 - (2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;
 - (3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;
 - (4) proof of publication of notice of the application, if required by §11.39 of the Alcoholic Beverage Code;
- and
- (5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a prequalification packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage Code and rules of the commission or whether there is legal reason to deny the application.

(d) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

- (1) may be filed with the county judge as mandated by §61.31 of the Alcoholic Beverage Code;
- (2) has been referred to the State Office of Administrative Hearings;
- (3) is granted; or
- (4) is refused.

(e) For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days ~~before the date the permit or license is issued [prior to filing an application pursuant to subsection (c) of this section. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission].~~

(f) A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

AGENDA ITEM 28: APPROVAL PURSUANT TO PROPOSE AMENDMENT TO §33.15. USE OF WINERY FESTIVAL PERMIT (SB 438)

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.15, Use of Winery Festival Permit.

S.B. 438, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §17.01(b) to change the constraints on how often the holder of a winery festival permit may offer wine for sale under the permit. Before the amendment, the permit could not be used for more than three consecutive days at the same location. The amendment changed the consecutive day limit from three to four. Because 16 T.A.C. §33.15 as currently written complies with the prior version of the Alcoholic Beverage Code, it must be amended to conform to the requirements of S.B. 438.

The proposed amendment changes the consecutive day limitation on use of the permit in subsection (c) from three days to four days to conform to S.B. 458.

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.

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

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the discrepancy between the rule and the Code, as amended, will be eliminated.

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) 206-3480. 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 September 7, 2011 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. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. 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. 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.

The proposed amendment is authorized by Texas 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 and §17.01.

§33.15. Use of Winery Festival Permit.

(a) This section relates to Chapter 17 of the Alcoholic Beverage Code. In the absence of specific statutory authority to the contrary, this section regulates the activities of holders of Winery Permits who also hold Winery Festival Permits.

(b) Applications for Winery Festival Permits under Chapter 17 of the Alcoholic Beverage Code, and the expiration, denial, cancellation and suspension of such applications and permits shall be in accordance with the statutes, rules and commission policies governing applications, expirations, denials, cancellations and suspensions of permits generally.

AGENDA ITEM 28: APPROVAL PURSUANT TO PROPOSE AMENDMENT TO §33.15. USE OF WINERY FESTIVAL PERMIT (SB 438)

(c) No person may sell wine, or possess wine with the intent to sell it, at a farmer's market, at a civic or wine festival, or at a similar civic or wine celebration or event, without first having obtained from the commission a Winery Festival Permit Certificate authorizing sales at the event. For purposes of this section, a "celebration" is a special cultural or charitable event of a limited and specified duration that is organized for, and open to, the public. Each market, festival, celebration or other event requires a separate certificate, but a certificate may be valid for up to ~~four~~ **three** consecutive days at a single location. A Winery Festival Permit Certificate may only be issued to the holder of a Winery Festival Permit.

(d) The holder of a Winery Festival Permit, or his designated representative, must apply for a Wine Festival Permit Certificate on a form provided by the commission. The application must be submitted prior to the event for which the certificate is sought. The application should be submitted at least three business days prior to the event to allow the commission time to process it. The application must be submitted to the commission's district office having jurisdiction over the location of the event for which the certificate is sought. The application must include the following information:

- (1) the applicant's Winery Permit number;
- (2) the trade name of the Winery Permit holder associated with the Winery Festival Permit;
- (3) the location of the event where the Winery Festival Permit Certificate will be used;
- (4) the date and time of the event where the Winery Festival Permit Certificate will be used; and
- (5) a brief description of the event where the Winery Festival Permit Certificate will be used.

(e) The commission shall issue a certificate if the application is accepted. The certificate and a copy of the application must be displayed in a conspicuous place at the location of the event at all times during the event.

(f) The administrator or his designated representative may refuse to accept an application for a Winery Festival Permit Certificate if:

- (1) the application is incomplete or inaccurate;
- (2) the applicant does not qualify under subsection (c) of this section;
- (3) the event does not qualify under subsection (c) of this section; or
- (4) there are reasonable grounds to believe that issuance of the certificate will:
 - (A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or
 - (B) is otherwise detrimental to the public.

(g) The grounds for refusing to accept an application for a Winery Festival Permit Certificate shall be communicated in writing to the applicant as soon as is reasonably practical.

(h) All wine sold or possessed with the intention to sell at an event held in an area where the sale of wine has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(i) If a Winery Festival Permit Certificate is issued in error, the commission may rescind the certificate.

AGENDA ITEM 29: APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO §45.121. CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR (INCLUDING HB 2012)

Interested parties have indicated that they would like more time to work with us on this proposed rule, and have requested that consideration of this item be postponed until the August 23, 2011 Commissioners Meeting.

Regardless of whether the proposed rule is considered at this meeting or the August meeting, the decision to adopt it can still be made at the October Commissioners Meeting (and not before). A decision at the October meeting to adopt the rule means the earliest possible date it could become effective would be mid-November.

In light of this request to continue discussing the proposal, and since it will not affect the earliest possible date of adoption, I recommend that the Commission postpone consideration of this item and place it on the August Open Meeting Agenda.

Martin Wilson
Assistant General Counsel

CERTIFICATION

REGULAR COMMISSION MEETING

9:30 a.m. – July 26, 2011

**5806 Mesa Drive
Austin, Texas 78759**



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 July 26, 2011.

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

Alan Steen
Administrator

Sworn and subscribed before me this the 18th day of August 2011.

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

Gloria Darden Reed
Notary in and for Travis County, Texas

Attachment 7

**Approval to Publish Proposed Repeal of Chapter
32, Grant Administration**

Attachment 8

**Approval to Publish Proposed Amendment
to Rule §45.117, Gifts and Advertising
Specialties**

Attachment 9

**Approval to Publish Proposed Amendment to
Rule §33.25, Alcoholic Beverage License and
Permit Fees and Surcharges**

Attachment 10

Discussion of Rule Activity

Attachment 11

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

Attachment 12

Attachment 13

Approval of Licensing's Internal Audit

Attachment 14

Seller Server Training Curriculum Briefing

Attachment 15

**Approval to Publish Proposed Amendment to
Rule §45.120, Co-Packing of Liquor**

Attachment 16

**Approval to Publish Proposed Amendment to
Rule §45.121, Credit Restrictions and Delinquent
List for Liquor**

Attachment 17

**Approval to Publish Proposed Amendment to
Rule §45.131, Payment Regulations for Malt
Beverages**

Attachment 18

Public Comments

**Mr. Jim Haire
5801 Regents Row
Tyler, Texas 75703**